

**AUSTIN HOUSING FINANCE CORPORATION**

**as**

**ISSUER**

**and**

**CAPITAL ONE, NATIONAL ASSOCIATION**

**as**

**BONDHOLDER REPRESENTATIVE**

**and**

**HOUSING FIRST OAK SPRINGS, LP**

**as**

**BORROWER**

**LOAN AGREEMENT**

**Dated as of December 1, 2017**

**Relating to**

**\$11,500,000**

**Austin Housing Finance Corporation  
Multifamily Housing Mortgage Revenue Bonds  
(Housing First Oak Springs Apartments Project) Series 2017**

*The interests of the Issuer in this Agreement, excluding any unassigned rights specifically retained by Issuer, have been assigned to BOKF, NA, a national banking association, as Trustee (the "Trustee") pursuant to a Trust Indenture dated as of December 1, 2017, between the Issuer and the Trustee.*

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## **LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "**Agreement**") is made as of December 1, 2017, by and among AUSTIN HOUSING FINANCE CORPORATION, a housing finance corporation organized and under the laws of the State of Texas (the "**Issuer**"), CAPITAL ONE, NATIONAL ASSOCIATION, a national banking association (the initial "**Bondholder Representative**"), and HOUSING FIRST OAK SPRINGS, LP, a Texas limited partnership (the "**Borrower**").

### **WITNESSETH:**

WHEREAS, the Issuer was created and organized and is validly existing under the Constitution and laws of the State of Texas (the "**State**"), particularly Chapter 394, Texas Local Government Code, as amended (the "**Texas Local Government Code**"); and

WHEREAS, pursuant to the Texas Local Government Code, the Issuer is authorized and empowered to issue revenue bonds and use the proceeds from the sale of such bonds to make loans with respect to one or more projects authorized under the Act upon such term and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

WHEREAS, pursuant to a Trust Indenture (the "**Indenture**") executed as of even date herewith, by and between the Issuer and BOKF, NA, a national banking association, as trustee ("**Trustee**"), the Issuer has, among other things, issued its Multifamily Housing Mortgage Revenue Bonds (Housing First Oak Springs Apartments Project) Series 2017, in the original principal amount of \$11,500,000 (the "**Bonds**") for the purpose of making a loan (the "**Loan**") to finance the development and construction of the Housing First Oak Springs, a 50-unit single resident occupancy residential rental apartment complex, which will additionally include items not financed with the Bonds such as Retail Space and the Clinic (hereafter collectively, defined as the "**Project**," although Bond proceeds will only be applied for purposes allowed under the Texas Local Government Code and the Internal Revenue Code) to be located on the property located at 3000 Oak Springs Drive, in Austin, Texas 78702 (hereafter defined as the "**Land**") which tract of land is to be leased by the Borrower from the Austin-Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), as ground lessor ("**Ground Lessor**") pursuant to a long-term ground lease; and

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

WHEREAS, to evidence the Loan, the Borrower is making to the order of Issuer a Promissory Note in the principal sum of \$11,500,000 (the "**Note**") substantially in the form attached hereto as **Schedule B**, which Note provides for the repayment of the Loan in payments sufficient to pay, when due, the principal of, premium, if any, and interest on the Bonds, and to secure, among other things, the payments due under the Note and the other obligations of Borrower under this Agreement, and the Borrower is executing a Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "**Mortgage**") naming

the Issuer as beneficiary (the beneficial interest in which is being assigned by the Issuer to the Trustee) with respect to the Project;

WHEREAS, Housing First Oak Springs, GP, LLC, a Texas limited liability company (the "**General Partner**") and NEF Assignment Corporation, an Illinois not for profit corporation, as nominee ("**Investor Limited Partner**") entered into that certain Amended and Restated Agreement of Limited Partnership dated on or about December 1, 2017 (the "**Partnership Agreement**"), pursuant to which the Investor Limited Partner has been admitted as limited partner and has agreed to make capital contributions to the Borrower upon the satisfaction of certain conditions set forth therein; and

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

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

## ARTICLE 1 DEFINITIONS, EXHIBITS AND RULES OF INTERPRETATION

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

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

**"Act of Bankruptcy"** means any of the following events:

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

(b) a proceeding or case shall be commenced without the application or consent of the Borrower, a Guarantor, or the Investor Limited Partner, as the case may be, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or the composition or adjustment of debts of the Borrower, a Guarantor, or the Investor Limited Partner, (ii) the appointment of a trustee, receiver, custodian, or liquidator of the Borrower, a Guarantor, or the Investor Limited Partner or of all or any substantial part of the assets of the Borrower, a Guarantor, or the Investor Limited Partner, or (iii) similar relief in respect of the Borrower, a Guarantor, or the Investor Limited Partner under any law relating to bankruptcy, insolvency, reorganization, winding-up, or

composition or adjustment of debts and such proceeding or case shall not be dismissed within 60 days of such filing.

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

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

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

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

**“AHAP Contracts”** means, collectively, (a) the Project-Based Section 8 HUD Agreement to Enter Into Housing Assistance Payments Voucher Program entered into between Borrower and the Authority pursuant to Resolution 2488 duly adopted on March 9, 2017, by the Authority’s Board of Commissioners, which shall in any event cover 25 of the planned single occupancy residential units in the Project and all renewals and extensions thereof (the **“Housing Choice Voucher Program AHAP”**), and (b) the Project-Based Section 8 HUD Agreement to Enter Into Housing Assistance Payments Voucher Program entered into between Borrower and the Authority pursuant to Resolution 2482 duly adopted on February 16, 2017, by the Authority’s Board of Commissioners, which shall in any event cover 25 of the planned single occupancy residential units in the Project and all renewals and extensions thereof (the **“HUD VASH Program AHAP”**). Each AHAP Contract is to be entered into on or before the Bond Closing.

**“AHFC Second Loan”** means a subordinate loan in the amount of \$3,888,112.00 made to the Borrower by ATCIC (which will be made with a loan of the proceeds of general obligation bonds made to ATCIC by the Issuer in accordance with the terms of the Rental Housing Development Assistance Program Loan Agreement [the **“RHDA Agreement”**]), bearing interest at zero percent (0%), maturing on the later to occur of 40-years after the issuance of certificates of occupancy or November 30, 2059, and payable as provided for in the AHFC Second Loan Documents. The AHFC Second Loan will fund on or before the Construction Term Maturity Date as and when provided for in the Budget to pay a portion of the costs associated with the construction of the Project.

**“AHFC Second Loan Documents”** means all notes, agreements, instruments, and documents evidencing, governing, and/or securing the AFHC Second Loan (which, in any event, shall include the RHDA Agreement and the collateral assignment of the documents evidencing, securing, and pertaining to the loan by Issuer to ATCIC of proceeds for the AHFC Second Loan pursuant to the RHDA Agreement).

**“AHFC Regulatory Agreement”** means the Restrictive Covenant Running with the Land executed by ATCIC and Borrower for the benefit of AHFC.



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

**“Appraisal”** or **“appraisal”** means a written statement setting forth an opinion of the Appraisal Value of the Project that (i) has been independently and impartially prepared by a qualified appraiser directly engaged by the Bondholder Representative or its agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by the Bondholder Representative, in its reasonable judgment. Once an Appraisal has been reviewed and accepted by the Bondholder Representative, the Borrower shall be entitled to receive a copy of that Appraisal if that Appraisal was paid for by the Borrower.

**“Appraisal Value”** means, as reflected in the most current Appraisal obtained by the Bondholder Representative, the as-stabilized, as-completed value of the Project valued with rent restrictions (including current HUD utility allowances) and tax abatements (as applicable), plus the value of the Low Income Housing Tax Credit (at the lesser of the appraisal value or the actual aggregate purchase price as reflected in the Partnership Agreement).

**“Architect”** has the meaning assigned to that term in **Section 5.6(b)**.

**“Architecture Contract”** has the meaning assigned to that term in **Section 5.10(c)**.

**“Assignment of Management Agreement”** means the Assignment of Management Agreement of even date herewith from Borrower to Bondholder Representative.

**“ATCIC”** means Austin -Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), a community center created pursuant to Section 534 of the Texas Health and Safety Code.

**“ATCIC Sponsor Fourth Loan”** means the [\$4,640,995.00] loan to be made to Borrower by ATCIC bearing interest at zero percent (0%) per annum, having a 40-year term, and payable as provided for in the ATCIC Sponsor Fourth Loan Documents. The ATCIC Sponsor Fourth Loan will fully fund on or before the Bond Closing for deposit into the Collateral Account.

**“ATCIC Sponsor Fourth Loan Documents”** means all notes, agreements, instruments, and documents evidencing, governing, and/or securing the ATCIC Sponsor Fourth Loan.

**“Authority”** means the Housing Authority of the City of Austin.

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

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

**“Bond Closing”** means the date on which there is delivery by the Issuer of, and payment by the initial purchaser for, the Bonds.

**“Bond Closing Date”** means the date of this Agreement.

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

**“Bond Documents”** shall have the meaning given to that term in the Indenture.

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

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

**“Bondholder Representative's Required Completion Date”** means the earlier to occur of (a) fifteen (15) calendar months from the date of this Agreement (as may be extended for up to an aggregate combined amount of 60 days as a result of Excusable Delays), (b) the date the Investor Limited Partner shall require that the Improvements are placed in service as provided in the Partnership Agreement, (c) the date required by the Credit Agency for placing the Project in service in order to maintain its Low-Income Housing Tax Credit, as such placed in service date may be extended by the Credit Agency, or (d) the date required for completion of the Improvements under the Subordinate Loan Documents.

**“Bond Maturity Date”** means twenty-three (23) calendar months from Bond Closing.

**“Bond Regulatory Agreement”** shall mean that certain Regulatory and Land Use Restriction Agreement dated of even date herewith, by and among Borrower, Issuer and Trustee (and referred to as the Regulatory Agreement in the Indenture).

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

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

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

**“Borrower's Organizational Documents”** means the Partnership Agreement, its certificate of formation and any amendments and supplements thereto.

**“Borrower's Sources”** has the meaning assigned to that term in **Section 4.6(1)**.

**“Budget”** means the budget and related flow of funds prepared by Borrower, and approved by Bondholder Representative, setting forth in detail all direct and indirect costs for the acquisition and construction of the Improvements, as provided for in **Schedule C-1** attached hereto. The Budget shall have a hard cost contingency of at least 5% and a soft cost contingency of at least 5%. The Budget shall reflect a break down satisfactory to the Bondholder Representative showing the costs and sources for developing the residential units in the Improvements and the two commercial spaces (being the Retail Space and the Clinic Space).

**“Business Day”** means any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York or the jurisdiction in which the Bondholder Representative's designated offices are located, are authorized or obligated by law,

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

**"Capital Contribution Account"** means that certain interest bearing account of Borrower, located at Bondholder Representative to be used for disbursements by Bondholder Representative of certain of the Capital Contributions.

**"Capital Contributions"** means the Capital Contributions to be made by the Investor Limited Partner in accordance with and subject to the terms and provisions of the Partnership Agreement, a schedule of such payments is set forth in **Schedule J**, with respect to the purchase of a limited partnership interest in the Borrower. References to specific Capital Contributions shall be to the associated installment of the Capital Contribution in **Schedule J**.

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

**"City"** means the City of Austin, Texas.

**"Clinic Space"** means the \_\_\_\_\_ square feet (more or less) of commercial space in the Improvements as provided for in the Plans and Specifications, which will be sub-leased to ATCIC pursuant to a Commercial Lease for primary care and mental health services; provided, however, that the Bond proceeds will not be used to finance such commercial space.

**"Code"** means the Internal Revenue Code of 1986, as amended; all references to a particular section of the Code include (a) rulings of the Internal Revenue Service applicable to such sections and (b) final and temporary regulations issued under the Code with respect to such sections that are available to the general public.

**"Collateral Account"** means the blocked collateral account of Borrower located at the Bondholder Representative having an opening balance from the full funding of the ATCIC Sponsor Fourth Loan. Borrower shall have no access to the Collateral Account, except as specifically provided for in this Agreement.

**"Collateral Assignment"** means the Collateral Assignment of Rights to Tax Credits and Partnership Interests dated as of even date herewith executed by Borrower and the General Partner.

**"Collateral Assignment of HAP Contracts"** means a Collateral Assignment of HAP Contracts dated of even date herewith executed by Borrower and relating to the Borrower's rights under and with respect to each HAP Contract.

**"Collateral Pledge"** means the Collateral Assignment of Account of even date herewith from Borrower to the Bondholder Representative and covering the Collateral Account.

**"Commercial Lease"** means a sub-lease of space in the Retail Space and/or the Clinic Space.

**"Commitment"** means any written or oral commitment, offer, or statement made by Bondholder Representative to Borrower before the Bond Closing with respect to the terms and

manner upon which Bondholder Representative will purchase the Bonds (including the letter dated December 8, 2016, from the Bondholder Representative to Borrower).

**"Computation Date"** has the meaning set forth in Section 1.148-1(b) of the Regulations and includes each Installment Computation Date and the Final Computation Date

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

**"Construction"** has the meaning assigned to that term in **Section 5.6(a)** of the Loan Agreement.

**"Construction Capital Contribution"** has the meaning assigned to that term in **Section 4.7**.

**"Construction Contract"** has the meaning assigned to that term in **Section 5.10(c)**.

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

**"Construction of the Project"** has the meaning assigned to that term in **Section 5.6(b)**.

**"Construction Term"** means the period beginning on the Bond Closing and ending on the date the Note is fully and finally paid.

**"Construction Term Maturity Date"** means twenty (20) calendar months from the Bond Closing Date, as the same may be extended pursuant to **Section 4.2(e)** hereof.

**"Contractor"** means ATCIC, and each other general contractor, whether one or more, engaged by Borrower, and approved in writing by the Bondholder Representative, to construct the Improvements (it being agreed that Bailey Elliott Construction, Inc. will be the primary subcontractor for the construction of the Improvements and in such role, will be treated as Contractor for purposes of this Agreement (if Bailey Elliott Construction, Inc. is not the primary subcontractor, Bondholder Representative shall approve any other primary subcontractor)).

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

**"Costs of Issuance"** has the meaning assigned to that term in the Indenture.

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

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

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

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

**"Determination of Taxability"** has the meaning assigned to that term in the Indenture.

**"Developer"** means ATCIC, acting in that capacity.

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

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

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

**"Draw Request"** has the meaning assigned to that term in **Section 4.7(2)**.

**"DSHS"** means the Department of State Health Services of the State.

**"DSHS Appropriation"** means the 2014-2015 General Appropriations Act, 5.B.1, 83<sup>rd</sup> Legislature 2013 (Article II, DSHS, Rider 90), whereby \$25,000,000 was appropriated to award a maximum of five grants to establish or expand community collaboratives that provide services to individuals experiencing issues related to mental health and homelessness.

**"DSHS Third Loan"** means a subordinate loan or grant to Borrower from ATCIC in the amount of \$4,442,438.00, having a 40-year maturity and 40-year amortization, bearing interest of zero percent (0%) per annum, and otherwise on terms acceptable to Bondholder Representative. The DSHS Third Loan will be made by ATCIC with proceeds of a healthy community collaborative grant from DSHS to ATCIC from the proceeds of the DSHS Appropriation. The DSHS Third Loan will be made available to Borrower during the Construction Term first for the payment of budgeted items as and when provided for in the Budget.

**"DSHS Third Loan Documents"** means all agreements, instruments and documents relating to, governing, evidencing, or securing the DSHS Third Loan.

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

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

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

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

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

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

**"Favorable Opinion of Bond Counsel"** means, with respect to any action the taking of which requires such an opinion, an unqualified opinion of counsel, which will be from Bond Counsel, delivered to and in form and substance satisfactory to the Issuer to the effect that such action does not adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

**"Federal Laws"** has the meaning assigned to that term in **Section 7.15(f)**.

**"Fifty Percent Test"** shall mean the 50% aggregate basis test under Section 42(h)(4)(B) of the Code.

**"Final Computation Date"** means the date on which the final payment in full of all outstanding Bonds is made.

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

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

**"General Partner Contribution"** means an equity contribution to be made by the General Partner in Borrower in the amount of \$676,500.00 on terms and from a source acceptable to the Bondholder Representative.

**"Good Costs"** means the Qualified Project Costs which may be paid with proceeds of the Bonds on deposit in the Project Fund.

**"Governmental Authority"** has the meaning assigned to that term in the Indenture.

**"Ground Lease"** means that certain Ground Lease, dated on or about even date herewith, by and between the Ground Lessor, as lessor, and the Borrower, as lessee (and is the same as the long-term ground lease referred to in the Recitals).

**"Guarantors"** means the General Partner and ATCIC (each as to payment and completion).

**"Guarantys"** shall mean the Payment and Performance Guaranty (whether one or more) executed by each Guarantor (in favor of the Bondholder Representative).

**"HAP Contracts"** means, collectively, (a) the Project Based Section 8 Housing Assistance Payments Contract to be entered into by the Authority and the Borrower pursuant to the Housing Choice Voucher Program AHAP, which shall in any event cover 25 of the planned residential units in the Project and all renewals and extensions thereof, and (b) the Project Based Section 8 Housing Assistance Payments Contract to be entered into by the Authority and the Borrower pursuant to the HUD VASH Program AHAP, which shall in any event cover 25 of the planned residential units in the Project and all renewals and extensions thereof .

**"Hazardous Substances"** shall have the meaning assigned to that term in the Mortgage.

**"Holder"** has the meaning assigned to that term in the Indenture (including the Bondholder Representative and each other owner of the Bonds).

**"Housing Act"** means the United States Housing Act of 1937 (42 U.S.C. §1437 et seq.), as amended from time to time, and any successor legislation.

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

**"HUD VASH"** means the HUD-Veterans Affairs Supportive Housing.

**"HUD VASH Program"** means the program which combines rental assistance from HUD for homeless veterans and their families and case management and clinical services for these

veterans provided by the VA. The VA will refer those individuals eligible for vouchers under the HUD VASH Program.

**"Improvements"** means the housing project, consisting of one building, which will serve tenants with chronic mental health and substance abuse issues with 50 fully furnished single occupancy efficiency apartments, the Clinic Space, the Retail Space, a community room and parking garage, which will be known as Housing First Oak Springs, and which will be located on the Land, and which will be developed with the proceeds of the Loan, the Capital Contributions, the General Partner Contribution, and the Subordinate Loans and Grants substantially in accordance with the Plans and Specifications. All of the residential units will be eligible for project based housing choice vouchers as provided for in an AHAP Contract. Nothing herein shall limit the requirements of the Texas Office of Mental Health and the requirements of each Regulatory and Restrictive Use Agreement with respect to the occupancy of the residential units.

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

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

**"Installment Computation Date"** means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

**"Intercreditor Agreement"** means, collectively, (a) an Intercreditor and Subordination Agreement among Borrower, Bondholder Representative, ATCIC and joined in by the Trustee, where the holder of the AHFC Second Loan subordinates the payment of the AHFC Second Loan and all liens securing the AHFC Second Loan to the Mortgage and subordinates the payment of the AHFC Second Loan to payment of the Loan, (b) an Intercreditor and Subordination Agreement among Borrower, Bondholder Representative, ATCIC and joined in by the Trustee, where the holder of the ATCIC Sponsor Fourth Loan subordinates the payment of the ATCIC Sponsor Fourth Loan and all liens securing the ATCIC Sponsor Fourth Loan to the Mortgage and subordinates the payment of the ATCIC Sponsor Fourth Loan to payment of the Loan, and (c) an Intercreditor and Subordination Agreement among Borrower, Bondholder Representative, ATCIC and joined in by the Trustee, where the holder of the DSHS Third Loan subordinates the payment of the DSHS Third Loan and all liens securing the DSHS Third Loan to the Mortgage and subordinates the payment of the DSHS Third Loan to payment of the Loan,

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

**"Investment Proceeds"** is defined in Section 1.148 1(b) of the Regulations and generally consists of an amounts actually or constructively received from investing Proceeds.

**"Investor Limited Partner"** has the meaning given to that term in the Recitals hereof

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

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

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



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

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

**“Loan Documents”** shall have the meaning given to that term in the Indenture (which in any event shall include, without limitation, this Agreement, the Note, the Mortgage, each Guaranty, the Collateral Pledge, the Collateral Assignment of HAP Contracts, and the Assignment of Management Agreement).

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

**“Low Income Housing Tax Credit”** means the 2016 4 % Low-Income Housing Credit as that term is used in Section 42 of the Code available to the Project in the anticipated amount of \$832,349.00, annually for ten (10) years.

**“Material Adverse Change or Effect”** means any act, circumstance, or event (including, without limitation, any announcement of action) which (i) causes an Event of Default, (ii) otherwise could reasonably be expected to be material and adverse to the financial condition or operations of Borrower or the Project, or (iii) in any manner could reasonably be expected to materially and adversely affect the validity or enforceability of any Loan Document.

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

**“Net Proceeds”** means the Sale Proceeds.

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

(1) the lesser of (a) Project Revenues actually received from or in connection with the Project during the period in question, but excluding tenant security and other deposits (except to the extent the tenant has forfeited its rights to return thereof), and other penalties and income of a nonrecurring nature, and adjusted for rental concessions and vacancy (vacancy shall be the greater of 5.0%, or actual vacancy as determined by Bank in its reasonable discretion, or pro forma vacancy), or (b) the Project Revenues based on the maximum rents permitted for the Low Income Housing Tax Credit Units; minus

(2) the sum of the greater of (a) pro forma operating expenses with respect to the Project approved prior to Bond Closing by the Bondholder Representative or (b) operating expenses actually incurred by the Borrower with respect to the Project during the period in question (provided that management fees for the Project will be deemed to be equal to the greater of the management fee actually paid or five percent (5%) of the Project Revenues) with an appropriate

adjustment to include in such period an allocable share of property taxes, Issuer Fees, Ordinary Fees and Expenses, utility costs, insurance premiums, and recurring maintenance expenses which cover a period of time greater than the period in question.

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

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

**“Ordinary Fees and Expenses”** has the meaning assigned to that term in the Indenture.

**“Outstanding Bonds”** and **Bonds Outstanding** have the meanings assigned to those terms in the Indenture.

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

**“Payment and Performance Bond”** means a payment and performance bond providing that the primary subcontractor is bonded for payment and performance, in an aggregate amount of at least equal to the Construction Contract, by a surety, having an AM Best rating of at least A/VIII or where an AM Best rating is unavailable, an S&P rating of at least AA (this bond shall contain a dual obligee clause in favor of the Contractor and the Bondholder Representative).

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

**“Permitted Encumbrances”** means the items listed in **Schedule A-1**, which for purposes of this Agreement shall include the Credit Agency Regulatory Agreement and the AHFC Regulatory Agreement.

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

**“Placed in Service or placed in service”** means with respect to the Project, the date that (a) the Project has received all temporary certificates of occupancy and use permits required for legal occupancy of all of its dwelling units and is ready and available for occupancy by tenants under Approved Leases (if such certificates or permits are of a temporary nature, the Project shall not be deemed to have been Placed in Service unless: (i) any work remaining to be done is of a nature that would not impair the permanent occupancy of any of the residential units on a full paying basis; and (ii) the Borrower has made adequate provision for the payment and completion of all outstanding punch list items and any other work that needs to be completed); (b) the Project is free of any mechanics or other Liens, except for the mortgages securing the Loan, the subordinate Liens securing the Subordinate Loans and Grants and Liens which are Bonded, or obligations secured thereby or affirmatively insured against by the Trustee’s loan title policy (in such manner as precludes recourse to the Borrower for any loss incurred by the insurer) or by another policy of title insurance issued to the Borrower by a reputable title insurance company, in an amount complying with the requirements of this Agreement (or by an endorsement of either such policy); (c) the Architect has issued an Architect’s Certificate in the form of AIA document

G704 stipulating that construction or rehabilitation is substantially complete; (d) the General Partner has issued a certification that the construction or rehabilitation is substantially complete and that all temporary certificates of occupancy and use permits have been issued for 100% of the residential units; (e) the Contractor has issued a General Contractor's Certificate comparable to AIA Form G706 and G706A certifying that it has been paid in full under the Construction Contract, that it has paid all subcontractors and materialmen in full, and that it has received waivers of mechanic's lien from all subcontractors, materialmen and anyone else that could lien the property in connection with the work under the Construction Contract or any such lien has been Bonded, and (f) there is no Event of Default that has occurred and is continuing.

**"Plans and Specifications"** has the meaning assigned to that term in **Section 5.6**.

**"Proceeds"** is defined in Section 1.148-1(b) of the Regulations and generally means any Sale Proceeds and Investment Proceeds of the Bonds.

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

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

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

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

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

**"Property Manager"** means Prak Property Management, Inc.

**"Publicly-Held Corporation"** means a corporation the outstanding voting stock of which is registered under Section 12(b) or 12(g) of the Securities and Exchange Act of 1934, as amended.

**"QAP"** means Qualified Allocation Plan for the 2016 Housing Tax Credit Program adopted by the Credit Agency (as may be amended, replaced, or superseded).

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

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

**"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.

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

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

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

**“Regulatory and Restrictive Use Agreements”** means, collectively: (i) the Bond Regulatory Agreement, and (ii) the Credit Agency Regulatory Agreement and (iii) the AHFC Regulatory Agreement.

**“Replacement Proceeds”** has the meaning set forth in Section 1.148-1(c) of the Regulations.

**“Requirements”** shall have the meaning set forth at **Section 5.1** herein (but in any event shall include the Regulations).

**“Requirements of Law”** means as to any Person the certificate or articles of incorporation or organization or formation and by-laws, operating agreement, or other organizational or governing documents of such Person; all requirements of HUD, the Credit Agency, the City, DSHS, the Issuer, the Subordinate Loan Documents, the Housing Act, the DSHS Appropriation, each Regulatory and Restrictive Use Agreement, the HUD VASH Program, the Subordinate Loan Documents, each AHAP Contract and each HAP Contract (once each is executed), and any other restrictions or covenants applicable to and affecting the use and development of the Project. Requirements of Law shall also include, without limitation, any and all applicable (a) federal, state, parish and municipal laws, codes, ordinances, rules and regulations actually applicable to the Project, whether currently existing or hereafter promulgated, including without limitation environmental laws, building codes, land use, and zoning codes to the extent actually applicable to the Project, (b) all requirements and terms of the QAP as adopted by the Credit Agency and applicable to the Low Income Housing Tax Credit for the Project, (c) federal regulations and policies issued pursuant to these regulations, including without limitation, 24 CFR 941 Subpart F, as amended from time to time, (d) the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157); (e) the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614; (f) the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973; (g) the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) 24 CFR Part 570.603) and supporting Department of Labor regulations; (h) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Development Act of 1974 as amended, and 24 CFR Part 570.606; and (i) for existing properties built prior to 1978, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §4831(b)) and the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35.

**“Requisition”** means a request for the disbursement of funds in the Project Fund (or if applicable, the Costs of Issuance Fund, as the case may be) in accordance with **Section 5.2(3)** of the Indenture, as otherwise required by the Trustee, on the form attached as Exhibit A to the Indenture (and in any event shall be the same as the requisitions used in the Indenture).

**"Retail Space"** means the \_\_\_\_ square feet (more or less) of retail commercial space in the ground floor of the Improvements as provided for in the Plans and Specifications, which will be leased initially to ATCIC and subleased to Goodwill and for a retail shop; provided, however, that the Bond proceeds will not be used to finance such commercial space.

**"Retainage"** means an amount equal to 10% of the amount of the contract with Contractor (whether one or more) shall be retained by Borrower, unless a greater amount is required to be retained under applicable Requirements of Law, in order to secure, the payment of artisans and mechanics who perform labor or service and the payment of any and all other persons who furnish material and labor, or specifically fabricated material for any contractor, subcontractor, agent, or receiver for the construction of the Improvements.

**"Sale Proceeds"** is defined in Section 1.148-1 of the Regulations and generally consists of 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(b)(4) of the Regulations.

**"Sanctioned Country"** means, at any time, a country or territory which is the subject or target of any Sanctions.

**"Sanctioned Person"** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

**"Sanctions"** means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

**"Section 8 Property"** means a property which all of a portion thereof qualifies for "project based assistance" under 42 U.S.C. §1437f and all regulations issued pursuant thereto.

**"State"** means State of Texas.

**"State Laws"** has the meaning assigned to that term in **Section 7.15(f)**.

**"Stored Materials"** has the meaning assigned to that term in **Section 5.27**.

**"Subordinate Loan Documents"** means, collectively, the AHFC Second Loan Documents, the ATCIC Sponsor Fourth Loan Documents, and the DSHS Third Loan Documents.

**"Subordinate Loans and Grants"** means, collectively, the AHFC Second Loan, the ATCIC Sponsor Fourth Loan, and the DSHS Third Loan.

**"Substantial Completion"** means the completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Encumbrances and Bonded liens in accordance with the Plans and Specifications to the satisfaction of the Bondholder Representative and its Project Engineer, except for such defects or departures which do not, in the opinion of the Bondholder Representative and its Project Engineer, adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, and copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units located in the Improvements including, and not by way of limitation, a conditional, temporary or permanent certificate of occupancy.

**"Tax Certificate"** has the meaning assigned to that term in **Section 2.2(11)**.

**"Tax Credit Allocation"** means the letter (or other form of notice) issued by the Credit Agency regarding the availability of a Low Income Housing Tax Credit for the Project which is attached hereto as **Schedule M** subject to the terms and provisions thereof

**"Title Policy"** has the meaning provided in **Schedule K**.

**"Total Project Expenses"** has the meaning assigned to that term in **Section 4.6(1)**.

**"Transfer"** means (a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law), (b) except pursuant to a Regulatory and Restrictive Use Agreement, the grant, creation, or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law) that is not Bonded, (c) the issuance or other creation of a direct or indirect ownership interest, (d) the withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity, or (e) the merger, dissolution, liquidation or consolidation of a legal entity. The term "Transfer" shall not mean or include (i) the conveyance of the Project at a judicial or non-judicial foreclosure sale under the Mortgage, (ii) the Project becoming part of a bankruptcy estate by operation of law under United States Bankruptcy Code, or (iii) any other transfer expressly permitted by the terms of the Loan Documents.

**"Unassigned Issuer's Rights"** has the meaning assigned to that term in the Indenture.

**"VA"** means the United States Department of Veteran Affairs.

**"Yield"** of (a) the Bonds 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 payment of principal and interest to be paid on the obligation produces an amount equal to the Issue Price of such Bond 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 payment of principal and interest to be paid on the investment produces an amount equal to all payments for the investment.

**Section 1.3 Schedules and Exhibits.** The following Schedules and Exhibits are attached to and by reference made a part of this Agreement:

- 1) **Schedule A:** Legal Description of Project;

- 2) **Schedule A-1:** Permitted Encumbrances;
- 3) **Schedule B:** Form of Promissory Note;
- 4) **Schedule C:** Project Expenses;
- 5) **Schedule C-1:** Budget;
- 6) **Schedule D:** Disbursement Schedule;
- 7) **Schedule D-1:** Authorized Signers;
- 8) **Schedule E:** Pro Forma Schedule;
- 9) **Schedule F:** [RESERVED]
- 10) **Schedule G:** List of Plans and Specifications;
- 11) **Schedule H:** Insurance Requirements;
- 12) **Schedule I:** [RESERVED]
- 13) **Schedule J:** Equity Funding Schedule; Investor Capital Contribution Schedule;
- 14) **Schedule K:** Title Insurance Requirements;
- 15) **Schedule L:** Survey Requirements;
- 16) **Schedule M:** Tax Credit Allocation;
- 17) **Schedule N:** Affidavit of Commencement;
- 18) **Schedule O:** Affidavit and Certificate of Completion

#### **Section 1.4 Rules of Interpretation.**

1) This Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as they may be preempted by federal rules, regulations, and laws. References in this Agreement and the other Loan Documents to particular sections of the Internal Revenue Code, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes. The Issuer and the Borrower expressly acknowledge and agree that any judicial action to enforce any rights of the Issuer under this Agreement and the other Loan Documents shall be brought and maintained in the District Court for Travis County, Texas, or in the United States District Court for the Western District of Texas or in any United States Bankruptcy Court in any case involving or having jurisdiction over the Borrower or over the Project.

2) The words "herein," "hereof," and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section, or subdivision of this Agreement.

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

4) All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with such principles. In the event that changes in GAAP shall be mandated by the Financial Accounting Standards Board and/or the American Institute of Certified Public Accountants or any similar accounting body of comparable standing, or shall be recommended by Borrower's certified public accountants, to the extent that such changes would modify such accounting terms or the interpretation or computation thereof as contemplated by this Agreement at the time of execution hereof, then in such event, such changes shall be followed in defining such accounting terms only after Bondholder Representative and Borrower amend this Agreement to reflect the original intent of such terms in light of such changes, and such terms shall continue to be applied and interpreted without such change until such agreement.

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

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

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

8) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

9) References to the Bonds as "tax exempt" or to the "tax exempt status of the Bonds" are to the exclusion of interest on the Bonds from gross income for federal income tax purposes pursuant to Section 103(a) of the Code (other than Bonds held by a "substantial user" of the Project or a "related person" to such a "substantial user," within the meaning of Section 147(a) of the Code).

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

11) The parties hereto acknowledge that each such party and its respective counsel have participated in the drafting and revisions of this Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply to the interpretation of this Agreement and the Indenture.



12) References in this Agreement and the other Loan Documents to particular sections of the Internal Revenue Code, the Texas Local Government Code, ADA, the Uniform Commercial Code, or any other legislation, rule, or regulation shall be deemed to refer also to any successor sections thereto or other re-designation for codification purposes.

## ARTICLE 2 REPRESENTATIONS OF ISSUER AND BORROWER

**Section 2.1 Representations of the Issuer.** The Issuer makes the following representations and warranties as the basis for its covenants herein:

1) The Issuer is organized and existing as a housing finance corporation duly organized and validly existing under the laws of the State, and is authorized to issue the Bonds to finance the acquisition, construction and equipping of the Project pursuant to the Texas Local Government Code.

2) The Issuer has lawful power and authority under the Texas Local Government Code to enter into this Agreement, the Bond Regulatory Agreement, and the Indenture and to carry out its obligations hereunder and under the Bond Regulatory Agreement and the Indenture. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers. The Indenture, the Bond Regulatory Agreement, and this Agreement have been duly executed by the Issuer and each constitutes a valid, legal, binding and enforceable obligation of the Issuer (subject to bankruptcy, insolvency, or other laws affecting creditors' rights generally and to the application of principles of equity generally) without offset, defense, or counterclaim. The execution, delivery, and performance of the Indenture, the Bond Regulatory Agreement, and this Agreement by the Issuer will not violate any law, regulation, order, or decree of any Governmental Authority regulating the Issuer and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of such documents by the Issuer have been obtained or made.

3) Issuer has no knowledge of any pending action, suit, or proceeding, arbitration, or governmental investigation against the Issuer, an adverse outcome of which will materially affect performance under the Indenture and this Agreement by the Issuer.

4) The Issuer constitutes a "housing finance corporation" within the meaning of the Chapter 394, Texas Local Government Code, as amended, and the Project constitutes a "residential development" under said provision.

5) To finance the costs of a portion of the Project, the Issuer will issue the Bonds in the aggregate principal amount of \$11,500,000.00. The Bonds will bear interest and be scheduled to mature and will be subject to redemption prior to maturity in accordance with the provisions of the Indenture. The Bonds are to be issued under and secured by the Indenture, pursuant to which the payments, revenues, and receipts derived by the Issuer pursuant to this Agreement, other than the Unassigned Issuer's Rights, will be pledged and assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

6) Under the provisions of the Indenture, the Issuer's interest in this Agreement and certain payments due hereunder (other than the Unassigned Issuer's Rights) is pledged and assigned to the Trustee as security for the payment of the principal of, interest on, and premium, if any, on the Bonds and the Issuer will not otherwise or further assign such interest in this Agreement.

7) To the extent within its reasonable control, the Issuer will not knowingly engage in any activity which might affect the exclusion for federal income tax purposes of the interest on the Bonds from the gross income of any Holder of the Bonds thereof (other than "substantial users" or "related persons" to "substantial users" within the meaning of Section 147(a) of the Code).

8) The execution, delivery, and performance of the Indenture and this Agreement by the Issuer will not cause or constitute a default under or conflict with its organizational documents or other agreements to which it is a party or otherwise materially adversely affect performance of the duties of the Issuer under such organizational documents or other agreements.

9) The Issuer makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations, or certifications furnished or to be made and furnished by the Borrower in connection with the sale of the Bonds, or as to the correctness, completeness, or accuracy of such statements.

10) THE ISSUER MAKES NO WARRANTY, EXPRESS, OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY PORTION THEREOF, INCLUDING WITHOUT LIMITATION, THE HABITABILITY THEREOF, THE MERCHANTABILITY OR FITNESS THEREOF FOR ANY PARTICULAR PURPOSES, THE DESIGN OR CONDITION THEREOF, THE WORKMANSHIP, QUALITY, OR CAPACITY THEREOF, LATENT DEFECTS THEREIN, THE VALUE THEREOF, FUTURE PERFORMANCE OR THE COMPLIANCE THEREOF WITH ANY REQUIREMENTS OF LAW.

11) THE ISSUER DOES NOT MAKE ANY WARRANTY, EITHER EXPRESS OR IMPLIED, THAT MONEYS, IF ANY, WHICH WILL BE PAID INTO THE PROJECT FUND OR OTHERWISE MADE AVAILABLE TO THE BORROWER WILL BE SUFFICIENT TO COMPLETE THE PROJECT, AND THE ISSUER SHALL NOT BE LIABLE TO THE BORROWER, THE BONDHOLDER REPRESENTATIVE, THE HOLDERS OR ANY OTHER PERSON IF FOR ANY REASON THE PROJECT IS NOT COMPLETED.

**Section 2.2 Representations and Covenants of the Borrower.** The Borrower makes the following representations and warranties as the basis for its covenants herein:

1) The Borrower is a limited partnership duly formed and existing under the laws of the State, and is duly authorized to conduct its business in the State and all other states where its activities require such authorization, has power to enter into this Agreement and the other Loan Documents to which the Borrower is a party and to use the Project for the purposes set forth in this Agreement, and by proper limited partnership action has authorized the execution and delivery of this Agreement and the other Loan Documents to which the Borrower is a party, and has approved

the Indenture and agrees to provide the Trustees with any instructions, notices, approvals or directions required to be provided by the Borrower under the Indenture.

2) This Agreement and the other Loan Documents to which the Borrower is a party have been duly executed and delivered by the Borrower; such documents constitute valid, legal, binding, and enforceable obligations of the Borrower (subject to bankruptcy, insolvency, or other laws affecting creditors' rights generally and to application of principles of equity generally), without offset, defense, or counterclaim; the execution, delivery, and performance of such documents by the Borrower will not violate any law, regulation, order, or decree of any Governmental Authority; and all consents, approvals, authorizations, orders, or filings of or with any court or governmental agency or body, if any, required for the execution, delivery, and performance of such documents by the Borrower have been obtained or made, except as indicated in Paragraph (4) below.

3) The execution and delivery of this Agreement and the other Loan Documents to which the Borrower is a party, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Partnership Agreement, or any restriction, any agreement or any instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or, to the best of the Borrower's knowledge, cause the Borrower to be in violation of any order, decree, statute, rule, or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or the Project and do not and will not result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound. The Borrower and General Partner have complied with any and all laws and regulations concerning their organization, existence, and the transaction of their business, and each is in good standing in each state in which it conducts its business. The Borrower has the right and power to lease the Project and to develop the Project as contemplated in the Loan Documents.

4) The Borrower is familiar with, and has complied in all material respects with, all of the Requirements, as well as all other applicable laws, regulations, and ordinances. The Project and the actual use and intended use thereof by the Borrower shall comply in all material respects with the Requirements. The Borrower has received no notices of violations of any Requirement, except violations that have been corrected. There are no claims, actions, proceedings, or investigations pending, or to Borrower's knowledge, threatened against the Borrower or affecting the Project except for those previously disclosed by the Borrower to the Bondholder Representative and the Issuer, in writing. The Borrower is familiar, and to the Borrower's knowledge, has complied in all material respects with all of the requirements of DSHS and the Issuer, as well as all other applicable laws, regulations and ordinances relating to the DSHS Appropriation to the Project. To Borrower's knowledge, Borrower's use of the Project will be in full compliance with the requirements of each AHAP Contract, each HAP Contract (once each is executed), each Regulatory and Restrictive Use Agreement, and of the provisions of the Code related to obtaining and preserving the Low-Income Housing Tax Credit. Without limiting the foregoing, all of the residential units associated with the Low-Income Housing Tax Credit will be eligible for "project based housing choice vouchers" and will be eligible to receive the benefit of

operating assistance pursuant to an AHAP Contract as a Section 8 Property or pursuant to the HUD VASH Program. The Borrower has properly obtained, or will when necessary for purposes of this Agreement obtain, all permits, licenses and approvals necessary to construct, occupy, operate, market, and lease or sell the Project in accordance with all Requirements, including those pertaining to zoning, and, upon request, the Borrower will deliver true and correct copies of them to Bondholder Representative. To Borrower's knowledge, no provision or obligation of the Borrower contained in any of the Loan Documents violates any of the Requirements, any other applicable law, regulation, or ordinance or any order or ruling of any court or governmental entity. To Borrower's knowledge, no such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Project.

5) No obligations have been or are expected to be issued under the Indenture or otherwise for purposes of Section 103 of the Code that were or will be (i) for sale at substantially the same time as the Bonds, (ii) for sale pursuant to the same plan of financing as the Bonds and (iii) payable from the same source of funds as the Bonds, or which are otherwise treated as the same "issue of obligations" as the Bonds under Section 1.150-1(c) of the Regulations.

6) The Borrower is not in the trade or business of selling properties such as the Project and has acquired the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no present intention to voluntarily sell, surrender, or otherwise Transfer, in whole or part, its interest in the Project.

7) To Borrower's knowledge, there are no actions, suits, proceedings, or inquiries or investigations at law or in equity pending or, to the actual knowledge of the Borrower, threatened against the Borrower or to Borrower's knowledge, against the Guarantor or any property of the Borrower in any court or before any federal, state, municipal, or other governmental agency, which, (i) if decided adversely to the Borrower or to Borrower's knowledge, the Guarantor, would have a Material Adverse Change or Effect upon the Borrower or upon the business or properties of the Borrower or upon its power, authority and right to enter into this Agreement and the other Loan Documents to which the Borrower is a party, (ii) affects or seeks to prohibit, restrain, or enjoin the issuance, sale, or delivery of the Bonds or the loaning of the proceeds of the Bonds to the Borrower or the execution and delivery of the Loan Documents, (iii) affects or questions the validity or enforceability of the Loan Documents, (iv) questions the exclusion from gross income for federal income tax purposes of interest on the Bonds, or (v) questions the power or authority or otherwise affects the Borrower's ability to carry out the transactions contemplated by, or to perform its obligations under, the Loan Documents. The Borrower is not in default with respect to any order of any court or governmental agency.

8) The Borrower has filed all federal and state income tax returns, if any, which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due. The Borrower knows of no basis for any additional assessment of federal or state income taxes against it.

9) The Borrower has reviewed the provisions of the Indenture and by execution of this Agreement hereby approves the same.

10) To the best of the Borrower's knowledge, except through positions held by virtue of employment by the Issuer, no member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment, or otherwise, in the Borrower, the Project, or the transactions contemplated hereby.

11) The covenants, representations, and warranties of the Borrower in the Bond Regulatory Agreement and the Tax Certificate executed by the Issuer and the Borrower on or before the date of delivery of the Bonds (the "**Tax Certificate**") are true and correct in all material respects and are incorporated herein by reference and made a part of this Agreement.

12) The Borrower has not entered into the transaction evidenced hereby with the actual intent to hinder, delay, or defraud any creditor and the Borrower has received reasonably equivalent value in exchange for its obligations hereunder and under the Mortgage and the Regulatory and Restrictive Agreements.

13) The Borrower has no contingent liabilities.

14) The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Project are otherwise bound, other than (a) obligations under this Agreement and the other Loan Documents to which the Borrower is a party; (b) obligations permitted by and specifically described in the Partnership Agreement as it exists as of the date of this Agreement or as it may be amended from time to time, with the consent of the Bondholder Representative to the extent such consent is required under the Loan Documents; (c) the Subordinate Loans and Grants (to the extent made subordinate to the Note or the Mortgage in a manner acceptable to the Bondholder Representative); and (d) obligations incurred by Borrower from time to time in the ordinary course of business.

15) Except for the Loan and the Subordinate Loans and Grants, the Borrower has not borrowed or received other debt financing that has not been heretofore repaid in full.

16) The Borrower is not (a) an "investment company" or a company "controlled by an investment company" within the meaning of the Investment Company Act of 1940, as amended; or (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (c) subject to any other federal or state law or regulation which purports to restrict its ability to borrow money.

17) Except as disclosed in the Title Policy, there are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements affecting the Project, nor, to the knowledge of the Borrower, are there any contemplated improvements to the Project that may result in such special or other assessments.

18) No statement of fact made herein or in the Loan Documents to which the Borrower is a party made by the Borrower contains any untrue statement of a material fact or omits to state any material fact necessary to make statements made herein or therein by the Borrower not misleading. There is no fact presently known to the Borrower which has not been disclosed to the Issuer and the Bondholder Representative which materially and adversely affects nor as far as the

Borrower can foresee is likely to materially and adversely affect the business, operations or conditions (financial or otherwise) of the Borrower.

19) All financial information which has been and will be prepared and delivered by or on behalf of the Borrower to the Issuer or the Bondholder Representative, including all information relating to the financial condition of the Borrower or the General Partner and the Project, does and will fairly and accurately represent (or, in the case of materials prepared by Persons other than the Borrower or the General Partner or their respective agents or employees, to the best of the Borrower's knowledge does and will fairly and accurately represent) the financial condition or results of operations being reported on. All such information prepared by or on behalf of the Borrower was and will be prepared in accordance with generally accepted accounting principles, consistently applied, unless otherwise noted. As of the date hereof, there has been no Material Adverse Change or Effect in any financial condition reported at any time to the Issuer or the Bondholder Representative.

20) All reports, documents, instruments, information, and forms of evidence delivered by or on behalf of the Borrower to the Bondholder Representative or the Issuer concerning the Loan or required by the Loan Documents are (or, in the case of materials prepared by persons other than the Borrower or the General Partner or their respective agents or employees, are to the best of the Borrower's knowledge) accurate, correct, and sufficiently complete in all material respects to give the Issuer and the Bondholder Representative true and accurate knowledge of their subject matter.

21) All utility services, including gas (if any), water, sewage, electrical, and telephone, necessary to develop and occupy the Project are available at or within the boundaries of the Project. In the alternative, the Borrower has taken all steps necessary to ensure that all utility services will be available upon completion of the Improvements.

22) The Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

23) The Borrower will hold and dispose of all tenant security deposits relating to the Project in accordance with State law.

24) The Borrower shall not discriminate on the basis of race, creed, color, sex, age, or national origin in the lease, use, or occupancy of the Project or in connection with the employment or application for employment of Persons for the operation and management of the Project and shall not deny admission to any person exclusively on the basis of rent assistance payments under a local, state, federal, or other housing assistance program, including, but not limited to, Section 8 of the Housing Act.

25) The Borrower shall comply with all requirements of the Housing Act and any and all lawful rules, policies, and applicable regulations of the Issuer (or its sponsoring entity) adopted pursuant to the Housing Act with respect to multifamily rental housing and the Project. The Project is located wholly within the boundaries of the Issuer's jurisdiction.

26) All tenant lists, applications, and waiting lists relating to the Project and, as applicable to the Retail Space and the Clinic Space, shall at all times be kept separate and

identifiable from any other business of the Borrower that is unrelated to the Project, and shall be maintained in a reasonable condition for proper audit and be subject to examination during business hours by representatives of the Issuer or the Trustee upon two (2) Business Days' prior notice (no such prior notice shall be required during the continuance of an Event of Default).

27) The Borrower agrees to maintain and operate the Project in a manner that provides decent, safe, and sanitary housing.

28) From time to time the Issuer may direct the Borrower to file such additional reports as the Issuer reasonably determines to be necessary to comply with State or federal laws or regulations in connection with administration of the Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly.

29) The Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Trustee or the Issuer in order to carry out the provisions of this Agreement and the other Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Loan Documents.

30) As of the Bond Closing, the Borrower is in compliance with all requirements of each Regulatory and Restrictive Use Agreement and the Tax Certificate, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate in all material respects and Borrower hereby incorporates the same as if set forth herein.

31) The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the documents and instruments relating to such financing to which it is a party, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Issuer, for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the other Bond Documents or the Loan Documents or otherwise relied on the Issuer in any manner (except as to the accuracy of the representations made by the Issuer and the performance by the Issuer of its agreements, covenants and undertakings).

32) The Borrower will comply with all requirements relating to DSHS Appropriation Act and all related rules, policies, and applicable regulations to ensure the full funding of the DSHS Third Loan prior to the expiration of the associated appropriation, and to maintain compliance with all related health community collaborative progress related to the Project.

33) Each Subordinate Loan and Grant is in full force and effect and no event has occurred which would prevent the funding of that Subordinate Loan and Grant or which would give the provider of that Subordinate Loan and Grant the right to require repayment from Bank or Borrower of all or a portion of that Subordinate Loan and Grant. No default, or event which with notice, the passage of time, or both, would result in a default, has occurred and is continuing with respect to any Subordinate Loan and Grant or under any Subordinate Loan Document or any instrument or agreement issued in connection therewith.

34) Borrower shall lease residential tenant space (as a sublease pursuant to the Ground Lease) in the Project only pursuant to Approved Leases. An "**Approved Lease**" of a residential

apartment is (i) a tenant lease of residential space in the Improvements that is substantially on the standard form submitted to Bondholder Representative prior to the Bond Closing and which has been approved by Bondholder Representative, and (ii) which is on terms and to a tenant who satisfies the requirements (1) of the terms and conditions of the Code for preserving the Low-Income Housing Tax Credit, (2) of an AHAP Contract and a HAP Contract (once each is executed), (3) of the Partnership Agreement, (4) of the DSHS Appropriation, (5) of the Subordinate Loan Documents, and (6) of all other applicable Requirements of Law. Further, if the applicable tenant is to receive Title IX Housing Protection for the associated lease to be an Approved Lease, the Borrower shall have provided to that tenant a copy of the HUD disclosure form. Borrower shall not, without the consent and approval of Bondholder Representative, make any change to its standard form of residential lease other than in the ordinary course of business. Further, with respect to a Commercial Lease, for that lease to be an Approved Lease, Bondholder Representative shall have received a copy of the lease (which shall satisfy all use requirements for the Project and be otherwise on terms and to a tenant satisfactory to the Bondholder Representative in its reasonable determination), and a subordination, non-disturbance, and attornment agreement executed by the tenant and Borrower on a form satisfactory to Bank.

**Section 2.3 General Representations, Warranties, and Covenants of the Borrower.**

The Borrower further represents, warrants, and covenants as follows:

1) It will comply with the requirements and conditions of the Tax Certificate and will ensure compliance of the Project with the provisions of each Regulatory and Restrictive Use Agreement, each AHAP Contract and each HAP Contract (once each is executed). The Borrower is not now in default under any Regulatory and Restrictive Use Agreement, each AHAP Contract, and each HAP Contract (once each is executed), and specifically agrees to continue to meet its requirements thereunder. Borrower shall keep the Bondholder Representative fully apprised of the status of the application to HUD for 50 Section 8 project based vouchers for the Project under the HUD VASH Program, and of responses to such provided by HUD or the VA.

2) It will not take or omit to take, or permit to be taken or omitted on its behalf, any action or omission that would cause the interest payable on the Bonds to be included in gross income for federal income tax purposes and, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel, it will take such action as may be necessary to continue the excludability of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes, including, without limitation the following:

(A) It will comply with all of the requirements of this Agreement in all material respects;

(B) It will prepare and file all statements, returns, reports, and attachments to income tax returns required to be filed by it in order to maintain such exclusion, including but not limited to the filing of all reports and certifications, if any, required by the respective Regulatory and Restrictive Use Agreements; and

(C) It will pay to the United States of America any Rebate Amount required to be paid by the Issuer or the Borrower pursuant to Section 148(f) of the Code and the



Regulations promulgated thereunder, all as contemplated and required by the Indenture and this Agreement;

3) In order to satisfy the requirements set forth in subpart (4) of the definition of “program investment” that appears in Section 1.148-1(b) of the Regulations (which requirements must be met in order for the Loan to qualify as a program investment within the meaning of the aforementioned Regulation), neither the Borrower nor any related party (as defined in Section 1.150-1(b) of the Regulations) will purchase Bonds in an amount related to the amount of the Loan made to the Borrower unless such party provides a Favorable Opinion of Bond Counsel to the Issuer.

4) No changes will be made in the Project, no actions will be taken by the Borrower, and the Borrower will not omit to take any actions, which will in any way adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

5) The Borrower will not knowingly take any action or willfully omit to take any action with respect to the Gross Proceeds or of any amounts expected to be used to pay the principal of or the interest on the Bonds which, if taken or omitted, respectively, would cause any Bond to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Except as provided in the Indenture and this Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Agreement or the Note relating to the Bonds, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds in any investment (or to use Gross Proceeds to replace money so invested), if as a result of such investment the Yield of all Investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to stated maturity, except as permitted by Section 148 of the Code and Regulations thereunder. The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of said Section 148 and the Regulations thereunder relating to the Bonds and the interest thereon.

6) If the Borrower becomes aware of any situation, event or condition, which could result in the interest payable on the Bonds becoming includable in gross income for federal income tax purposes, the Borrower will promptly give written notice of such situation, event or condition to the Issuer, the Trustee, and the Bondholder Representative.

7) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements, if any, of each Regulatory and Restrictive Use Agreement and the DSHS Appropriation (and all related rules and regulations), including all applicable requirements of the Code; all leases will comply with all applicable State and Federal laws and each Regulatory and Restrictive Use Agreement.

8) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project shall not use that portion

of the Project in any manner that would violate the covenants set forth in this Agreement; any lease or grant of use will be subject to compliance with this Agreement.

9) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements, if any, of each Regulatory and Restrictive Use Agreement, each AHAP Contract and each HAP Contract which has then been executed, including all applicable requirements of the Code; all leases will comply with all applicable State and Federal laws and each Regulatory and Restrictive Use Agreement, each AHAP Contract and each HAP Contract (to the extent each is then executed).

10) Notwithstanding any provisions of this **Section 2.3** if the Borrower shall provide to the Issuer an opinion of Bond Counsel that any specified action required under this **Section 2.3** or under **Section 4.9** of the Indenture is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax of interest on the Bonds, the Issuer and the Borrower may conclusively rely on such opinion in complying with the requirements of this **Section 2.3** and **Section 4.9** of the Indenture and be protected in so doing, and the covenants hereunder shall be deemed to be modified to the extent of such Bond Counsel opinion.

11) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions of this **Section 2.3** or of the Indenture or a Regulatory and Restrictive Use Agreement, and that in any event, the requirements of this Agreement and the Regulatory and Restrictive Use Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

12) It is anticipated that the completed Project will qualify for the Low Income Housing Tax Credit as evidenced by the Tax Credit Allocation and Borrower will use its best efforts to ensure that all requirements for Borrower to receive the anticipated amount of the Low Income Housing Tax Credit have or will be timely and fully satisfied in accordance with all Requirements of Law to the extent applicable to the Project. In connection with the foregoing, the Tax Credit Allocation has not been rescinded and Borrower is in full compliance with the terms and provisions thereof.

13) All of the General Partner Contribution, and the Subordinate Loans shall be used during the Construction Term, be funded (and/or available to Borrower for immediate funding in a manner satisfactory to the Bondholder Representative) for budgeted items related to the Project when such proceeds are required for the development of the Project and to pay the Loan based on the flow of funds set forth in the Budget and approved by the Bondholder Representative.

14) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower, its subsidiaries, and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its subsidiaries, and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Borrower, any subsidiary, or to the knowledge

of the Borrower or such subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No borrowing of the Loan or use of proceeds, or other transaction contemplated by this Agreement will violate Anti-Corruption Laws or applicable Sanctions.

15) The Borrower shall comply with Section 394.027(c) of the Act and the rules of the Texas Department of Housing and Community Affairs promulgated pursuant to Section 394.027(c) of the Act (the “**Rules**”) and shall prepare and provide to the Issuer (or at the Issuer’s request, the Texas Department of Housing and Community Affairs) no later than October 15 of each year, beginning October 15, 2018, a report in the form prescribed by the Rules and which will include, with respect to each person residing in the residential units in the Project, geographic and demographic information, including tenant incomes, household size and total household income and all other data required by the Rules.

**Section 2.4** **Ground Lease.** With respect to the Ground Lease, the Borrower warrants, represents, agrees, and covenants as follows:

1) The Ground Lease is in full force and effect, and there have been no amendments, supplements, extensions or other modifications of any nature to the Ground Lease, written or oral.

2) To the Borrower’s knowledge, there are no existing uncured defaults by the Borrower under the Ground Lease, and to the Borrower’s knowledge, no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default by the Borrower under the Ground Lease, and no default will occur as a result of the execution and delivery by the Borrower to the Trustee (or the Issuer as the case may be) of the Mortgage.

3) The Borrower agrees to cause the lessor under the Ground Lease to grant permission to the Bondholder Representative, and its agents and representatives, to, after two (2) Business Days’ prior notice (provided no such prior notice is required during the continuance of an Event of Default) enter at any reasonable time during normal business hours upon the Project to inspect the Project.

4) The Borrower has not received written notice of any pending condemnation or eminent domain proceeding affecting the Project.

5) The Borrower agrees to perform and fully comply with all agreements, covenants, terms, and conditions imposed on or assumed by the Borrower as lessee under the Ground Lease; and if the Borrower fails so to do, the Bondholder Representative may, but shall not be obligated to, take any action the Bondholder Representative deems necessary or desirable, in Bondholder Representative’s sole and reasonable determination, to prevent or to cure any default by the Borrower in the performance of or compliance with any of the Borrower’s covenants or obligations under the Ground Lease. On receipt by the Bondholder Representative from the lessor under the Ground Lease, of notice of any default by the Borrower thereunder pursuant to the terms of the Ground Lease, the Bondholder Representative may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof is questioned or denied by the Borrower or by any party on behalf of the Borrower. The Borrower hereby

expressly grants to the Bondholder Representative, and agrees that the Bondholder Representative shall have, the absolute and immediate right to enter in and on the Project to such extent and as often as the Bondholder Representative, in its sole discretion, deems necessary or desirable in order to cure any Event of Default by the Borrower, provided that if no Event of Default exists, the Bondholder Representative shall have a right of entry during ordinary business hours upon two Business Days' prior notice to the Borrower (provided no such prior notice is required during the continuance of an Event of Default). The Bondholder Representative may pay such sums of money as the Bondholder Representative in its reasonable discretion deems necessary to cure any Default, and the Borrower hereby agrees to pay to the Bondholder Representative, immediately and without demand, all such sums so paid and expended by the Bondholder Representative, together with interest thereon from the date of each such payment at the Default Rate. If Bondholder Representative takes any action necessary to cure any Default or Event of Default by Borrower, Bondholder Representative shall be subrogated to any and all of the rights of the Person or Persons to whom any payment is made by the Bondholder Representative and all of the rights of the Borrower under the terms and provisions of the Ground Lease.

6) The Borrower agrees to deliver to the Bondholder Representative and the Issuer copies of all notices of default or foreclosure received by the Borrower from the lessor under the Ground Lease.

**Section 2.5 Additional Tax-Related Representations, Certifications, Expectations and Warranties of Borrower.** The Borrower covenants to refrain from any action which would adversely affect, or to take such action to ensure, the treatment of the Bonds as 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" to a "substantial user" within the meaning of section 147(a) of the Code) for purposes of federal income taxation. In particular, but not by way of limitation thereof, the Borrower covenants as follows:

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

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

(1) ensuring that at all times within the Qualified Project Period that 40 percent of the residential units in the Project will be occupied by persons whose income is 60 percent or less of area median gross income or, in lieu thereof, 20 percent of the residential units in the Project will be occupied by persons whose income is 50 percent or less of area median gross income percent,

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

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

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

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

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

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

(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 a discount, the issue price) of the Bonds;

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

(f) to use no more than two percent of the gross proceeds of the Bonds for the payment of Costs of Issuance;

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

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

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

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

(k) to take such action to ensure, and to refrain from any action which would cause, the Project financed with the proceeds of the Bonds to not be as described in the "Application of Private Activity Bonds" submitted by the Issuer on behalf of the Borrower to the Texas Bond Review Board in order to receive an allocation of state volume cap as required by section 146 of the Code; and

(l) the Issuer agrees to submit, and the Borrower agrees to cause the issuer to submit, such closing documents for the Bonds, in accordance with the rules of the Texas Bond Review Board, as may be necessary, or to take such other action as reasonably required, to cause the Texas Bond Review Board to provide the certificate of allocation.

(m) The Issuer and Borrower understand that the term "proceeds" includes "disposition proceeds" as defined in the Treasury Regulations and, in the case of refunding bonds, transferred proceeds (if any) and proceeds of the refunded bonds expended prior to the date of issuance of the Bonds. It is the understanding of the Issuer and the Borrower that the covenants contained in this Agreement are intended to ensure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify or expand provisions of the Code, as applicable to the Bonds, the Issuer and the Borrower will not be required to comply with any covenant contained herein to the extent that 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 Bonds under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Bonds, the Issuer 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 Bonds under section 103 of the Code. In furtherance of such intention, the Issuer hereby authorizes and directs the authorized officer of the Issuer to execute any documents, certificates or reports required by the Code and to make such elections, on behalf of the Issuer, which may be permitted by the Code as are consistent with the purpose for the issuance of the Bonds.

(n) The Borrower (a) has designated the manager of the General Partner as the person who will contact the Issuer in the event of any change of use of any portion of the Project ("change of use") within 15 days of such change in use event, and (b) will provide, within 60 days of the applicable date, a rebate report or a letter (prepared by a CPA, nationally recognized rebate consultant or bond counsel) attesting that one is not required.

(o) The Issuer has designated the program manager as the person who (a) will receive notice by the person describe in the preceding paragraph of any change of use of the Project and who will determine, upon consultation with nationally recognized bond counsel, whether to take a remedial action or any other remedy available at law to ensure that the tax-exempt status of the Bonds is preserved following such change of use, and (b) will receive the aforementioned rebate report or letter attesting that such report is not required.

(p) Allocation of, and Limitation on Expenditures for the Project. The Issuer 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 Issuer 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 Bonds, or (2) the date the Bonds are retired, unless the Issuer obtains an opinion of nationally-recognized bond counsel that such expenditure will not adversely affect the tax-exempt status of the Bonds. For purposes hereof, the Issuer 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.

**Section 2.6 Tax Exemption; Regulatory and Restrictive Use Agreements, DSHS Appropriations.** The Borrower hereby covenants, represents, and agrees as follows:

1) to file of record such documents and take such other reasonable steps as are necessary in order to ensure that the requirements and restrictions, if any, of each Regulatory and Restrictive Use Agreement then executed by Borrower, will be binding upon all owners of the Project, including, but not limited to, the execution and recordation, if required, of each Regulatory

and Restrictive Use Agreement, once executed, in the real property records of Travis County, Texas; and

2) to reference the requirements and restrictions, if any, contained in each Regulatory and Restrictive Use Agreement, once executed, in any deed or other document transferring any of its interest in the Project to another Person to the end that such transferee has notice of, and is bound by, such restrictions, and to obtain the agreement from any transferee to so abide.

**Section 2.7 Representations and Covenants of the Borrower as Single Purpose Entity.** Without limiting any of the foregoing, but in addition thereto, Borrower covenants and agrees that it shall not, nor shall it permit its General Partner to, take any of the following actions without the prior written consent of the Bondholder Representative:

1) engage in any business or activity other than the acquisition, construction, ownership, operation, leasing, and maintenance of the Project, and activities incidental thereto;

2) acquire or own any material asset other than (i) the Project, and (ii) such incidental personal property as may be necessary for the operation of the Project;

3) except as expressly permitted by the Loan Documents, (A) merge into or consolidate with any Person or entity, or (B) dissolve, terminate or liquidate in whole or in part, (C) Transfer or otherwise dispose of all or substantially all of its assets, or (D) change its legal structure, without in each case described in clauses (A)-(D) Bondholder Representative's consent;

4) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Bondholder Representative, amend or modify (to the extent prohibited in this Agreement), terminate or fail to comply in all material respects with the provisions of Borrower's Organizational Documents;

5) except as specifically permitted by any Loan Document, own any subsidiary or make any investment in or acquire the obligations or securities of any other Person or entity without the consent of Bondholder Representative;

6) commingle its assets with the assets of any of its partner(s), members, shareholders, affiliates, or of any other Person or entity or transfer any assets to any such Person or entity other than (i) distributions on account of equity interests in the Borrower permitted hereunder and properly accounted for, and/or (ii) any other transfer expressly permitted under the Loan Documents;

7) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, the Subordinate Loans and Grants, subordinated deferred developer fee, loans from Borrower's partners pursuant to the Partnership Agreement (to the extent made subordinate to the Loan on terms acceptable to the Bondholder Representative), guaranty obligations owed to Borrower and treated as loans (to the extent made subordinate to the Loan on terms acceptable to the Bondholder Representative), and unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Project in such amounts as are normal and reasonable under the circumstances;

8) allow any Person to pay its debts and liabilities (except a Guarantor or any of the Borrower's partners) or fail to pay its debts and liabilities solely from its own assets (or the assets of Guarantor or any of the Borrower's partners).

9) fail to maintain its records, books of account and Bondholder Representative accounts separate and apart from those of the shareholders, partners, members, principals and affiliates of Borrower, the affiliates of a shareholder, partner or member of Borrower, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Project is actually owned by the Borrower.

10) enter into any contract or agreement with any shareholder, partner, member, principal or affiliate of Borrower, Guarantor or any shareholder, partner, member, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or affiliate of Borrower or Guarantor, or any shareholder, partner, member, principal or affiliate thereof;

11) seek dissolution or winding up, in whole or in part;

12) fail to correct any known misunderstandings regarding the separate identity of the Borrower, which could adversely impair the tax exempt nature of the Bonds or the Borrower's status as a single asset entity;

13) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Borrower (except for Guarantor and Borrower's partners);

14) make any loans or advances to any third party, including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof, except as expressly provided in the Partnership Agreement and this Agreement;

15) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks and such failure shall have a material impact on Borrower's status as a single asset entity;

16) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof);

17) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

18) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.



19) file a voluntary petition or otherwise initiate proceedings to have the Borrower or any manager, managing member, or general partner of Borrower, as applicable, adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any manager, managing member, or general partner of Borrower, as applicable, or file a petition seeking or consenting to reorganization or relief of the Borrower or any manager, managing member, or general partner of Borrower, as applicable, as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any manager, managing member, or general partner of Borrower, as applicable; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequester, custodian, liquidator (or other similar official) of the Borrower or any manager, managing member, or general partner of Borrower, as applicable, or of all or any substantial part of the properties and assets of the Borrower or any manager, managing member, or general partner of Borrower, as applicable, or make any general assignment for the benefit of creditors of the Borrower or any manager, managing member, or general partner of Borrower, as applicable, or admit in writing the inability to the Borrower or any manager, managing member, or general partner of Borrower, as applicable, to pay its debts generally as they become due or declare or effect a moratorium on the Borrower or any manager, managing member, or general partner of Borrower, as applicable, debt or take any action in furtherance of any such action;

20) share any common logo with or hold itself out as or be considered as a department or division of (i) any shareholder, partner, principal, member or affiliate of Borrower, (ii) any affiliate of a shareholder, partner, principal, member or affiliate of Borrower, or (iii) any other Person or allow any Person to identify the Borrower as a department or division of that Person;

21) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other Person;

22) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations, provided that there is sufficient cash flow from the Project at such time to do so and the Borrower's constituent owners shall not be required to fund or advance any additional capital to satisfy this obligation; or

23) fail to use separate contracts, purchase orders, invoices and checks (other than such documents that bear the name of its manager or managing agent with reference to the Project).

Except as otherwise provided in the Loan Documents, the Borrower shall not amend or modify any Borrower's Organizational Documents in any manner that would result in a breach of any of the representations, warranties or covenants set forth in this **Section 2.7** or that would otherwise adversely affect the Borrower's special purpose entity status without the prior written consent of the Bondholder Representative, which consent shall not be unreasonably withheld, delayed or conditioned. Promptly after the Bondholder Representative's written request from time to time, but not more frequently than once in any calendar year, the Borrower shall deliver to the Bondholder Representative a signed sworn statement that the Borrower is in compliance with the provisions of this **Section 2.7**.

**Section 2.8 Additional Representations and Agreements of Borrower.** The Borrower represents, warrants, covenants and agrees as set forth below to and with the Trustee, and the Borrower agrees that the Trustee may rely on such representations, warranties covenants and agreements and the other representation, warranties, covenants and agreements contained in this Agreement as if the Trustee were a party to this Agreement.

1) The Title Policy delivered at the Bond Closing satisfies the requirements of **Schedule D** and **Schedule K** of this Agreement.

2) If the Construction Term Maturity Date is to be extended pursuant to **Section 4.2(e)**, the Trustee may rely on a certificate of the Bondholder Representative to the effect that the conditions contained in **Section 4.2(e)** have been satisfied.

3) The Trustee may assume without investigation that the amounts of money transferred to it by the Borrower as “**Basic Payments**” in accordance with **Section 4.2(b)** of this Agreement are sufficient to satisfy the requirements of **Section 4.2(b)** of this Agreement.

**Section 2.9 Representations and Warranties of the Bondholder Representative.** The Bondholder Representative makes the following representations and warranties:

1) The Bondholder Representative has all power and authority necessary (i) to execute and deliver this Agreement, (ii) to perform its obligations under this Agreement and (iii) to consummate the transactions contemplated by this Agreement.

2) The Bondholder Representative has taken all actions necessary to authorize (i) the execution and delivery of this Agreement, (ii) the performance of its obligations under this Agreement, and (iii) the consummation of the transactions contemplated by this Agreement.

3) This Agreement has been duly executed and delivered by the Bondholder Representative and constitutes, assuming due execution and delivery by the other parties hereto, the valid and binding obligation of the Bondholder Representative, enforceable against the Bondholder Representative in accordance with its terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and the exercise of judicial discretion in accordance with principles of general equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4) To the best knowledge of the Bondholder Representative, neither the execution and delivery by the Bondholder Representative of this Agreement, nor the performance by the Bondholder Representative of its obligations under any of the Loan Documents to which it is a party, nor the consummation of the transactions contemplated by such Loan Documents will violate any law, rule, regulation or ordinance, or any order, judgment or decree of any Federal, state or local court or will conflict with, or constitute a breach of, or a default under, the charter or by-laws of the Bondholder Representative or under any agreement, instrument or commitment to which the Bondholder Representative is a party or by which the Bondholder Representative or any of its property is bound.

5) To the best knowledge of the Bondholder Representative, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board

or body pending or, to the knowledge of the Bondholder Representative, threatened against the Bondholder Representative (nor, to the knowledge of the Bondholder Representative, is there any basis therefor), which (i) affects or seeks to prohibit, restrain or enjoin the execution and delivery by the Bondholder Representative of any of the Loan Documents to which it is a party; the performance by the Bondholder Representative of its obligations under such Loan Documents, or the consummation of the transactions contemplated by such Loan Documents, or (ii) affects or questions the validity or enforceability of such Loan Documents.

6) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Bondholder Representative as a prerequisite to the execution and delivery by the Bondholder Representative of the Loan Documents, the performance by the Bondholder Representative of its obligations under such Loan Documents or the consummation of the transactions contemplated by such Loan Documents.

7) To the best knowledge of the Bondholder Representative, no information, statement or report furnished to the Issuer or Bond Counsel by the Bondholder Representative in connection with the negotiation of or performance under any of the Loan Documents or the consummation of the transactions contemplated hereby contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. It is specifically understood by the Bondholder Representative that all such statements, representations and warranties shall be deemed to have been relied upon by the Issuer as an inducement to effectuate the Loan, and that if any such statements, representations and warranties were materially incorrect at the time they were made on or as of Bond Closing, the Issuer may consider any such misrepresentation or breach a Default.

8) To the best knowledge of the Bondholder Representative, it is not in default with respect to any order or decree of any court or any order, regulation or demand of any Federal, state, municipal or governmental agency, which default might have consequences that would affect its performance hereunder.

9) To the best knowledge of the Bondholder Representative, it is not a party to or bound by any agreement or instrument or subject to any charter or any other corporate restriction or any judgment, order, writ, injunction, decree, law, or regulation which now or in the future may materially and adversely affect the ability of the Bondholder Representative to perform its obligations under any Loan Document to which it is a party, or which requires the consent of any third person to the execution of such Loan Document, or the consummation of the transaction contemplated hereby.

10) All fees charged by the Bondholder Representative in connection with the origination of the Loan are no more than those which are reasonable and customary for lenders to charge in connection with similar loans not financed through the issuance of tax-exempt Bond.

11) Any certificate signed by a representative of the Bondholder Representative and delivered pursuant to and concurrently with this Agreement shall be deemed a representation of the Bondholder Representative as to the statements made therein.

12) The Bondholder Representative hereby agrees to purchase from the Issuer the Bonds in the principal amount of up to \$11,500,000.00 as provided in the Indenture and in this Agreement, at a purchase price equal to 100% of the principal amount thereof, for the purpose of financing the acquisition, construction and equipping of the Project.

13) All funds held by the Bondholder Representative or any other party, which are used to secure payment of the obligations of the Borrower under the Note are identified in the Tax Certificate.

14) The Bondholder Representative represents that it is purchasing the Bonds for its own account and not for reoffering to the public. In connection with its purchase of the Bonds, the Bondholder Representative agrees to deliver to the Issuer an investor letter substantially in the form of Exhibit C to the Indenture. In the event the Bondholder Representative transfers the Bonds, such transfer shall be subject to the terms of the Indenture. In the event of a transfer of the Bonds (or any beneficial interest therein), by the Bondholder Representative other than in accordance with the provisions of the Indenture and the securities laws of the United States, the Bondholder Representative agrees to indemnify the Issuer and the Trustee against any liability, cost and expense (including attorney's fees) that may result therefrom.

15) The Bondholder Representative has reviewed the Indenture and agrees to provide the Trustee with any instructions, notices, approvals, consents or directions required to be provided by the Bondholder Representative under the Indenture.

#### **Section 2.10 ERISA.**

1) The Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken hereunder to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA and/or Section 4975 of the Code.

2) The Borrower further covenants and agrees to deliver to the Bondholder Representative such certifications and other evidence from time to time once leasing of the Improvements has commenced as are reasonably requested by the Bondholder Representative that (i) the Borrower is not (and is not deemed to include the assets of) an "employee benefit plan" that is subject to Title I of ERISA and/or a "plan" that is subject to Section 4975 of the Code; (ii) the Borrower is not a "governmental plan" within the meaning of Section 3(32) of ERISA and is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following statements is and remains true:

3) Equity interests in the Borrower are "publicly offered securities" within the meaning of 29 C.F.R. § 2510.3-101 (as modified by Section 3(42) of ERISA, the "*Plan Assets Regulation*"); or

4) Less than 25% of each outstanding class of equity interests in the Borrower are held by "benefit plan investors" (determined in accordance with the Plan Assets Regulation).

5) The Borrower shall not agree to, enter into or consummate any transaction which would render the Borrower unable to furnish the certification or other evidence referred to in **Section 2.10(2)**, to the extent applicable.

6) The Borrower represents, warrants and covenants to the Bondholder Representative that neither the Borrower nor any ERISA Affiliate maintains, contributes to, or has any obligation to contribute to, or has any direct or indirect liability with respect to any “employee benefit plan” as defined in Section 3(3) of ERISA (including any “multiemployer plan” as defined in Section 3(37) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code. The Borrower shall take or refrain from taking, as the case may be, such actions as may be necessary to cause the representation and warranty in this **Section 2.10** to remain true and accurate until full repayment of the Indebtedness.

7) The Bondholder Representative shall have the right to consult with the Borrower on significant business issues relating to the operation of the Mortgaged Property and the management of the Borrower. Representatives of the Borrower shall make themselves available quarterly, either personally or by telephone at mutually agreeable times for such consultations. Such consultations need not result in any changes in the Borrower’s decisions or actions. The Bondholder Representative intends to use such rights to satisfy the management rights requirements under the Plan Assets Regulation.

### ARTICLE 3 **ISSUANCE OF BONDS; PAYMENT OF COSTS**

**Section 3.1 Issuance of Bonds.** The Issuer has determined to issue the Bonds pursuant to the Indenture, and the Borrower has reviewed and does hereby approve the terms of the Indenture. Upon execution of this Agreement, the other Loan Documents, and the Indenture and the occurrence (or waiver by all required parties) of all conditions precedent to issuance (including the conditions to closing listed in **Schedule D**), or as soon thereafter as practicable, the Issuer will execute the Bonds and deliver the Bonds to the Bank as the initial purchaser thereof or to its order upon payment of the purchase price and the delivery to the Trustee of all documents required to be delivered as a condition to such delivery pursuant to the Indenture. The proceeds of the Bonds will be deposited with the Trustee and disbursed in accordance with the Indenture.

**Section 3.2 No Warranty by Issuer.** The Borrower agrees that, because the components of the Project have been and are to be designated and selected by it, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION, OR DURABILITY THEREOF OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

THE PROVISIONS OF THIS **SECTION 3.2** HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROJECT OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

**Section 3.3 Disbursements From the Project Fund and the Costs of Issuance Fund.**

1) The Issuer has authorized and directed the Trustee to make payments from the Costs of Issuance Fund in accordance with the requirements of **Section 5.9** of the Indenture, and the Bondholder Representative has consented to Trustee's making of such payments by acknowledging its obligation to provide written consents to Requisitions upon the satisfaction of the applicable conditions listed in **Schedule D** and **Section 4.7** of this Agreement and the limitations relating to the 95% rule as represented herein.

2) The balance of the Bond proceeds shall be disbursed by the Trustee only in accordance with the Indenture, including delivery of a written Requisition by the Borrower satisfying the requirements of **Section 5.2** of the Indenture and approved in writing by the Bondholder Representative, which approval of the Bondholder Representative will be granted upon satisfaction of the conditions and performance of the covenants and conditions set forth in this Agreement.

3) The Bondholder Representative shall consent to Requisitions of amounts in the Project Fund for costs of the Project based on the Budget and the further terms and conditions of this Agreement (including **Schedule D** and **Section 4.7**). If the Borrower cannot complete the Project in strict conformity with the most recently approved Budget, the Borrower shall promptly submit to the Bondholder Representative for its approval a revised Budget in the same format as the Budget. The Bondholder Representative need not make further disbursements unless and until it approves the revised Budget, which approval shall not be unreasonably withheld, conditioned, or delayed.

4) In addition to the items required in the attached **Schedule D** ("**Disbursement Schedule**"), Borrower shall have provided to the Bondholder Representative all items in **Section 4.7(2)** for a disbursement of the applicable Borrower's Sources to be funded.

5) In no event shall the Bondholder Representative be required to approve disbursements from Borrower's Sources (as defined in **Section 4.6(1)** below) in an aggregate total amount in excess of the Total Project Expenses (including contingency reserve and interest reserve) as set forth in the most recently approved Budget.

**Section 3.4 Payment of Costs of Issuance by the Borrower.** The Borrower agrees that it will provide any and all funds required for the prompt and full payment of Costs of Issuance for the Bonds, including, but not limited to, to pay the following items:

1) all reasonable legal fees (including Bond Counsel and the respective counsel to the Borrower, the Issuer, the Bondholder Representative, the Guarantors, and the Trustee), abstractors', title insurance, financial, engineering, environmental, construction services, appraisal

and accounting fees and expenses, administrative fees, printing and engraving costs, and other expenses incurred and to be incurred by the Borrower, the Issuer, the Bondholder Representative, and the Trustee in connection with issuance of the Bonds;

2) all recording fees and other taxes, charges, assessments, license, or registration fees of every nature whatsoever incurred and to be incurred in connection with the issuances of the Bonds;

3) all initial fees and expenses of the Trustee, the Paying Agent, and the Issuer;

4) all reasonable fees and expenses for title insurance, survey, and related matters;

5) a non-refundable origination fee due to the initial Bondholder Representative for the Loan upon execution of this Agreement, in the amount of \$115,000.00; and

6) all reasonable Costs of Issuance actually incurred.

**Section 3.5 Title Insurance.** The Borrower agrees to furnish to the Bondholder Representative (with a copy to the Trustee) at the closing of the transaction contemplated hereby the Title Policy (or Pro Forma thereof, as the case may be) satisfactory to the Bondholder Representative with respect to the Project as required by **Schedule D** and **Schedule K**.

1) For each Requisition, the Borrower agrees to furnish to the Issuer and the Trustee, at the Borrower's expense, an endorsement to the Title Policy extending the effective date of the Title Policy (with no new exceptions to coverage other than as permitted by the Loan Documents) and increasing the amount of coverage under the Title Policy to include the advance. The Trustee has no duty or obligation to review the sufficiency of any such required endorsements.

2) The Borrower hereby represents that the Permitted Encumbrances do not and will not Materially Adversely Affect (a) the ability of the Borrower to pay in full the principal of and interest on the Note in a timely manner or (b) the use of the Project for the use contemplated or (c) the value of the Project.

3) The Borrower has (a) good and insurable title to its leasehold interest in the Land, subject to no liens, charges, or encumbrances other than the Permitted Encumbrances, including without limitation, those liens granted in the Loan Documents and the liens granted in the Subordinate Loan Documents.

4) Upon the execution by the Borrower and the proper recording of the Mortgage, and upon the appropriate filing of UCC financing statements, and upon execution of each Intercreditor Agreement, the Trustee will have a valid first lien in and to the Borrower's leasehold interest in the Land and in and to the Improvements and a valid security interest in the tangible personal property encumbered by the Mortgage (only to the extent that under the Uniform Commercial Code a security interest can be perfected by filing a UCC financing statement) subject to no liens, charges or encumbrances other than the Permitted Encumbrances and the subordinate liens granted in the Subordinate Loan Documents.

ARTICLE 4  
THE LOAN, LOAN REPAYMENT AND ADDITIONAL CHARGES

**Section 4.1    The Loan.** The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds, excluding any interest earned thereon by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Indenture. The obligation of the Issuer to make the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note, in the form attached as **Schedule B** hereto, and contemporaneously with the issuance of the Bonds, the Issuer will endorse the Note without recourse to the order of and will pledge the Note to the Trustee, as the assignee of the Issuer. The obligation of the Bondholder Representative to approve any Requisition (or to purchase the Bonds) is subject to satisfaction or written waiver by all required parties of the conditions listed in **Schedule D**.

**Section 4.2    Loan Repayment.**

(a) The Borrower will repay the Loan in accordance with the provisions of the Note and this Agreement. Notwithstanding anything to the contrary contained herein, the Borrower covenants that it shall make payments, at such times and in such amount to ensure that payment of the principal of and premium, if any, and interest on the Bonds shall be made when due, whether at maturity, by call for redemption, by acceleration or otherwise. Without limiting the foregoing, Borrower agrees that it will pay the Bonds down as needed to satisfy the 50% aggregate basis test under Section 42(h)(4)(B) of the Code as soon after Substantial Completion as reasonably practical based on the timing of the funding of the Capital Contributions and other sources available to Borrower (Borrower acknowledges that the Bonds can be paid down to the 50% aggregate basis test under Section 42(h)(4)(B) of the Code prior to the Construction Term Maturity Date).

(b) Subject to the Borrower's right of prepayment granted in **Section 10.1** (or in connection with the corresponding redemption under the terms of the Indenture), the Borrower hereby acknowledges its indebtedness to the Issuer and agrees to make monthly payments, on the first day of each month (or, if such day is not a Business Day, on the first Business Day which next follows such first day of a month) (such date a payment is due, "a **Payment Date**"), commencing January 1, 2018, which monthly payments shall be in an amount which will equal the sum of each of the following which will be due (whether at maturity or by redemption or acceleration or otherwise pursuant to the Indenture) on the next Payment Date under the Note (or other date upon which any of the following items are payable) ("**Basic Payments**"):

- (i) Amounts then due with respect to the Loan as provided in subsection (d) below;
- (ii) Ordinary Fees and Expenses of the Trustee;



(iii) To the extent sufficient amounts have not been deposited in the Revenue Fund, the Issuer Fees and other reasonable expenses of the Issuer actually incurred.

(c) The Borrower shall pay to the Trustee, within ten (10) days after written demand therefor together with a reasonable accounting of such amounts, any reasonable extraordinary fees and expenses actually incurred by the Trustee, the amounts required to be deposited in the Rebate Fund pursuant to **Section 7.16**, and the reasonable fees and expenses of the Rebate Analyst actually incurred.

(d) Interest only as it accrues on the Note (at the rates then accruing under the terms of the Bonds as provided in the Note) shall be payable monthly from sources other than proceeds of the Loan on each Payment Date (for interest unpaid and accruing through the first day of that calendar month). The Loan shall be fully and finally due and payable on the Bond Maturity Date; provided if the Construction Term Maturity Date is not extended under **subsection (e)** below, on the Construction Term Maturity Date, the Bondholder Representative may exercise the put option set forth in the Indenture and thereby cause all amounts to be then due under the Note regardless of the stated maturity of the Bond.

(e) The Construction Term Maturity Date may be automatically renewed and extended at the request of the Borrower, on a one time basis, for three (3) calendar months to the Bond Maturity Date, provided that each of the following conditions shall either have been waived in writing by the Bondholder Representative or shall have been fully, completely, and timely satisfied (otherwise, Bondholder Representative and Trustee shall have no commitment to extend the Construction Term Maturity Date and any agreement to extend the Construction Term Maturity Date will be at the sole discretion of Bondholder Representative):

(i) On or before 30 days prior to August 1, 2019, the Borrower shall have provided the Bondholder Representative with written notice of its intent to extend the Construction Term Maturity Date provided for herein for a period of three (3) months to the Bond Maturity Date, and the Bondholder Representative shall approve or deny such request subject to the full satisfaction (or waiver in writing by the Bondholder Representative) of the other subsections of this **subsection (e)** as determined by the Bondholder Representative in its reasonable discretion;

(ii) Substantial Completion of the Improvements shall have occurred as evidenced by a temporary certificate of occupancy and certificate of Substantial Completion from the Architect and concurred to by the Bondholder Representative's construction consultant;

(iii) No event which materially limits, reduces, or impairs the Low Income Housing Tax Credit for the Project shall have occurred and is continuing, and Borrower shall otherwise be in strict compliance with all placed in service

requirements and all other guidelines relating to the Low Income Housing Tax Credit for the Project;

(iv) Borrower shall have delivered, at its sole cost and expense, all amendments, extensions, and other agreements, instruments, amendments, title insurance endorsements, and modifications of this Agreement and the Note required by Bondholder Representative in its reasonable discretion to effect such renewal and extension of the Construction Term Maturity Date for three (3) calendar months (but without changing the Bond Maturity Date) and will provide for, among other things, that interest shall continue to accrue on the Note at the rate provided for in the Note prior to the Bond Maturity Date, and the Note shall continue to be payable interest only, and the execution of any such extension agreement by the Bondholder Representative shall evidence to the Trustee that the subsections of this subsection (e) have been satisfied or waived);

(v) Leasing efforts for the residential units, the number of residential units leased, the level of operating expenses, and the rate of lease-up for the residential units shall each be reasonably satisfactory to Bondholder Representative;

(vi) Borrower shall have reimbursed Bondholder Representative and Trustee for all of their reasonable costs and expenses (including reasonable attorneys' fees) actually incurred and relating to the extension;

(vii) In connection with the requested extension, upon Bondholder Representative's request, Bondholder Representative shall have received and approved a Favorable Opinion of Bond Counsel, together with such other evidence that the Fifty Percent test has then been met and the draft cost certification;

(viii) The Subordinate Loan Documents shall have been modified, amended, or extended as required by the Bondholder Representative in connection with the extension of the Construction Term Maturity Date;

(ix) The Borrower shall have delivered to the Bondholder Representative evidence of compliance of the Project with all placed in service requirements under Section 42 of the Code required by the Bondholder Representative to effect such renewal and extension;

(x) Each of the conditions listed in Section 1(c) of the Disbursement Schedule (Schedule D) shall have been fully and completely satisfied or waived in writing;

(xi) No Material Adverse Change or Effect shall exist;

(xii) No Default or Event of Default shall be then existing, and no default in performance shall then be existing by Borrower under and with the respect to any Subordinate Loan or by the General Partner under the Partnership Agreement;

(xiii) The interest reserve must be sufficient (as determined by the Bondholder Representative in its reasonable discretion) to pay interest for the term of the extension (Borrower may satisfy the requirement by advancing any deficiency in the interest reserve prior to such extension), and the Loan shall otherwise be in balance;

(xiv) The Borrower shall have paid an extension fee to the Bondholder Representative equal to 0.20% of the principal amount of the Bonds Outstanding;

(xv) If and to the extent required by Bondholder Representative or Trustee, the Trustee has received an opinion of Bond Counsel that such extension will not in and of itself adversely affect the tax exempt status of the Bonds;

(xvi) All required Capital Contributions and fundings of the DSHS Third Loan and other Subordinate Loans then scheduled to be funded shall have been fully funded and used to pay budgeted items satisfactory to the Bondholder Representative, and the Loan shall otherwise be in balance as required by this Agreement.

(xvii) The Bondholder Representative must have received and approved evidence that use of the proceeds of the Bonds will meet the 50% aggregate basis test under Section 42(h)(4)(B) of the Code and a draft, good faith estimate of the cost certification.

The Trustee shall be entitled to rely on the Bondholder Representative's written notice of approval as evidence that the requirements of this **Section 4.2(e)** have been satisfied.

If the Construction Term Maturity Date is extended pursuant to this **subsection (e)**, Borrower may request an additional extension of the Construction Term Maturity Date (and the Bond Maturity Date) but that any such additional extension shall be subject to approval of the requisite persons and committees of the Bondholder Representative (no such additional extension has been or is hereby committed or offered by the Bondholder Representative, and if later offered or committed, the terms of such extension will be subject to the applicable persons and committees of the Bondholder Representative, but in any event will include a Favorable Opinion of Bond Counsel).

(f) In the event of a Determination of Taxability, interest shall thereafter accrue on the Note at the Default Rate.

(g) The Borrower shall make each payment required to be made by it hereunder (whether principal, interest or fees or otherwise) prior to 11:00 a.m., Austin, Texas time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Trustee (with the consent of Bondholder Representative), be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing

interest thereon shall be payable for the period of such extension. All payments made hereunder shall be made in U.S. dollars.

**Section 4.3 Additional Charges.** The Borrower agrees to pay, when due, subject to the payment of amounts due under **Section 4.2** all reasonable costs and expenses incurred in connection with the issuance of the Bonds (but only to the extent the same are not included in Ordinary Fees and Expenses, are not paid from the Cost of Issuance Fund established under the Indenture), and are not paid pursuant to **Section 4.2** (in the aggregate, the "**Additional Charges**"), including without limitation, the expenses listed in **Section 3.4** and each and all of the following:

1) all reasonable fees of the Trustee, the Issuer, and any Holder for services rendered pursuant to the terms of the Indenture, any amounts due under **Section 3.4** hereof (but only to the extent the same are not included in Ordinary Fees and Expenses and are not paid pursuant to **Section 4.2**) and all reasonable fees and reasonable charges of any registrars, legal counsel, accountants, engineers, public agencies, and others actually and reasonably incurred in the performance of services reasonably required pursuant to the terms and conditions of the Indenture for which such Persons are actually entitled to payment or reimbursement, any reasonable fees or charges of public agencies, and any reasonable fees or expenses actually incurred and resulting directly from the occurrence and continuance of an Event of Default by the Borrower hereunder;

2) (a) all indemnity payments required to be made to the Issuer, the Trustee, and any Holder under **Section 7.3** and the Trustee under **Section 4.11** of the Indenture; (b) all reasonable expenses (including reasonable legal fees) incurred by the Issuer or the Trustee to exercise their rights under this Agreement following an Event of Default; and (c) all other reasonable expenses incurred by the Issuer in relation to the Project which are not otherwise required to be paid by the Borrower under the terms of this Agreement or any separate fee agreement, including costs incurred as a result of a request by the Borrower;

3) amounts advanced by the Trustee, if any, pursuant to the Indenture;

4) interest, at the Default Rate, on all payments not made by the Borrower under **Section 4.2** and under this **Section 4.3** when due (accruing from the applicable due date), to the parties entitled thereto; and

5) If any payment required under this Agreement is not paid within ten (10) days after such payment is due, then, at the option of the Bondholder Representative, the Borrower shall pay a late charge equal to three percent (3.0%) of the amount of such payment to compensate the Bondholder Representative for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to the Bondholder Representative. This late charge shall be in addition to any interest due as a result of interest then accruing on the Bonds Outstanding at the Default Rate, if applicable.

**Section 4.4 The Borrower's Obligations Unconditional.** The obligations of the Borrower to perform and observe the agreements on its part contained herein shall be absolute and unconditional and payment of the Loan and Additional Charges and all other payments required of the Borrower hereunder or under the Note shall be paid without set off, counterclaim, or defense

for any reason and without abatement or deduction or defense. The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Agreement, and, except as expressly permitted in **Section 10.3** will not terminate this Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, the lack of right, power or authority of the Issuer to enter into this Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy, or insolvency of the Issuer or the Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the payment of the Loan and other amounts payable by the Borrower hereunder or under the Note shall be paid in full when due without any delay or diminution whatever.

**Section 4.5 Assignment of Issuer's Rights.** As security for the payment of the Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement and the Note, including the right to receive payments hereunder (but excluding the Unassigned Issuer's Rights), and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith assents to such assignment and will make payments under this Agreement directly to the Trustee, or otherwise upon the order of the Trustee without defense or set off by reason of any dispute between the Borrower and the Issuer, the Holders, or the Trustee and Trustee shall have the rights and remedies of the Issuer under this Agreement and each Loan Document and shall have the right to exercise such rights and remedies without the joinder or consent of the Issuer, in the same manner and under the limitations and conditions that the Trustee (but only upon the direction and authorization of the Bondholder Representative) is entitled to exercise rights and remedies under the Indenture.

**Section 4.6 Loan in Balance; the Borrower's Sources.**

1) The Loan is "in balance" whenever the undisbursed funds available to the Borrower for the Project (taking into account, among other things, the timing of anticipated receipts and disbursements of funds) under the Loan, plus any sums on deposit in the Capital Contribution Account and other amounts to be deposited therein for budgeted items and to pay the Note, plus undisbursed portions of the General Partner Contribution and the Subordinate Loans and Grants to pay budgeted amounts to be used for budgeted items and/or to pay the Loan prior to the Construction Term Maturity Date (as may be extended to the Bond Maturity Date), plus any sums on deposit in the Borrower's Funds Account (as defined below), plus any undisbursed Loan funds in the Project Fund (with respect to budgeted construction items) and the Interest Account of the Bond Fund (with respect to budgeted interest) or otherwise made available to the Bondholder Representative in the form of a letter of credit, pledged bank account, or other form of cash collateral, approved by the Bondholder Representative in its sole and absolute discretion ("**Cash**

**Collateral**”), are sufficient in the reasonable judgment of the Bondholder Representative to pay, through Substantial Completion of all of the Project and on a timely basis all of the following sums (“**Total Project Expenses**”): (i) all costs of acquisition, equipment, ownership and maintenance of the Project and all costs and expenses of construction and equipment of the Improvements in accordance with the Plans and Specifications and the Budget approved by the Bondholder Representative; (ii) all costs of leasing or renting of the apartment units in the Project; and (iii) all interest and all other sums and costs which may accrue or be payable under the Loan Documents prior to or in connection with the Construction Term Maturity Date (as may be extended to the Bond Maturity Date). The Capital Contribution Account, the Borrower’s Funds Account, the unfunded portion of the General Partner Contribution and the Subordinate Loans and Grants, the General Partner Contribution, any Cash Collateral, together with undisbursed Loan funds in the Project Fund (with respect to budgeted construction items) and the Interest Account of the Bond Fund (with respect to budgeted interest), are collectively referred to herein as “**Borrower’s Sources**.” Prior to and in connection with the occurrence of the Bond Closing, the Borrower shall (a) cause the Investor Limited Partner to deposit the first installment of the Capital Contribution set forth in **Schedule J**, less any portion thereof used to pay Costs of Issuance through the escrow for the closing of the Loan or any reimbursements permitted under the Partnership Agreement into the Capital Contribution Account on the date of issuance of the Bonds; (b) cause the Investor Limited Partner to deposit subsequent Capital Contributions in the Capital Contribution Account as set forth in **Schedule J** at the time such equity installments become due and payable as provided for in the Partnership Agreement, subject to the terms and conditions therein; and (c) deposit amounts demanded by the Bondholder Representative as set forth below when the Loan is “out of balance” into a restricted non-interest bearing account to be maintained with the Bondholder Representative in the Borrower’s name (the “**Borrower’s Funds Account**”) to be disbursed to complete the Construction of the Project, unless the Bondholder Representative has agreed otherwise in writing in each instance, which agreement may be withheld by the Bondholder Representative in its sole discretion.

2) The Loan is "out of balance" if and when the Bondholder Representative determines that there are insufficient funds (taking into account the amount and timing of all of the Borrower's Sources) in the reasonable judgment of the Bondholder Representative to pay, through completion of the Project and the Construction Term Maturity Date (as may be extended to the Bond Maturity Date), all Total Project Expenses. The Borrower acknowledges that the Loan may become "out of balance" in numerous ways, not all of which may now be foreseen. Except as permitted in **Schedule D**, undisbursed funds in one category or line item may not be applied to another category or line item unless the Bondholder Representative consents in writing to such use in each instance, such consent not to be unreasonably withheld, conditioned or delayed. All Requisitions of amounts in the Project Fund must comply with the requirements of the applicable Regulatory and Restrictive Use Agreements and the Indenture.

3) Whenever the Loan becomes “out of balance,” the Bondholder Representative may, at its option, make written demand on the Borrower to deposit the Borrower’s own funds into the Borrower’s Funds Account and/or draw upon, demand, or otherwise obtain payment to the Bondholder Representative of any Cash Collateral, in any such instance in an amount sufficient in the Bondholder Representative’s reasonable estimation to cause the Loan to be “in balance.” Within thirty (30) Business Days following the Bondholder Representative’s written demand, the Borrower must deposit into the Borrower’s Funds Account all funds required by the Bondholder

Representative's demand that are in excess of any Cash Collateral actually delivered to the Bondholder Representative. The Borrower must also submit, for the Bondholder Representative's approval, a revised Budget (with a copy to the Issuer) within ten (10) Business Days after any such demand. Notwithstanding anything herein to the contrary, amounts to be funded from any Requisition shall be first paid with amounts in Borrower's Funds Account. Any funds in the Borrower's Fund Account on the date the Note is fully and finally paid shall be paid to Borrower.

#### **Section 4.7 Disbursement Procedures.**

1) Subject to the terms and conditions of this Agreement and **Schedule D**, the Bondholder Representative shall consent to Requisitions of Bond proceeds and Draw Requests of amounts in the Project Fund, of Capital Contributions in the Capital Contribution Account, and of any deposits of the DSHS Third Loan with the Bondholder Representative. Notwithstanding recording of the Mortgage or anything contained in this Agreement, the Bondholder Representative shall not be required to approve any Requisitions of amounts in the Project Fund and amounts on deposit in the Capital Contribution (and if applicable, deposits of the DSHS Third Loan with the Bondholder Representative) (except for reasonable fees, costs and reimbursements payable to the Bondholder Representative pursuant to the terms and conditions of this Agreement and **Schedule D**), unless and until the Bondholder Representative has determined in its reasonable judgment that: (i) the amount and timing of the Borrower's Sources are sufficient to pay the Total Project Expenses and to pay the Loan, (ii) the Mortgage and all disbursements of the Loan funds will be and shall remain a first priority lien on the Project; and (iii) the applicable conditions in **Schedule D** have been satisfied or waived in writing by all required parties. Notwithstanding anything herein or in the Indenture to the contrary, Trustee shall not authorize any disbursement of the Bond proceeds from the Project Fund unless and until the Bondholder Representative has approved that Requisition, such approval not to be unreasonably withheld. No Requisition then shall be funded unless and until the Bondholder Representative has approved the Requisition as provided in **subsection 2** below.

2) Disbursements of Borrower's Sources to the Borrower shall be made by the Trustee from the Project Fund and by the Bondholder Representative from all other of Borrower's Sources by deposit into a non-interest bearing checking account to be maintained with the Bondholder Representative in the name of the Borrower (the "**Disbursement Checking Account**") unless otherwise requested by the Borrower and consented to by the Bondholder Representative, such consent to be delivered in writing to the Trustee. Before the Bondholder Representative becomes obligated to consent to a Requisition of amounts in the Project Fund or to disburse any amounts in the Capital Contribution Account to the extent on deposit with the Bondholder Representative or to disburse deposits of the DSHS Third Loan with the Bondholder Representative, it must receive a written request signed by the Borrower or the Borrower's agent designated in **Section 7** of the Disbursement Schedule attached hereto as **Schedule D**, using a form acceptable to the Bondholder Representative (referred to and defined in **Schedule D** the "**Draw Request**"), accompanied by such documentation and information as required by **Schedule D** and as the Bondholder Representative may reasonably require (for fundings from the Project Fund, such required documentation shall include a signed Requisition). In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Budget. Without limiting the foregoing, each Draw Request shall be accompanied by lien waivers, on forms reasonably acceptable to the Bondholder Representative or the title insurer, from each subcontractor or

material supplier paid with the proceeds of the immediately preceding Draw Request. The Bondholder Representative shall not be obligated to consent to a Requisition or to disburse amounts in the Capital Contribution Account or deposits with the Bondholder Representative (if any) of the DSHS Third Loan, as requested in any Draw Request, earlier than ten (10) Business Days after receipt of a complete supporting package and satisfaction of the items listed in **Schedule D**. If the Bondholder Representative approves a Requisition, the Bondholder Representative will then submit the Requisition to the Trustee. In the event the Draw Request is approved and the funds from Borrower's Sources are disbursed into the Disbursement Checking Account, the Borrower shall promptly then pay the appropriate parties with the proceeds of the amounts in the Disbursement Checking Account unless otherwise requested by the Borrower and consented to by the Bondholder Representative which consent shall not be unreasonably withheld, conditioned or delayed. The Borrower may submit Requisitions and Draw Requests to the Bondholder Representative no more frequently than once each calendar month, unless the Bondholder Representative has given its prior written consent and delivered such consent to the Trustee in each instance. Notwithstanding the foregoing, for purposes of accruing interest thereon, the Loan shall be deemed fully disbursed and made available to the Borrower (subject to the terms of this Agreement) upon deposit of the proceeds of the Loan with the Trustee.

3) The Bondholder Representative, at any time, subject to the terms and conditions of this Agreement, may use any of Borrower's Sources which are on deposit with the Bondholder Representative to pay outstanding Loan fees owed to the Bondholder Representative, interest on the Loan, reasonable fees and expenses of the Bondholder Representative's attorneys, title insurance and miscellaneous costs actually incurred which are specifically payable by the Borrower hereunder, and such other sums as are actually outstanding and owing from time to time by the Borrower to the Bondholder Representative with respect to the Loan, all without further notice to or authorization by the Borrower (subject to the requirements of **Section 4.7(6)** below). These payments may be made, at the Bondholder Representative's option, by: (i) debiting the applicable account containing any of the Borrower's Sources (excluding the Funds established pursuant to the Indenture) in the amount of the payments without first depositing that amount into the Disbursement Checking Account; (ii) disbursing all or any part of the amount of the payments into the Disbursement Checking Account and then debiting the Disbursement Checking Account or (iii) invoicing the Borrower in the amount of the payments; provided, however, that the Bondholder Representative shall provide the Borrower with notice of any such debit by the Bondholder Representative no later than ten (10) Business Days after the debiting has occurred together with a reasonable accounting of such debited amount as such is reasonably practical after a written request therefor by Borrower. For these purposes, the Bondholder Representative is not restricted to the line items and cost categories of the Budget. The Borrower acknowledges that such a use of Borrower's Sources by the Bondholder Representative may cause the Loan to become "out of balance," requiring deposits by the Borrower into the Borrower's Funds Account or payment to the Bondholder Representative of Cash Collateral.

4) If the Budget provides for an undisbursed balance remaining in the interest reserve line item of the Budget and all other disbursement conditions have been met, then the Bondholder Representative from time to time shall disburse Borrower's Sources to pay interest on the Loan from the interest reserve line item.



5) Subject to the further terms of this Section and this Agreement (including **Schedule D**), disbursements made or authorized under this Agreement to pay Good Costs shall be paid first from proceeds of the first installment of the Capital Contribution set forth in **Schedule J** (sometimes referred to herein as the “**Construction Capital Contribution**”, whether one or more) deposited in the Capital Contribution Account maintained by the Bondholder Representative (to the extent deposited with the Bondholder Representative under the terms of the Partnership Agreement and to the extent available to pay Good Costs as provided in the most recently revised Budget and as set forth in **subsection (6)** below), then from proceeds of the DSHS Third Loan (to the extent available to pay budgeted construction items), and then from the Requisitions made on the Project Fund. Without limiting the foregoing, no consent to a Requisition by the Bondholder Representative will be provided unless and until all of the Construction Capital Contribution then payable under the Partnership Agreement have been fully funded in accordance with the terms of the Partnership Agreement and used first to pay Bad Costs and other Costs of Issuance (by payment to the Trustee in accordance with the terms of the Indenture) and then to pay Good Costs (by deposit in the Capital Contribution Account for disbursement therefrom in accordance with the terms of this Agreement). Without limiting the foregoing, it is agreed the proceeds of the Bonds shall only be used to pay Good Costs, and the proceeds of the Capital Contributions and the DSHS Third Loan (to the extent available to pay budgeted construction items) shall be used first to pay Bad Costs and then any remaining amounts shall be used to pay Good Costs. Notwithstanding the foregoing (and without limiting the terms of **Section 3.3(5)** hereof), if the Bondholder Representative determines it is necessary that certain Draw Requests be instead funded from the Project Fund to satisfy the 95% rule or the Fifty Percent Test, as the case may be, those Draw Requests will be first funded from the Project Fund (in any event, it is the intent of the parties that all proceeds of the Bonds will be used for the development of the Project and any disbursement of the DSHS Third Loan (to the extent available to pay budgeted construction items) for amounts paid with Bond proceeds to meet the Fifty Percent Test and/or such 95% rule will be deposited with the Bondholder Representative to be disbursed to pay later Requisitions). In addition to the foregoing, without limiting the requirements of **Schedule D**, prior to and as a condition to the Bondholder Representative’s agreement to buy the Bonds, the Borrower shall have caused the portion of the Construction Capital Contributions set forth in **Schedule J** which will be used to pay Costs of Issuance to be deposited in the Cost of Issuance Fund in accordance with the terms of the Indenture, and then any remainder of the Construction Capital Contributions shall be deposited in the Capital Contribution Account for disbursement in accordance with the terms of this Agreement to first pay budgeted Bad Costs which are not Costs of Issuance in accordance with the Budget and then to pay budgeted Good Costs as provided in this **subsection (5)** above. If a portion of the Draw Request is to be funded by the proceeds of the DSHS Third Loan (to the extent available to pay budgeted construction items) and a request has been made therefor and funding is pending by ATCIC (as applicable), in that event, Bondholder Representative may authorize a Requisition on the Project Fund (to the extent to be used for Good Costs) for that amount, and when funded, the proceeds of the DSHS Third Loan (to the extent available to pay budgeted construction items) for that Draw Request will be deposited in a collateral account of Borrower at the Bondholder Representative and then used to pay the next Draw Request to be funded from the Project Fund as reimbursement for the prior funding (any amounts in such collateral account when the Note is fully and finally paid shall be released to Borrower).

6) In addition to the foregoing, without limiting the requirements of **Schedule D**, prior to and as a condition to the Bondholder Representative's agreement to buy the Bonds, the Borrower

shall have caused the portion of the Construction Capital Contribution set forth in **Schedule J** which will be used to pay Costs of Issuance to be deposited in the Cost of Issuance Fund in accordance with the terms of the Indenture, and then any remainder of the Construction Capital Contribution shall have been deposited in the Capital Contribution Account for disbursement in accordance with the terms of this Agreement to first pay budgeted Bad Costs which are not Costs of Issuance in accordance with the initial Budget and then to pay budgeted Good Costs as provided in **subsection (5)** above.

7) The second and third installments of the Capital Contributions set forth in **Schedule J** shall each be funded into the Capital Contribution Account to first pay any budgeted construction items and then, except as otherwise provided in **Schedule J**, any remaining proceeds thereof shall if directed by Borrower, be applied to the Note. Without limiting the foregoing or anything in **Schedule J** to the contrary, Borrower shall cause the balance of the Loan to be no greater than \$\_\_\_\_\_ in connection with the funding of the second installment of the Capital Contribution described in **Schedule J**.

**Section 4.8 Additional Disbursement Conditions.** The Bondholder Representative need not approve the disbursement of Borrower's Sources (including approving a Requisition) until the Borrower fulfills all conditions of the Loan Documents relating to such disbursement set forth in **Schedule D** to the Bondholder Representative's satisfaction, in its reasonable judgment, or such conditions are otherwise waived in writing by Bondholder Representative. The Bondholder Representative's Loan closing conditions and conditions for subsequent disbursements include the matters described in the Disbursement Schedule. Further, fundings will be based upon the percentage of completion for actual work-in-place as approved by the Bondholder Representative and its Project Engineer.

**Section 4.9 No Waiver of Conditions.** Any waiver by the Bondholder Representative of a condition of disbursement must be expressly made by the Bondholder Representative in writing. If the Bondholder Representative makes a disbursement before fulfillment of one or more required conditions, such disbursement shall not be a waiver of such condition with respect to subsequent disbursements, and the Bondholder Representative reserves the right to require their fulfillment before making any subsequent disbursements. If all disbursement conditions are not satisfied or waived in writing by the Bondholder Representative, the Bondholder Representative, without waiving any rights or conditions as to any other or further disbursements, may disburse selectively as to certain items or categories of costs and not others.

Notwithstanding anything to the contrary set forth in this Agreement, all of the Bond proceeds shall, for federal income tax purposes, be (1) allocated to the Improvements in the Project and the Land on which it is located and (2) used exclusively to pay costs of the construction and rehabilitation of the Project which are includable in aggregate basis of the Improvements and the Land on which the Improvements are located ("**Eligible Costs**") in a manner such that the Improvements satisfies the requirements of Section 42(h)(4)(B) of the Internal Revenue Code. Accordingly, no Bond proceeds will be deemed to have been used to pay any of the Costs of Issuance of the Bonds, or to fund any reserve account other than the Project Fund to be used to pay Eligible Costs.

**Section 4.10 Subordinate Loans and Grants.** As a condition to the Bondholder Representative's purchase of the Bonds, the Bondholder Representative shall have received and approved evidence that the Subordinate Loans and Grants have closed on terms acceptable to the Bondholder Representative and the Bondholder Representative shall have received copies of the related Subordinate Loan Documents and an original counterpart of an Intercreditor Agreement in form and substance satisfactory to the Bondholder Representative. Unless otherwise consented to by Bondholder Representative in writing, the Subordinate Loans and Grants shall be fully funded (and/or immediately available to Borrower on terms satisfactory to Bondholder Representative) by the Construction Term Maturity Date (as may be extended to the Bond Maturity Date). The proceeds of the Subordinate Loans and Grants, when paid, will be used to pay the Loan, except that the DSHS Third Loan may be used to pay budgeted acquisition, development, and related costs as and when provided for in this Agreement. Notwithstanding the foregoing, all of the ATCIC Sponsor Fourth Loan shall only be used on or before the Bond Closing to fund the Collateral Account. Further, notwithstanding anything contained herein to the contrary, the DSHS Third Loan shall fund as provided for in the Intercreditor Agreement entered into with respect to the DSHS Third Loan. Without limiting the foregoing, Borrower shall provide the Bondholder Representative with evidence of the budgeted items paid with the proceeds of the DSHS Third Loan upon and in connection with each such payment; provided that if the Bondholder Representative has approved a Requisition from the Project Fund to pay the items for which that advance of the DSHS Third Loan has been made, in that event, that advance of the DSHS Third Loan shall be deposited with the Bondholder Representative as reimbursement for the funding of that advance from the Project Fund and then those proceeds of the DSHS Third Loan shall be used to fund the next request for advance before any of the Borrower's other Sources (except to the extent the use of Project Funds is required for Good Costs). Further, in the event, for any reason (excluding, however, an action or omission on the part of Bondholder Representative), all or any portion of the proceeds of the DSHS Third Loan deposited with Bondholder Representative are required to be returned to ATCIC by Bondholder Representative, Borrower shall promptly reimburse such amount to Bondholder Representative. Any amounts funded under the DSHS Third Loan and not immediately used by Borrower to pay budgeted costs shall be deposited in an interest bearing account of Borrower located at Bondholder Representative for disbursement as provided for this Agreement. Further, on the Construction Term Maturity Date (or such earlier date that Borrower wants to pay the Loan in full, which in any event shall be no later than the date of the funding of the second Capital Contribution set forth in Schedule J), Borrower agrees and authorizes the Bondholder Representative to use the proceeds then on deposit in the Collateral Account to pay the Loan.

**Section 4.11 Cash Flow.** Until the Note is fully and finally paid, all NOI shall be deposited by Borrower, on a monthly basis, in an account of Borrower located at Bondholder Representative which shall be a blocked collateral account. Borrower shall have no access to such account until the Note is fully and finally paid, but funds in the account will be available to pay principal and interest due on the Note, for budgeted development items, and for contingency needs approved by Bank in Bank's sole and reasonable discretion. If NOI is not a budgeted development source, notwithstanding anything herein to the contrary, Borrower shall pay interest due under the Note from NOI before using any unfunded interest reserves.

**Section 4.12 Required Payment of the Loan.** Notwithstanding anything herein to the contrary, in connection with the lien free completion of the Improvements and the funding of the

second Capital Contribution described in **Schedule J**, Borrower shall pay the Loan in full from the proceeds of that Capital Contribution, amounts on deposit in the Collateral Account (subject to **Section 4.13** below), the other Borrower's Sources then available to pay the Loan, and any other sources as may be required by Bondholder Representative to make such payment. If however, for any reason, the Note is then outstanding, Borrower shall also make a payment on the Loan in connection with the third Capital Contribution described in **Schedule J** to pay the Note in full.

**Section 4.13 Cash Collateral Account.** The amounts on deposit in the Collateral Account shall be used to pay the Loan to the extent there are not other sources available to pay the Loan when the Loan is fully and finally due and payable (including if it is due as a result of the exercise of when the third Capital Contribution described in **Schedule J** funds). To the extent after the Loan is paid in full, there remains proceeds on deposit in the Collateral Account, those proceeds shall then be made available to Borrower.

## ARTICLE 5 **PROJECT COVENANTS**

### **Section 5.1 Project. Title, Operation, and Maintenance.**

1) The Issuer, Bondholder Representative, and the Trustee shall not be under any obligation to operate, maintain, or repair the Project. The Borrower agrees that until this Agreement is terminated pursuant to **Section 10.3** hereof, it will, at its own expense (to the extent the expenses will not be paid from insurance proceeds actually available for that purpose or a reserve account), and consistent with similarly sized and situated projects in the metro Austin, Texas area, (a) keep the Project in safe repair and in such operating condition as is needed for its operations; (b) except as otherwise provided in this Agreement, make all necessary repairs and replacements to the Project (whether ordinary or extraordinary, structural or nonstructural); (c) operate the Project in a sound and economic manner in accordance with usual business practice, subject to the restrictions imposed on the Project pursuant to each Regulatory and Restrictive Use Agreement, once executed, and any "extended use agreement" entered into with respect to the Project in order to secure the availability of Low Income Housing Tax Credit for the Project; (d) operate the Project in compliance with all applicable laws, codes, environmental laws, zoning laws, the Americans with Disabilities Act of 1990 applicable to the Project, laws regulating construction, occupancy, or maintenance of property of a character included in the Project; (e) operate the Project in a manner which ensures compliance with the DSHS Appropriation, DSHS, HUD, each AHAP Contract, each HAP Contract (to the extent each is then executed), and the Subordinate Loan Documents and the funding of the Subordinate Loans and Grants; and (f) comply with all applicable existing and future laws, regulations, orders, building codes and restrictions, and requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial, or legal authorities having actual jurisdiction over the Project and other Requirements of Law applicable to the Project (including all conditions or requirements imposed upon Borrower or the Project in connection with the allocation of Low Income Housing Tax Credit to the Project) or the Borrower's business conducted thereon or therefrom, and with all restrictive covenants and other title encumbrances encumbering the Project, including without limitation those contained in each Regulatory and Restrictive Use Agreement, and any additional regulatory

agreements to which the Project may now or hereafter be subject in connection with the allocation of low income housing tax credits to the Project (all collectively, the “**Requirements**”).

2) The Borrower shall pay all expenses of the operation and maintenance of the Project including, but without limitation, the policies of insurance required pursuant to **Section 5.5**, and all taxes and special assessments levied upon or with respect to the Project and payable during the term of this Agreement, all in conformance with and subject to any good faith contest provisions provided in the Mortgage or this Agreement.

3) In the event that the Borrower shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep the Project in as reasonably safe condition as its operating conditions will permit, or shall fail to keep the Project in good repair and good operating condition and make all necessary repairs and replacements to the Project (except as otherwise expressly provided in this Agreement), the Bondholder Representative may (but shall be under no duty or obligation to) after giving the Borrower notice of its intention to do so, contract for the required policies of insurance and pay the premiums on the same or contract for any required repairs, renewals and replacements; and the Borrower agrees to reimburse the Trustee or the Bondholder Representative, as the case may be, to the extent of the amounts so advanced, and in addition shall pay interest on any such amount (but not including amounts in the capital replacement reserve account to be used for that purpose) at the Default Rate from the date of demand for such amount until the date such amount is paid or reimbursed by the Borrower.

4) The Borrower shall obtain or cause to be obtained all required permits and approvals for the operation and maintenance of the Project and shall comply with all lawful requirements of any governmental body with jurisdiction concerning the use or condition of the Project, whether existing or later enacted or whether involving any change in governmental policy or requiring structural or other changes to part or all of the Project and irrespective of the cost of making the same.

5) Notwithstanding the provisions of this **Section 5.1** the Borrower may in good faith contest the actual validity or the applicability of any law, ordinance, rule or regulation provided that during the period of such contest and any appeal therefrom, (i) such failure to comply with such requirement or requirements will not adversely affect the lien of the Mortgage or endanger the Project or any part thereof and (ii) will not subject the Project or any part thereof to loss or forfeiture.

6) The Borrower agrees not to permit to continue or allow others to permit to continue a nuisance in connection with their use or occupancy of the Project.

7) Without limiting the foregoing, all of the residential units associated with the Low Income Housing Tax Credit will be eligible for Section 8 subsidies under a HAP Contract once executed.

**Section 5.2** **Change in Composition of Borrower.** Except to the extent permitted pursuant to the Mortgage or this **Section 5.2** and subject to the requirements in the Bond Regulatory Agreement, Borrower shall not permit any change in the ownership of the Project or in Borrower, or in the ownership interests of the partners of Borrower, except that (i) a limited

partner may Transfer its interest to an Affiliate of that limited partner or an Affiliate of National Equity Fund, Inc. (to the extent such new limited partner is capitalized in a sufficient manner), (ii) a limited partner may syndicate, sell, and Transfer interests in the limited partner or an Affiliate of National Equity Fund, Inc. (to the extent in compliance with **Section 5.29**), (iii) the Investor Limited Partner may pledge and encumber its interests to or for the benefit of any Financial Institution which provides financing to the Investor Limited Partner to make its Capital Contributions to the Borrower, (iv) the general partner may change its interest in cash flow and capital transaction proceeds related to the Project in accordance with the terms of the Partnership Agreement, (v) the general partner may pledge its interest in the Borrower to the Investor Limited Partner (or an Affiliate thereof) as contemplated by the Partnership Agreement, and (vi) the limited partners may replace the general partner in accordance with the terms of the Partnership Agreement with written notice to the Issuer and the prior written consent thereto of the Bondholder Representative, provided that such replacement general partner is acceptable to Bondholder Representative in its reasonable discretion (Bondholder Representative agrees that a replacement general partner that is an Affiliate of the Investor Limited Partner or an Affiliate of National Equity Fund, Inc. is acceptable to the Bondholder Representative to the extent replacement is made as provided in the Partnership Agreement and that such Transfers of the general partnership interest in Borrower are permitted without Bondholder Representative's consent).

**Section 5.3 Advances.** The Borrower acknowledges and agrees that under this Agreement and certain of the other Loan Documents, the Bondholder Representative may, but shall be under no obligation to, take certain action and approve certain advances relating to the Project from certain funds held under the Indenture or otherwise, and the Borrower shall be obligated to repay all such advances (except for funds disbursed from a reserve account for the purposes of that reserve account) on demand with interest from the date such advance was made until paid, at the Default Rate.

**Section 5.4 Alterations to the Project and Removal of Equipment.** Without the prior written consent of the Bondholder Representative, except as provided for in **Section 5.10(b)**, the Borrower shall not remodel or make any material additions, modifications, alterations, improvements, or changes that would be a Material Adverse Change or Effect in or to the Project after Substantial Completion of construction as evidenced by delivery of the Completion Certificate or remove any equipment therefrom other than in connection with the replacement of worn, damaged, non-functioning or obsolete property. Notwithstanding the provisions of the Mortgage, no such alteration or removal will be made if to do so would impair the character of the Project as a "residential development" within the meaning of the Housing Act, or impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 5.5 Insurance.**

(a) The Borrower must provide, maintain, and keep in force at all times the insurance required in **Schedule H** attached hereto.

(b) At all times prior to repayment in full of the Loan, the Borrower must provide, maintain and keep in force all other insurance reasonably required by the Bondholder Representative.

(c) Without limiting the requirements of **Schedule H**, all policies of insurance required under this Agreement must be issued by companies approved by the Bondholder Representative having an A.M. Best's rating of A or better, with limits, coverage, forms, deductibles, inception and expiration dates and cancellation provisions acceptable to the Bondholder Representative. In addition, each required property insurance policy must contain a lender's Loss Payable Form (Form 438 BFU or equivalent) in favor of Issuer, the Trustee and the Holders and provide that all proceeds be payable to the Trustee to the extent of its interest. An approval by the Bondholder Representative is not, and may not be deemed to be, a representation of the solvency of any insurer or the sufficiency of any amount of insurance.

(d) Without limiting the requirements of **Schedule H**, each policy of insurance required under the Loan Documents must provide that it may not be modified or canceled without at least thirty (30) days' prior written notice to Bondholder Representative and the Trustee. At least fifteen (15) days before expiration of any required insurance policy, the Borrower must furnish the Bondholder Representative with proof reasonably acceptable to the Bondholder Representative that the policy has been reinstated or a new policy issued, continuing in force the insurance covered by the expired policy. The Borrower must also furnish evidence satisfactory to the Bondholder Representative that all premiums for such policy have been paid within fifteen (15) days of renewal or issuance. If the Bondholder Representative fails to receive such proof and evidence, the Bondholder Representative has the right, but not the obligation, after notice and opportunity to cure to pay for current coverage on account of the Borrower. The Borrower must repay the Bondholder Representative immediately on demand for any such payment made on Borrower's account for such premiums, which will be an additional loan to the Borrower bearing interest at the Default Rate, and secured by the Mortgage and any other collateral held by the Trustee in connection with the Loan; provided, however, that interest on any such advances will be included in gross income for federal income tax purposes.

#### **Section 5.6 Commencement and Substantial Completion of the Project.**

(a) The Borrower must commence construction of the Improvements (the "**Construction**") within thirty (30) days after the date of the Bond Closing, and continue Construction of such Improvements diligently and continually to Substantial Completion which shall occur by the Bondholder Representative's Required Completion Date. Without limiting the foregoing, Borrower shall cause the Project to be placed in service pursuant to Section 42 of the Code by the deadline required by the Credit Agency. The Borrower shall not permit cessation of work on the Project for a period in excess of ten (10) consecutive days (but excluding Excusable Delays) without the Bondholder Representative's prior written consent, provided that in no event shall there be a cessation of work on the Project for an aggregate period in excess of 30 days. So long as no Event of Default has occurred and is continuing, the Bondholder Representative shall extend the Substantial Completion date set forth in **Schedule E** by a period of time equal to the period of the Excusable Delay, but not more than a total of sixty (60) days. Such an extension, however, shall not affect the time for performance of, or otherwise modify, any of the Borrower's other obligations under the Loan Documents or the maturity the Note.

(b) By the Bondholder Representative's Required Completion Date, the Borrower must have Substantially Completed Construction of the Project, as hereinafter defined. As used in this Agreement, "**Construction of the Project**" includes completing construction of the structural components, operating systems, and all other elements of such improvements to buildings. The Construction of the Project is deemed complete for all purposes of this Agreement when the Construction has been completed on a lien free basis (unless Bonded) in substantial accordance with the plans and specifications described in **Schedule G**, as those plans and specifications may be amended in accordance with **Section 5.10** (the "**Plans and Specifications**"), as evidenced by the written certification of the architect for the Project (the "**Architect**") and Contractor for the Project in Form AIA G-706 or another form satisfactory to the Bondholder Representative and filed with the Trustee and the Bondholder Representative (the "**Completion Certificate**"), and the Bondholder Representative has received evidence reasonably satisfactory to it that:

(i) All of the buildings constituting the Project have been "placed in service" if required by and within the meaning of Section 42 of the Code; and

(ii) The completed Project has been inspected by and received all approvals of governmental authorities having jurisdiction over the Project, permitting occupancy by residential tenants of all residential units in the Project.

(c) In addition, the Borrower shall record the Affidavit and Certificate of Completion in the form of **Schedule O** attached hereto in Travis County, Texas, or a certificate or affidavit in such other form that complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to the Bondholder Representative, all appropriate notices of completion, and obtain certificates of occupancy or similar permits regarding completed apartment units and other spaces within the Project as necessary or required to permit the lawful use and occupancy of each of such units and spaces.

**Section 5.7 Construction.** The Borrower must conduct the Construction of the Project in a good and workmanlike manner in accordance with sound building practices, and all governmental and insurance requirements applicable to the Project and the Borrower, in accordance in all material respects with the Plans and Specifications and the recommendations of any geotechnical inspection, environmental report or engineering report delivered by the Borrower to, and approved by, the Bondholder Representative.

**Section 5.8 Preservation of Rights.** The Borrower must obtain, preserve, and maintain in good standing, as applicable, all rights, privileges, and franchises necessary or desirable for the operation of the Project and the conduct of the Borrower's business thereon or therefrom.

**Section 5.9 Maintenance and Repair.** Except as otherwise provided in this Agreement, the Borrower must (i) maintain the Project, including the parking and landscaping portions thereof, in good condition and repair, normal wear and tear excepted (ii) promptly make all necessary structural and non-structural repairs to the Project (or cause tenants under any leases to perform such obligation), and (iii) not demolish, alter, remove, or add to the Project, excepting (A) the repair and restoration of the Project following damage thereto as permitted by this Agreement, (B) the construction or installation of non-structural alterations or improvements,



provided the same are in all respects consistent with the character and utility of the existing Project, (C) the installation or construction of tenant improvements and related demolition in connection with any leases allowed by this Agreement, and (iv) not erect any new buildings, structures, or building additions on the Project, except as described in the Plans and Specifications, without the prior written consent of the Bondholder Representative. Subject to **Section 12.32**, the Borrower must pay when due all claims for labor performed and materials furnished therefor in connection with any improvement or construction activities, unless such claims are being contested in good faith and are Bonded. If a claim of lien is recorded which affects the Project or a stop notice, funds capture notice or similar notice from a potential mechanic's lien claimant is served upon the Borrower, the Borrower shall, within twenty (20) calendar days of such recording or service or within five (5) calendar days of the Bondholder Representative's demand, whichever occurs first (a) effect the release thereof by recording or delivering to the Bondholder Representative a surety bond in sufficient form and amount; or (b) provide the Bondholder Representative with other reasonable assurances which are reasonably satisfactory to the Bondholder Representative for the payment of such claim of lien and for the full and continuous protection of the Trustee and the Bondholder Representative from the effect of such lien (without limiting the terms of **Section 12.32**).

#### **Section 5.10 Changes.**

(a) The Borrower agrees to provide Bondholder Representative with copies of all change orders pursuant to which changes are proposed to the Plans and Specifications or to the design of the Project, together with all additional documents relating to the proposed change that the Bondholder Representative may reasonably require. These documents may include the following: (i) plans and specifications indicating the proposed change; (ii) a written description of the proposed change and related working drawings; and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

(b) The Borrower must obtain the Bondholder Representative's prior written approval of any change order which in any single instance involves more than Twenty-Five Thousand and No/100 Dollars (\$25,000) in changes in costs of the Project or which, when aggregated with other change orders not previously approved by the Bondholder Representative, involves more than One Hundred Twenty-Five Thousand and No/100 Dollars (\$125,000.00) in changes in costs of the Project (the foregoing approval may be evidenced by the funding of the applicable change order or by specific written approval by the Bondholder Representative for that change order). Notwithstanding the foregoing, all change orders shall be properly documented in a manner satisfactory to Bondholder Representative on the related G702 and G703 draw requisitions. In any event, any changes in costs must also satisfy the requirements of the Subordinate Loan Documents. Further, notwithstanding the foregoing, reallocations of the Budget, or reallocation of costs associated with the Retail Space and/or the Clinic Space to the costs associated with the development of the residential portion of the Improvements shall require the prior written consent of the Bondholder Representative.

(c) In addition, the Borrower must obtain the Bondholder Representative's prior written approval of all material changes in the scope or general conditions of the contract

with the Contractor for the Construction of the Project (the “**Construction Contract**”) or the contract with the Architect for the design of the Project (the “**Architecture Contract**”). Finally, the Borrower must obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials, or contracts required by any of the Requirements, applicable to the Project, or under the terms of any lease, loan commitment, or other agreement relating to the Project.

(d) The Bondholder Representative may take a reasonable time not to exceed ten Business Days to evaluate any requests for proposed changes and may require that all approvals required from other parties (including investment partners of the Borrower) be obtained before it approves any requested change. The Bondholder Representative may approve or disapprove changes described in **Section 5.10** in the exercise of its reasonable judgment. The Borrower acknowledges that delays may result but that shall not affect the Borrower's obligation to complete the Project by the Bondholder Representative's Required Completion Date.

#### **Section 5.11 Construction Information and Verification.**

(a) Within thirty (30) days after receiving a written request from the Bondholder Representative so to do, the Borrower shall deliver to the Bondholder Representative any and all of the following information and documents, all in forms reasonably acceptable to the Bondholder Representative:

(i) Current Plans and Specifications for the Project certified by the Architect as being complete and accurate;

(ii) If required by Bondholder Representative, a current, complete, and correct list showing the name, address, and telephone number of each contractor, subcontractor, and material supplier who is engaged by the Borrower in connection with the Construction of the Project, together with the total dollar amount of each contract and subcontract (including any changes) and the amounts paid through the date of the list;

(iii) A true and correct copy of the most current version of the Construction Contract, including any changes;

(iv) A current construction progress schedule showing the progress of Construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule;

(v) Any update to any item described above, previously delivered to the Bondholder Representative; and

(vi) At any time after Construction of the Project, as-built plans and specifications for the Project as actually completed to date, certified by the Architect as being complete and accurate (provided, however, if the Architect is not reasonably able to deliver such as-built plans and specifications within such

thirty (30) day period, the Bondholder Representative consents to extend the Borrower's deadline up to an additional thirty (30) days).

(b) The Borrower expressly authorizes the Bondholder Representative to contact the Architect, the Contractor, or any contractor, subcontractor, material supplier, surety, or any Governmental Authority or agency to verify or discuss any information disclosed in accordance with this **Section 5.11** and any other information that the Bondholder Representative may reasonably require.

(c) The Borrower shall promptly notify the Bondholder Representative of any material default by Architect, Contractor, subcontractor, material supplier, or surety under its respective agreement which is not cured after the passage of applicable notice and cure periods. Any Architect, Contractor, subcontractor, material supplier, or surety who terminates or materially breaches its contract and fails to cure such breach during any applicable notice and cure period, the Contractor must be replaced promptly, with a replacement approved by the Bondholder Representative, and the Borrower must deliver all required information and documents to the Bondholder Representative regarding each such replacement Architect, Contractor, subcontractor, material supplier, and surety. The Bondholder Representative shall not unreasonably withhold, condition or delay its approval of any replacement Architect, Contractor, subcontractor, material supplier, surety, or other party reasonably selected by the Borrower.

**Section 5.12 Permits, Licenses, and Approval.** The Borrower must obtain, comply with, and keep in effect all required and necessary permits, licenses and approvals related to the Project and required by governmental bodies in order to construct, occupy, operate, market, and lease a portion of the Project for its intended use. The Borrower must promptly deliver, within ten (10) Business Days after a reasonable written request therefor from Bondholder Representative, copies of all such permits, licenses, and approvals.

**Section 5.13 Purchase of Materials; Conditional Sales Contracts.** Without the Bondholder Representative's prior written consent, the Borrower may not: (i) purchase or contract for any materials, equipment, furnishings, fixtures, or articles of personal property to be placed or installed on the Project under any security agreement or other agreement where the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of construction; or (ii) remove or permit to be removed from the Project any equipment, machinery, or fixtures owned by Borrower and used in connection with the management, maintenance, operation, or enjoyment thereof unless replaced by articles of equal suitability and value owned by the Borrower, in each case free and clear of any lien or security interest.

**Section 5.14 Site Visits; Right to Stop Work.**

(a) Subject to the rights of the tenants under leases, the Borrower grants to the Bondholder Representative, and its agents and representatives, the right to enter and visit the Project on any Business Day during normal business hours upon prior reasonable notice to Borrower (of at least two (2) Business Days in advance but that no such advance notice will be required if an Event of Default is then continuing) and its Property Manager of the

Project for the purposes of performing an appraisal, pursuant to any requirement for same under this Agreement, observing the work of construction, inspecting the property, and examining all materials, plans, specifications, working drawings, and other matters relating to the construction and during the continuance of an Event of Default, taking soil or groundwater samples, conducting tests to, among other things, investigate for the presence of Hazardous Substances. Prior to Substantial Completion and funding of Retainage, for purposes of these site visits, the Borrower must maintain at all times a full set of working drawings at the construction site. During such site visits, the Bondholder Representative has the right to examine, copy, and audit the books, records, accounting data, and other documents of the Borrower and its contractors relating to the Project or Construction of the Project. The Bondholder Representative is under no duty to visit or observe the Project, or to examine any books or records. Any site visit, observation, or examination by the Bondholder Representative will be solely for the purpose of protecting and preserving the rights of the Trustee and the Bondholder Representative under this Agreement and the Mortgage. No site visit, observation or examination by the Bondholder Representative will impose any liability on Bondholder Representative or result in a waiver of any default of the Borrower or be a representation that the Borrower is or will be in compliance with the Plans and Specifications, that the construction is free from defective materials or workmanship, or that the construction complies with all applicable Requirements. Neither the Borrower nor any other party is entitled to rely on any site visit, observation or testing by Bondholder Representative, its agents, or representatives. The Bondholder Representative owes no duty of care to protect the Borrower or any other party against, or to inform the Borrower or any other party of, any adverse condition affecting the Project, including any defects in the design or construction of any improvements on the Project or the presence of any Hazardous Substances on the Project. In each instance, the Bondholder Representative will give the Borrower reasonable prior notice before entering the Project and make all reasonable efforts to avoid interfering with the Borrower's Construction of the Project, use or operation of the Project, or any tenant's rights under leases of the Project when exercising any of the rights granted in this Section.

(b) Subject to the terms and provisions of **Section 11.2**, if the Bondholder Representative in its reasonable judgment determines that any work or materials fail to conform in any material respect to the approved Plans and Specifications or sound building practices, or that they otherwise depart in any material respect from any of the requirements of this Agreement, the Bondholder Representative may require the work to be stopped and withhold its consent to disbursements until the matter is corrected. If this occurs, the Borrower must promptly correct the work to the Bondholder Representative's reasonable satisfaction and halt all other work pending completion of such corrective work. No such action by the Bondholder Representative will affect the Borrower's obligation to complete the Project on or before the Bondholder Representative's Required Completion Date.

**Section 5.15 Protection Against Lien Claims.** The Borrower must pay or otherwise discharge promptly all claims and liens for labor done and materials and services furnished in connection with the Construction of the Project. Notwithstanding the foregoing sentence and subject to the terms and requirements of **Section 5.9** and **Section 12.32**, the Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to the Bondholder Representative or delay in completing the Project. Promptly upon the

Bondholder Representative's request, the Borrower must provide a surety bond, cash deposit, or other security in accordance with **Section 5.9**.

**Section 5.16 Cooperation.** The Borrower will reasonably cooperate at all times with the Issuer, the Trustee, and the Bondholder Representative in bringing about the timely completion of the Project, and the Borrower must resolve all disputes arising during the Construction of the Project in a manner allowing work to proceed expeditiously. Further, from time to time the Issuer may direct the Borrower to file such reasonable additional reports for compliance with State or federal laws or regulations in connection with administration of the Loan and operation of the Project hereunder and the Borrower agrees to file such reports promptly. Further, the Borrower covenants and agrees to execute such additional instruments as may be reasonably requested by the Trustee or the Issuer in order to carry out the provisions of this Agreement and the other Loan Documents and to perfect or give further assurances of any of the rights granted or provided for in the Bond Documents and the Loan Documents.

**Section 5.17 Income from Project.** The Borrower must first apply all income from leases, and all other income derived from the Project, to pay costs and expenses then due and payable and associated with the ownership, maintenance, development, operation, and marketing of the Project, including all amounts then required to be paid under this Agreement and other Loan Documents, before using or applying such income for any other purpose.

**Section 5.18 Payment of Expenses.** The Borrower must pay the Bondholder Representative's reasonable costs and expenses incurred in connection with the administration of, and approval of disbursement of proceeds of, the Loan. The Borrower must also pay any and all of the Bondholder Representative's reasonable costs and expenses incurred in connection with any revisions, extensions, renewals, modifications, or "workouts" of the Loan, and in the exercise of any of the Bondholder Representative's rights or remedies under this Agreement. Such reasonable costs and expenses include, without limitation, charges for title insurance (including endorsements), filing, recording and escrow charges, reasonable fees for appraisals and appraisal reviews, architectural and engineering review and services, construction services and cost engineering and environmental review and services, zoning and entitlement review and services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of the Bondholder Representative's counsel, survey charges, insurance premiums, and any other reasonable fees and costs for services, regardless of whether such services are furnished by the Bondholder Representative's employees, or agents or independent contractors. The Borrower acknowledges that amounts payable under this Section are not included in any loan or commitment fees for the Loan. Without limiting the generality of the foregoing, as a condition to the approval of a Draw Request or Requisition, the Borrower shall pay to the Bondholder Representative (or such other party which engages the consultant, as applicable) a construction inspection/administrative fee ("**Construction Inspection Fee**") of \$\_\_\_\_\_ per monthly inspection (plus travel expenses) provided that the fee for the initial inspection and review of the Plans and Specifications shall be \$\_\_\_\_\_ (or such other amounts as may be owing to the Project Engineer for such inspections). All such sums reasonably and actually incurred by the Bondholder Representative and not reimbursed by the Borrower promptly upon Borrower's receipt of written demand together with a reasonable accounting of all amounts for payment will be considered an additional loan to the Borrower, secured by the Mortgage and the other collateral held by the Trustee in connection with the Loan, and bearing interest at the Default Rate; provided, however,

that interest on any such advances will be included in gross income for federal income tax purposes. In addition, the Borrower must pay to the Issuer and the Trustee all fees and expenses of Issuer and the Trustee described in the Indenture.

**Section 5.19 Performance of Acts.** Upon the Bondholder Representative's reasonable request, the Borrower must perform all acts necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

**Section 5.20 Management Agreement.** The Property Manager and the management agreement with the Property Manager shall be subject to the prior written approval of the Bondholder Representative prior to the Bond Closing, which approval shall not be unreasonably delayed, conditioned or withheld. The Property Manager is hereby approved as the initial management agent. The management agreement shall not be materially amended, modified, or supplemented, or terminated, or canceled without the prior written approval of the Bondholder Representative, which approval shall not be unreasonably delayed, conditioned or withheld, and may, in each instance, be conditioned upon delivery of a collateral assignment and subordination of the management agreement relating to the Project. The Borrower shall obtain the Bondholder Representative's approval of the Borrower's management plan for the Project, which plan shall provide for training of the onsite staff in full compliance with federal, state and local affordable housing requirements applicable to the Project.

**Section 5.21 Perfection and Continued Perfection.** The Borrower shall take such actions as reasonably requested by Bondholder Representative (including the filing of UCC financing statements) as may be necessary to (a) initially perfect the lien and security interests of the Trustee pursuant to the Mortgage and the Indenture, as first priority liens, and (b) maintain the liens and security interests of the Trustee pursuant to the Mortgage and the Indenture as continuously perfected first priority liens on the property therein described.

**Section 5.22 Appraisals.** If reasonably required by the Bondholder Representative, or if required by law or regulations, the Bondholder Representative shall have the right to order Appraisals of the Project from time to time (but in no event more often than annually) from an appraiser selected by the Bondholder Representative, which Appraisals shall comply with all federal and State standards for Appraisals and otherwise shall be satisfactory to the Bondholder Representative in all material respects. The Borrower agrees to pay the reasonable cost and expense for all Appraisals and reviews thereof ordered by the Bondholder Representative pursuant to this Section. It shall not be an Event of Default under this Agreement if the Appraised Value of the Project goes down (provided that in connection with any re-appraisal of the property, the Loan to Value Ratio as calculated pursuant to this Agreement shall not exceed 80%).

**Section 5.23 HAP Compliance.** The Borrower shall fully comply with all terms and requirements for all residential units in the Project to be eligible to receive project based housing choice voucher Section 8 units pursuant to the HAP Contracts and 24 CFR Part 983 and the HUD VASH Program. As soon as reasonably practical after the execution thereof, the Borrower shall promptly furnish the Bondholder Representative with a copy of each fully executed HAP Contract as soon as reasonably practical after completion of the Improvements, issuance of the certificates of occupancy, and when all units pass HUD-established Housing Quality Standards of HUD,

together with a Collateral Assignment of each HAP Contract (the HAP Contracts shall provide that HUD consents to such collateral assignments).

**Section 5.24** Subordinate Loans and Grants. Borrower shall (and shall cause the General Partner to) fully comply with all terms and requirements of the Subordinate Loan Documents.

**Section 5.26 USA Patriot Act.** Bondholder Representative hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Bondholder Representative to identify the Borrower in accordance with the Patriot Act.

**Section 5.27 Stored Materials.**

(a) Bondholder Representative shall have the right to approve or disapprove in its reasonable discretion disbursements for any materials to be used for the Construction of the Project and not to be immediately incorporated into and made a part of the Improvements ("**Stored Materials**"). Bondholder Representative will not approve disbursements for Stored Materials until Borrower complies with the conditions set forth below.

(b) As a condition precedent to the disbursement of Capital Contributions from the Capital Contribution Account or from the Loan from the Project Fund for Stored Materials, Borrower shall supply Bondholder Representative, as reasonably requested by Bondholder Representative (x) evidence reasonably satisfactory to Bondholder Representative that the Stored Materials are included in the coverage of the insurance policies required by this Agreement; (y) evidence reasonably satisfactory to Bondholder Representative from the Borrower or the Contractor that, upon payment for such Stored Materials, ownership thereof will vest in Borrower free of any liens or claims of third parties; and (z)(A) evidence reasonably satisfactory to Bondholder Representative that the Stored Materials are satisfactorily stored at the Project to protect against theft or damage, or (B) if the Stored Materials are not stored at the Project, (1) evidence satisfactory to Bondholder Representative that the Stored Materials are stored in a bonded warehouse or storage yard approved by Bondholder Representative, and the warehouse or yard has been notified that Bondholder Representative has a security interest in the subject Stored Materials, and (2) Bondholder Representative shall have received from Borrower or the Contractor the original warehouse receipt. With Bondholder Representative's prior written approval, Stored Materials may be stored in the yard or warehouse of the seller or fabricator, subject to satisfaction of conditions (x), (y), (z)(B)(1), and (z)(B)(2) in this **subsection (b)**, and *provided further* that Bondholder Representative receives satisfactory evidence that the Stored Materials are protected against theft or damage, have been suitably identified as belonging to Borrower for use in the Project, and that such seller or fabricator has been notified of the security interest of Bondholder Representative therein.

**Section 5.28 Environmental Reports.** Borrower agrees to provide Bondholder Representative, in a timely manner, with copies of all environmental reports on the Project generated during the term of the Loan.

**Section 5.29 Equity Funding.** Investor Limited Partner is responsible for funding the Capital Contributions. If, after the Bond Closing, the Investor Limited Partner transfers any of the Investor Limited Partner's interest in the Borrower other than to the Bondholder Representative or an Affiliate thereof, the Investor Limited Partner shall provide Bondholder Representative with written notice of the transfer and the identity of all partners or members of the entity (the "**Fund**") to which the Investor Limited Partner's limited partnership interest was transferred. All information received in connection with the foregoing shall be kept confidential by Bondholder Representative. If prior to the earlier to occur of (i) the full and final payment of the Loan or (ii) the payment in full of the Capital Contribution, subject to any adjusters in the Partnership Agreement, any partner or member in the Fund is substituted for any one or more other Persons, the Investor Limited Partner shall promptly notify Bondholder Representative in writing of the substitution. The Investor Limited Partner (or another subsidiary or Affiliate of National Equity Fund, Inc.) shall in any event be the general partner (or manager, if applicable) of the Fund. Prior to the earlier to occur of (a) the full and final payment of the Loan, and (b) the payment in full of the First, Second, and Third Capital Contributions set forth in **Schedule J** (subject to any adjusters provided for in the Partnership Agreement), the partners or members owning in the aggregate not less than 75% of the ownership interests in the Fund will be investment grade (defined as BBB- or better rated by S&P or similar rating agency) Financial Institutions or corporations, or wholly-owned subsidiaries of such entities, or otherwise approved by Bondholder Representative in writing.

**Section 5.30 Developer Fee/Contractor Profit.** The Developer Fee shall be paid pursuant to the terms of **Section 7(c)** of **Schedule D** of this Agreement. Contractor profit and overhead may be paid, as budgeted, on a percentage of completion basis.

## ARTICLE 6

### **DAMAGE, DESTRUCTION, AND CONDEMNATION**

**Section 6.1 Damage and Destruction.** If the Bonds are Outstanding when the Project is damaged or destroyed by fire or other casualty, the Borrower shall restore the Project if the conditions contained in **Section 6.4** are satisfied; otherwise, the Borrower shall use any proceeds received with respect of such casualty to prepay the Loan in whole or in part. Notwithstanding anything to the contrary set forth in this Agreement, the terms of this **Article 6** are subject to the terms and provisions of the Mortgage, and in the event of any irreconcilable conflicts between this Agreement and the terms of the Mortgage, the terms set forth in this Agreement shall govern and control.

**Section 6.2 Condemnation.** Notwithstanding anything in the Mortgage to the contrary, if the Bonds are Outstanding when the Project or any part thereof is taken by Condemnation, the Borrower shall use any proceeds received with respect of such Condemnation to prepay the Loan in whole or in part or to restore the Project if permitted by this Agreement and the Mortgage or take such other action, as is required or permitted by the Mortgage and the other Loan Documents.



**Section 6.3 Parties To Give Notice.** In the case of material damage to or destruction of all or a substantial part of the Project, the Borrower shall give prompt notice thereof to the Issuer, the Trustee, and the Bondholder Representative in the manner prescribed by **Section 12.2.** In the case of a taking or proposed taking of all or any part of the Project by Condemnation, the party hereto upon which notice of such taking or proposed taking is served shall give prompt notice thereof to the Issuer, the Trustee, and the Bondholder Representative in the manner prescribed by **Section 12.2.** Any such notice shall describe generally the nature and extent of such damage, destruction, taking, or proposed taking.

**Section 6.4 Conditions to Restoration.** Notwithstanding anything in the Mortgage to the contrary, the following shall be conditions precedent to the obligation of the Borrower to restore the Project following the occurrence of a casualty or Condemnation:

(a) No Default or Event of Default shall then be continuing that would not be cured by the planned restoration in accordance with the terms of this Agreement and the Mortgage;

(b) The Bondholder Representative shall have received and approved each of the following (which approval shall not be unreasonably withheld, conditioned or delayed):

(i) acceptable Plans and Specifications for the reconstruction of the Project;

(ii) copies of all contracts and subcontracts for the reconstruction of the Project;

(iii) if required by Bondholder Representative, either payment and performance bonds for the reconstruction of the Project provided by a surety acceptable to the Bondholder Representative (with an AM Best rating of "A") or a fifteen percent (15%) letter of credit in lieu of bonding issued by a Financial Institution and on a form acceptable to the Bondholder Representative;

(iv) assignments by the Borrower to the Trustee of each of the contracts and subcontracts described in clause (ii), in form and content satisfactory to the Bondholder Representative, and consents to such assignment, in form and content satisfactory to the Bondholder Representative, duly executed by the contractors and subcontractors;

(v) a line item budget setting forth, in form and level of detail satisfactory to the Bondholder Representative, all costs of reconstruction of the Improvements in accordance with the Plans and Specifications described in clause (i), above;

(c) All proceeds of casualty insurance policies awards less the costs of collection, as the case may be, shall have been received in the Mortgage Recovery Fund established under the Indenture and the Borrower hereby grants a security interest in said account to the Issuer, and the Issuer hereby assigns such security interest to Trustee on behalf of the Holders; and

(d) it is determined by an appraiser selected by the Bondholder Representative at the expense of the Borrower (unless waived by the Bondholder Representative) that the Project will, following reconstruction, have a fair market value which is at least equal to its value immediately prior to the casualty or Condemnation.

**Section 6.5 Conditions to Disbursement of Proceeds.** If all of the foregoing conditions are satisfied, proceeds held by Trustee shall be disbursed subject to the consent of the Bondholder Representative in the same manner and subject to the same conditions, including without limitation consent of the Bondholder Representative to each disbursement (subject to adjustment to reflect the different nature of construction) as applied with respect to the initial disbursement of the proceeds of the Loan (as provided in **Schedule D**). When obtaining disbursements from the Mortgage Recovery Fund established under the Indenture, the Borrower agrees to the conditions contained in, and agrees to comply with the procedures set forth in **Section 5.7** of the Indenture or otherwise required by Trustee. If the foregoing conditions are not satisfied, or if, after satisfaction of such conditions any proceeds of casualty insurance or condemnation awards remain, all such proceeds shall be remitted to the Trustee promptly on account of the outstanding balance on the Note for application to the redemption in whole or in part of the Bonds.

## ARTICLE 7 COVENANTS OF ISSUER AND BORROWER

**Section 7.1 Covenant for the Benefit of the Bondholder Representative.** The Borrower recognizes the authority of the Issuer to assign its interest in and right to receive moneys receivable under this Agreement (other than the Unassigned Issuer's Rights) to the Trustee as security for the payment of the principal of and interest and redemption premium, if any, on the Bonds, and the payment of all Additional Charges. The Borrower hereby agrees to be bound by, and grants a security interest to the Trustee for and on behalf of the Issuer in any right and interest the Borrower may have in sums held in the Funds described in the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Bonds and payments made under the Loan Documents. Each of the terms and provisions of this Agreement is a covenant for the use and benefit of the Bondholder Representative, so long as the Bonds shall remain outstanding; but upon discharge of the Bonds in accordance with **Article 7** of the Indenture and payment of all reasonable fees and charges incurred by the Issuer and the Trustee payable by Borrower pursuant to the terms of the Indenture, this Agreement, or otherwise, then, upon the occurrence of the foregoing, all references in this Agreement to the Bondholder Representative and the Bonds shall be ineffective, and the Bondholder Representative shall thereafter have no rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder or under the Regulatory and Restrictive Use Agreements, once executed, which survive termination of this Agreement.

### **Section 7.2 Inspection and Access.**

1) The Borrower agrees that, upon prior reasonable notice (of at least two (2) Business Days) by the Issuer, Bondholder Representative and/or the Trustee to the Borrower and the Property Manager (provided no such prior notice shall be required if an Event of Default is then continuing), but specifically subject to the rights of the tenants under the leases, the Issuer, the Bondholder Representative, the Trustee, and their duly authorized agents shall have the right to examine and inspect during normal business hours on a Business Day, and for that purpose to enter

upon, the Project, and shall also have such right of access thereto upon prior reasonable notice provided if and to the extent required by this Section at reasonable times and under reasonable conditions but specifically subject to the rights of tenants in possession as may be reasonably necessary to cause the Project to be properly maintained in accordance with **Article 5** of this Agreement and in accordance with the applicable provisions of the other Loan Documents.

2) The Borrower hereby covenants to execute, acknowledge, and deliver all such further documents, and do all such other acts and things as may be necessary in order to grant to the Issuer, Bondholder Representative, and the Trustee the rights of access and entry described herein and agrees that such rights of access and entry shall not be terminated, curtailed, or otherwise limited by any assignment, lease, or other Transfer of the Project by the Borrower to any other Person; provided, that such rights will be specifically subject to the rights of tenants in possession under their respective leases.

### **Section 7.3 Indemnity.**

1) **The Borrower will pay, defend, and will protect, indemnify, and save the Issuer, the Trustee, the Bondholder Representative, and each Holder of the Bonds (including without limitation the Bondholder Representative), and the members of the governing body and staff, directors, officials, officers, attorneys, agents, and employees of each of them and any Person who controls any of them within the meaning of the Securities Act of 1933, as amended (for purposes of this Section 7.3 only, collectively, the "Indemnified Parties") from and against all liabilities, losses, damages, reasonable costs and expenses (including without limitation reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) actually incurred, causes of action (whether in contract, tort, or otherwise), suits, claims, demands, and judgments of every kind, character, and nature whatsoever asserted against any Indemnified Party by any third party (collectively referred to herein as the "Liabilities") directly or indirectly arising from or relating to the Bonds, the loan of the proceeds of the Bonds, this Agreement and the other Loan Documents, the Project, the Mortgage, the Indenture, or any document related to the issuance and sale of the Bonds (but excluding from the obligations undertaken pursuant to this Section 7.3 any obligations to pay principal or interest on the Loan or the Bonds), including, but not limited to, the following:**

(a) **the Indenture, this Agreement, and each Regulatory and Restrictive Use Agreement, once executed, or the execution or amendment thereof or the transactions contemplated thereby, including the issuance, sale, resale, or remarketing of the Bonds or any of them;**

(b) **any act or omission of the Borrower or any of its agents, contractors, servants, employees, or licensees in connection with the Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct, or management of work done in, on, or about the Project, or from the planning, design, acquisition, installation, or construction of, the Project, or any part thereof;**

(c) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the use, non-use, condition or occupancy of the Project or any part thereof;

(d) any lien or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions, and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(e) actual violation by the Borrower of any agreement or condition of this Agreement, the Regulatory and Restrictive Use Agreements, once executed, or the Mortgage;

(f) actual violation by the Borrower of any contract, agreement, or restriction relating to the Project;

(g) actual violation by the Borrower of any law, ordinance, or regulation affecting the Project, or any part thereof or the ownership, occupancy, or use thereof, including without limitation any violation of any applicable environmental law, rule, or regulation with respect to, or the release of any Hazardous Substance from, the Project or any part thereof;

(h) the defeasance or redemption, in whole or in part, of the Bonds;

(i) any statement, information, or certificate furnished by the Borrower to the Issuer which is misleading, untrue, or incorrect in any material respect, including without limitation any untrue statement or misleading statement of a material fact by the Borrower contained in any offering statement or document for the Bonds or any of the documents relating to the Bonds to which the Borrower is a party, or any material omission from any offering statement or document for the Bonds of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(j) any and all Liabilities directly or indirectly arising out of or resulting from construction of any Improvements on the Project, including any defective workmanship or materials;

(k) any failure to satisfy any requirements of any applicable laws, regulations, ordinances, governmental policies or standards, reports, subdivision maps, or development agreements that actually apply and pertain to the Project;

(l) breach of any representation or warranty made or given by the Borrower to any of the Indemnified Parties or to any prospective or actual buyer of all or any portion of the Project;

(m) any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of the Borrower or any other

person or entity in connection with the ownership, sale, operation, or development of the Project; and

(n) any declaration of taxability of interest on the Bonds, or allegations or regulatory inquiry that interest on the Bonds is taxable, for federal tax purposes, except by reason of being held by a "substantial user" of the Project or a "related person" to a "substantial user" within the meaning of Section 147(a) of the Code.

2) The Borrower also agrees to indemnify and hold harmless each of the Indemnified Parties from and against the Liabilities directly or indirectly arising from or relating to any fraud or misrepresentations or omissions by the Borrower occurring during any proceedings of the Issuer relating to the issuance of the Bonds or pertaining to the financial condition of the Borrower which, if known to the Bondholder Representative purchasing the Bonds, might be considered a factor in its decision to purchase the Bonds.

3) Nothing in Section 7.3(1) shall be deemed to require the Borrower to provide indemnification to an Indemnified Party with respect to Liabilities arising from the fraud, the negligence (except in the case of Issuer and the Bondholder Representative), willful misconduct, or breach of contractual duty (except in the case of Issuer) of any Indemnified Party as adjudicated by a court of competent jurisdiction in a non-appealable judgment. **THE ISSUER SHALL BE INDEMNIFIED BY THE BORROWER EXCEPT FOR ITS OWN BAD FAITH, WILLFUL MISCONDUCT, OR FRAUD. THE BONDHOLDER REPRESENTATIVE SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM ITS OWN NEGLIGENCE.**

4) Promptly after receipt by an Indemnified Party of actual notice of the commencement of any action or proceeding with respect to which indemnification is being sought hereunder, such Indemnified Party will as soon as reasonably practical notify the Borrower of the commencement of such proceeding. Receipt of such notification shall be a necessary condition precedent to the Borrower's indemnification obligation hereunder, but failure of the Borrower to receive such notification or defects in such notification will not relieve it from any liability to an Indemnified Party which the Borrower may have otherwise. As to Indemnified Parties other than Issuer, if the Borrower so elects, it may assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and will pay the fees and disbursements of such counsel. However, notwithstanding the foregoing, (i) if counsel for such Indemnified Party and counsel for the Borrower agree that (A) having common counsel to represent both the Borrower and the Indemnified Party would present a conflict of interest or (B) defenses are available to such Indemnified Party which are not available to the Borrower or vice versa and (ii) if the Borrower fails to assume the defense of the action or proceeding in a timely manner, then such Indemnified Party may employ separate counsel to represent or defend it in any such action or proceeding and the Borrower will pay the reasonable fees and disbursements of such counsel. In any action or proceeding the defense of which the Borrower assumes, the Indemnified Party will have the right to participate in such litigation and to retain its own counsel at such Indemnified Party's own expense. Notwithstanding the foregoing, if the Indemnified Party is the Issuer, the Issuer shall employ its own counsel and the Borrower shall be liable for the reasonable cost of such counsel. No Indemnified Party

shall settle any Liability for which indemnification is being sought hereunder, without the prior written consent of the Borrower, which consent shall be at the sole discretion of Borrower.

5) The Indemnified Parties, other than the Issuer and Bondholder Representative, shall be considered to be intended third party beneficiaries of this Agreement for purposes of Section 7.3(1)-(4).

Notwithstanding any Transfer of the Project to another owner in accordance with the provisions of this Agreement prior to the full and final payment of the Note, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section but only for such Liabilities arising from and with respect to action, inaction, or other circumstances or events occurring prior to such Transfer, but only if the Bondholder Representative and the Trustee have consented to such Transfer or it is otherwise expressly permitted under this Agreement or the other Loan Documents. In that event, such subsequent owner shall indemnify any Indemnified Parties hereunder following such Transfer under all of the terms and conditions applicable to Borrower.

Anything to the contrary in any other Loan Document notwithstanding, the provisions of this Section 7.3 are not secured by the Mortgage, and survive the termination of this Agreement, repayment of the Loan and foreclosure of the Mortgage or similar proceedings, final payment or defeasance of the Bonds, and (in the case of the Trustee) any resignation or removal, insofar as such indemnification relates to actions or claims arising from the Trustee's services prior to such resignation or removal.

The obligations of the Borrower under this Section 7.3 are independent of any other contractual obligation of the Borrower to provide indemnity to the Indemnified Parties named herein, and the obligation of the Borrower to provide indemnity hereunder may not be interpreted, construed, or limited in light of any other separate indemnification obligation of the Borrower. Any Indemnified Party is entitled simultaneously to seek indemnity under this Section 7.3 and any other provision under which it is entitled to indemnity from the Borrower, provided, however, such Indemnified Party shall be entitled to only one recovery of indemnity for the same Liabilities.

The Borrower's duty and obligation to defend, indemnify, and hold harmless the Indemnified Parties shall survive the term of the Bonds, the release, reconveyance, or partial reconveyance of the Mortgage, the termination of this Agreement, and the resignation or removal of the Trustee.

Notwithstanding anything to the contrary set forth in this Agreement and/or any of the other Loan Documents, in the event any Liabilities for which the Borrower and/or the Guarantor have provided indemnification under any of the Loan Documents arises as a result of a negligent act or omission of any Indemnified Party (except the Issuer), the total amount of such Liabilities shall be limited to the proceeds of insurance policies carried or required to be carried by the Borrower under the Loan Documents.

**Section 7.4 Keeping the Issuer Informed.** The Borrower must keep the Issuer informed, following its receipt of written request from Issuer, concerning the Borrower's financial condition and business operations, the condition and all uses of the Project, including all changes in condition or use, and any and all other circumstances that are a Material Adverse Change or Effect.

**Section 7.5 Status of the Borrower.**

1) Throughout the term of this Agreement, the Borrower will maintain its existence as a limited partnership organized under the laws of the State in good standing and qualified to transact business in the State and will not wind up or otherwise dispose of all or substantially all of its assets except as provided in the Mortgage and **Section 5.2** of this Agreement.

2) Notwithstanding the provisions of the Mortgage, the Borrower shall not effect a merger, consolidation, or Transfer if the result thereof would cause the interest on the Bonds (in the hands of any Person who is not a "substantial user" of the Project or a "related person") to become includable in gross income for federal income tax purposes.

3) Upon any change in the general partner of the Borrower or the jurisdiction of organization of the Borrower, by way of substitution, sale, or otherwise, or a change in the jurisdiction of the Borrower's organization, the Issuer, the Trustee, and the Bondholder Representative shall be immediately informed, and if requested, the Borrower as newly constituted shall deliver to the Issuer, the Trustee, and the Bondholder Representative an instrument in form satisfactory to each of them affirming the liability of the Borrower hereunder, subject to all events to the terms and conditions of **Section 11.10** hereof.

4) The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

**Section 7.6 Execution of Financing Statements.** Without limiting **Section 7.5**, the Borrower agrees that it will, at its sole expense, file at the request of Bondholder Representative, any financing statements or continuation statements required or requested by the Bondholder Representative to perfect and preserve the security interest of the Issuer and the Trustee in this Agreement and the payments to be made hereunder, as granted in the Indenture.

**Section 7.7 Proceedings Relating to a Determination of Taxability.** If any action or proceeding is commenced which questions the excludability of interest on the Bonds from gross income under Section 103(a) of the Code or which might result in a Determination of Taxability, the Borrower, the Issuer, the Trustee, or the Bondholder Representative may contest such action or Determination of Taxability. All reasonable costs actually incurred by Bondholder Representative, the Issuer, and/or the Trustee in such contest shall be borne by the Borrower. No such action or proceeding shall be settled by the Borrower or the Trustee without the written consent of the Issuer and the Bondholder Representative, and, if no Event of Default has then occurred and is continuing, no such action or proceeding shall be settled by the Issuer, the Trustee or the Bondholder Representative without the written consent of the Borrower.

**Section 7.8 Financial Information.** Borrower shall furnish to Bondholder Representative all financial and other information relating to Borrower and the Project as Bondholder Representative shall reasonably request, including, without limitation, all of the following:

(a) Within 30 days from the end of each calendar month, a monthly activity or traffic report prepared on a form and in a manner acceptable to Bondholder Representative, and in any event (beginning in the first month after leasing of the Project has commenced) should detail rents charged by residential unit type and average median income restriction, estimated unrestricted market rents for each residential unit type, any concessions, rent discounts, specials being offered, vacancies by residential unit type, property visitors, applications, application status (approvals, withdrawals denied, pending), signed leases, move-ins, move-outs, and notices of move-outs or other vacancies pending;

(b) As soon as available, subject to the further terms of this subsection, within 30 days from the end of each calendar month (beginning with the first calendar month after leasing has commenced for all or any part of the Project), unaudited statements addressed to Bondholder Representative, signed and dated by an authorized representative of the General Partner of Borrower attesting to the fact that the statements are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles, consistently applied, and show the financial condition of the Borrower at the close of such calendar month, which statements shall include, without limitation, a balance sheet and an income/operating statement, a current rent roll (which shall include a summary of the number of residential units leased, available, and occupied and any rental concessions), the current month's budget, year to date activity, year to date budget, a rolling 12-month budget comparison, a reconciliation of net operating income for the period then ending, a rent roll, and all other matters as Bondholder Representative may reasonably request;

(c) As soon as available, and in any event within 45 days from the end of each fiscal quarter of Borrower (including the last fiscal quarter of each fiscal year of Borrower), unaudited statements showing the financial condition of Borrower at the close of such calendar month, which statements shall include, without limitation, a balance sheet and an income/operating statement certified and signed by a duly authorized officer of the general partner of Borrower;

(d) As soon as available, and in any event within 45 days from the end of each fiscal quarter of the General Partner (including the last fiscal quarter of each fiscal year of the General Partner), unaudited statements showing the financial condition of the General Partner at the close of such calendar month, which statements shall include, without limitation, a balance sheet and an income/operating statement certified and signed by a duly authorized officer of the General Partner;

(e) As soon as available, and in any event within 45 days from the end of each fiscal quarter of ATCIC (including the last fiscal quarter of each fiscal year of ATCIC), compiled statements showing the financial condition of ATCIC at the close of such



calendar month, which statements shall include, without limitation, a balance sheet and an income/operating statement certified and signed by a duly authorized officer of ATCIC;

(f) As soon as available, and in any event within 120 days from the end of each fiscal year of Borrower, an audited financial statement, prepared by accountants satisfactory to Bondholder Representative and in a manner acceptable to Bondholder Representative and certified by a duly authorized officer of the General Partner of Borrower (in that capacity), showing the financial condition of Borrower at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses), and shall be accompanied by an annual compliance certificate prepared on a form and in a manner satisfactory to Bondholder Representative;

(g) As soon as available, and in any event within 120 days from the end of each fiscal year of the General Partner, an audited financial statement, prepared by accountants satisfactory to Bondholder Representative and in a manner acceptable to Bondholder Representative and certified by a duly authorized officer of the General Partner (in that capacity), showing the financial condition of the General Partner at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses), and shall be accompanied by an annual compliance certificate prepared on a form and in a manner satisfactory to Bondholder Representative;

(h) As soon as available, and in any event within 120 days from the end of each fiscal year of ATCIC, a compiled financial statement, prepared in a manner acceptable to Bondholder Representative and certified by a duly authorized officer of ATCIC, showing the financial condition of the ATCIC at the close of such fiscal year and the results of operation during such fiscal year, which financial statement shall include a balance sheet, income statement, statement of contingent liabilities, and statement of cash flows (sources and uses), and shall be accompanied by an annual compliance certificate prepared on a form and in a manner satisfactory to Bondholder Representative;

(i) Borrower shall provide to Bondholder Representative (within 30 days of filing), and the General Partner and ATCIC shall provide to Bondholder Representative (within 30 days of filing), a copy of their respective filed federal income tax returns for such calendar year and of all requests for extensions to the filing thereof (within 30 days of filing). Without limiting the foregoing, Borrower shall submit to Bondholder Representative a copy of the following sections of Borrower's federal tax return: Forms 1065, 8586, 8609, and 8609 Schedule A. The tax return and forms must show the Low Income Housing Tax Credit allocated and claimed for the Project by Borrower for the preceding year;

(j) Within 120 days after the end of each fiscal year of Borrower, and at any other time upon Bondholder Representative's request, an accounting of all security deposits held pursuant to all leases of residential units and to all Commercial Leases, including the name of the institution (if any) and the names and identification numbers of the accounts

(if any) in which such security deposits are held and the name of the person to contact at such Financial Institution, along with any authority or release necessary for Bondholder Representative to access information regarding such accounts;

(k) Within 120 days after the end of each fiscal year of Borrower, and at any other time upon Bondholder Representative's request, a statement that identifies all owners of any interest in Borrower and the interest held by each, if Borrower is a corporation, all officers and directors of Borrower, and if Borrower is a limited liability company, all managers who are not members;

(l) Upon Bondholder Representative's request, a monthly property management report for the Project, showing the number of inquiries made and rental applications received from tenants of residential units or prospective tenants of residential units and deposits received from tenants and any other information requested by Bondholder Representative;

(m) Within 30 days after the end of each fiscal year of Borrower, annual operating and capital expenditures budgets for the Project, prepared on a form and in a manner satisfactory to Bondholder Representative; and

(n) Within 30 days after receipt thereof, the results of any federal, state, local, or other governmental audit or inspection, including without limitation, those covering compliance with requirements of DSHS, the Credit Agency and other Governmental Authorities, operation, or financial reporting.

Each of the Borrower statements, schedules and reports required by this **Section 7.8** shall be certified to be complete and accurate by an individual having authority to bind Borrower or the Property Manager where applicable, and shall be in such form and contain such detail as Bondholder Representative may reasonably require. If Borrower fails to provide in a timely manner the statements, schedules and reports required by this **Section 7.8**, then Bondholder Representative shall have the right to have Borrower's books and records audited, at Borrower's expense, by independent certified public accountants selected by Bondholder Representative in order to obtain such statements, schedules and reports, and all related reasonable costs and expenses of Bondholder Representative shall become immediately due and payable. If an Event of Default has occurred and is continuing, Borrower shall deliver to Bondholder Representative upon written demand all books and records relating to the Project or its operation, provided, however, Borrower can keep copies thereof. Borrower authorizes Bondholder Representative to obtain a credit report on Borrower at any time.

**Section 7.9** **Notices.** The Borrower, upon receipt of actual notice, must notify the Bondholder Representative, the Trustee, and the Issuer promptly in writing of:

(a) Any litigation not previously disclosed in writing to the Bondholder Representative and the Issuer affecting the Borrower or the General Partner wherein the amount in issue is in excess of \$100,000, and the amount claimed is not fully covered by insurance (except for permitted deductibles);

(b) Any written or oral communication the Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Project fails in any respect to comply with any of the Requirements or any other applicable governmental law and that failure is not fully cured within 30 days after the date the applicable notice is given;

(c) Any Material Adverse Change or Effect in the physical condition of the Project (including any damage suffered as a result of earthquakes or floods or other natural disasters);

(d) Any Material Adverse Change or Effect in the financial condition or operations of the Borrower or the General Partner or any change in the management of the Borrower or the General Partner, or any Guarantor (to the extent the Borrower has actual knowledge of such change);

(e) Any default by the Contractor or any subcontractor, material supplier, or surety which could have a Material Adverse Change or Effect on any Guarantor, the Borrower, or any General Partner or the Project, or any Material Adverse Change or Effect in the financial condition or operations of any of them which could have a Material Adverse Change or Effect on the Borrower or the Project;

(f) All material notices or other documents or communications that the Borrower receives from tax or Low Income Housing Tax Credit allocation authorities or from the Issuer or which the Borrower gives to such entities with regard to or relating in any way to the Low Income Housing Tax Credit;

(g) Any Material Adverse Change or Effect in the Borrower's ability to timely perform any of its obligations under any of the Loan Documents;

(h) To the Borrower's actual knowledge, any Material Adverse Change or Effect in any Guarantor's ability to timely perform any of its obligations under any of the Loan Documents; and

(i) Actual knowledge of any governmental investigation against the Borrower, the General Partner, and, to Borrower's actual knowledge, any Guarantor.

**Section 7.10 Notice of Change.** The Borrower shall give the Bondholder Representative, the Issuer, and the Trustee prior written notice of any change in:

(a) the location of its place of business or its chief executive office if it has more than one place of business; and

(b) the Borrower's name or business structure as a limited partnership.

Unless otherwise approved by the Bondholder Representative in writing, the Borrower agrees that all Mortgaged Property that consists of tangible personal property (other than the books and records) will be located at the Project and that all books and records will be located at the

Borrower's place of business, which place of business will be immediately identified to Bondholder Representative upon request.

**Section 7.11 Negative Covenants.** Without the Bondholder Representative's prior written consent, the Borrower may not:

- (a) engage in any business activities substantially different from the Borrower's present business;
- (b) liquidate or dissolve the Borrower's business;
- (c) lease, sell, or dispose of (other than pursuant to Approved Leases allowed by this Agreement or the Mortgage) all or a substantial part of the Borrower's business or the Borrower's assets (except worn, obsolete, or damaged property);
- (d) enter into any consolidation, merger, pool, joint venture, syndicate, or other combination;
- (e) Incur, create, assume, or permit to exist any debt, except:
  - (i) the Loan and all obligations under the Loan Documents;
  - (ii) the Subordinate Loans and Grants (to the extent each is then subordinate to the Loan in a manner satisfactory to Bondholder Representative);
  - (iii) endorsements of negotiable instruments for collection or deposit in the ordinary course of business;
  - (iv) obligations from time to time incurred in the ordinary course of business, other than for borrowed money;
  - (v) taxes, assessments, or other government charges which are not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted if a reserve shall have been made therefor as required by GAAP;
  - (vi) obligation to pay the Developer Fee pursuant to the Development Agreement, subject to the conditions herein (but only to the extent the payment of the Developer Fee is unsecured and subordinated to the Loan in a manner satisfactory to the Bondholder Representative); and
  - (vii) obligations described in the Partnership Agreement (to the extent subordinate to the payment of the Loan).
- (f) Create, incur, assume, or permit to exist any mortgage, pledge, security interest, Lien, or similar encumbrance on any of the Borrower's assets, including, without limitation, any of the Project, acquire or agree to acquire assets under any conditional sale

agreement or title retention contract, or the sale and leaseback any assets, except that the foregoing restrictions shall not apply to:

- (i) Liens for taxes, assessments, and other governmental charges not yet due;
  - (ii) Liens of vendors, carriers, warehousemen, landlords, mechanics, laborers, and materialmen arising by law in the ordinary course of business for sums not yet due or being contested in good faith if reserve shall have been made therefor as required by GAAP;
  - (iii) pledges or deposits in connection with or to secure worker's compensation, unemployment insurance, pensions, or other employee benefits;
  - (iv) mortgages, pledges, security interests, liens, encumbrances, landlord's liens, or title retention contracts existing as of the date of this Agreement and disclosed to the Bondholder Representative in writing and approved by the Bondholder Representative before the date hereof;
  - (v) Liens securing the Subordinate Loans and Grants (to the extent each is then subordinate to the Mortgage in a manner satisfactory to Bondholder Representative);
  - (vi) Liens and/or security interests required by this Agreement and the other Loan Documents;
  - (vii) Liens that are Bonded;
  - (viii) a pledge of the Investor Limited Partner's interest in the Borrower to a financial institution for the purpose of making the Capital Contributions (to the extent otherwise permitted under the terms of this Agreement); and
  - (ix) each Regulatory and Restrictive Use Agreement and the items set forth in Exhibit B to the Mortgage and other Permitted Encumbrances.
- (g) permit the Loan to Value Ratio to exceed eighty percent (80%) at any time.
- (h) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Bondholder Representative from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower;
- (i) fail to provide documentary and other evidence of Borrower's identity as may be requested by Bondholder Representative at any time to enable Bondholder Representative to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318;

(j) except for regularly scheduled payments under the Ground Lease and Developer Fee which may be paid under the terms of this Agreement, make any distributions or advances to its members or partners, as applicable, without the written consent of Bondholder Representative;

(k) permit the Borrower or any of its respective officers, managers or principal employees to be on the list of Specially Designated Nationals and Blocked Persons issued by the office of Foreign Assets Control of the U.S. Department of Treasury;

(l) permit the Borrower to fail to satisfy the requirement of Section 42(h)(4)(B) of the Code.

(m) request any borrowing of the Loan and the Borrower shall not use and shall ensure that its or their respective directors, officers, employees and agents shall not use the proceeds of any borrowing of the Loan:

(i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws;

(ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transactions would be prohibited by Sanctions if conducted by a corporation incorporated in the United States; or

(iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**Section 7.12 Tax Status of the Bonds.** The Borrower hereby covenants, represents, and agrees as follows: (a) that the Borrower will not take or permit any action to be taken that would adversely affect the excludability from gross income for federal income tax purposes of the interest on the Bonds and, if it should take or permit any such action, the Borrower will take all lawful actions to rescind such action promptly upon having knowledge thereof and (b) that the Borrower will take such action or actions, including amending the Loan and/or this Agreement, as determined reasonably necessary in the opinion of Bond Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under the Code. The Borrower further covenants and agrees that it will direct all investments in compliance with the Code. The Borrower covenants and agrees to calculate and pay any amounts owing to the United States as rebate in accordance with the procedures set forth herein and in the Indenture.

**Section 7.13 Incorporation of Tax Certificate.** The covenants, representations, warranties, and agreements of the Borrower set forth in the Tax Certificate are incorporated by reference herein as if fully set forth herein.

**Section 7.14 Loss of Tax Exclusion.** The Borrower understands that the interest rates provided under this Agreement with respect to the Bonds are based on the assumption that interest income paid on the Bonds and received by the Bondholders will be excludable from the Holders' gross income for federal income tax purposes. In the event that (i) the Borrower receives notice from the Bondholder Representative or the Issuer, with a copy delivered to the Trustee, that the Bondholder Representative or the Issuer, respectively, has discovered any facts, actions, or failures to act by the Borrower that would cause interest on the Bonds to be includable in gross income for federal income tax purposes (unless the Borrower provides to the Holders, within thirty (30) days after the Borrower's receipt of such notice from the Bondholder Representative, an opinion from Bond Counsel, that notwithstanding any facts, actions or failures to act by the Borrower, interest on the Bonds will be excludable from the Bondholders' gross income for federal income tax purposes); or (ii) any Holder receives notice from the Internal Revenue Service or other government agency that interest on the Bonds is includable in gross income for federal income tax purposes, or that the Internal Revenue Service is challenging the status of interest on the Bonds as excludable from gross income for federal income tax purposes, then the interest rate on the Note and on all obligations under this Agreement shall be increased to a rate equal to the Default Rate. If the Bondholder Representative receives notice of a Determination of Taxability, the Loan shall be subject to mandatory prepayment as set forth in **Section 10.1** herein and **Section 3.1(1)** of the Indenture and the interest rate on the Loan shall be increased to the Default Rate for the period during which interest is deemed to be includable in gross income for federal income tax purposes.

The interest rates on the Bonds will be increased to a per annum rate equal to the Default Rate both prospectively and retroactively to the date on which such Determination of Taxability on the Bonds shall be applicable, and the Borrower shall pay to the Holders promptly upon demand any interest due retroactively. The Borrower shall also indemnify, defend, and hold the Bondholder Representative, the Trustee, and the Issuer harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all allocated time and charges of the Bondholder Representative's, the Trustee's, and the Issuer's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of interest on the Bonds and the interest payable to any Holder on the Bonds. The obligations of the Borrower under this paragraph shall survive termination of this Agreement and repayment of the Loan.

If, following any increase in interest rates pursuant to this **Section 7.14** a final determination is made, to the satisfaction of the Bondholder Representative, that interest paid on the Bonds is excludable from the Bondholders' gross income for federal income tax purposes, the Holders shall promptly refund to the Borrower any additional interest paid by the Borrower pursuant to this **Section 7.14** and the original interest rate or rates on the Note that otherwise would have been in effect if not for the Determination of Taxability shall be reinstated retroactive to the date on which such rate or rates were increased pursuant to this **Section 7.14**.

Notwithstanding any provision of this Section to the contrary, in no event shall the interest rate on the Note exceed the maximum lawful rate under State law.

**Section 7.15 Low Income Housing Tax Credit.** The Borrower promises to keep each of the following covenants relating to the Low Income Housing Tax Credit:

(a) To observe and perform all obligations imposed on the Borrower in connection with the Low Income Housing Tax Credit, including the "placed in service" requirements under Section 42 of the Code, as applicable, and otherwise under the Subordinate Loan Documents and the Partnership Agreement in a timely manner to ensure the availability of each such Low Income Housing Tax Credit; and to operate the residential units of the Project or to use the Borrower's best efforts to ensure the appropriate parties operate the same in accordance with all applicable statutes and regulations governing the Low Income Housing Tax Credit;

(b) To preserve at all times the availability to the Project of the Low Income Housing Tax Credit;

(c) Following the Bond Closing, not to release, forego, alter, amend, or modify its rights to the Low Income Housing Tax Credit, without the Bondholder Representative's prior written consent, which the Bondholder Representative may give or withhold in the Bondholder Representative's reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project not complying fully with all requirements and regulations governing the Low Income Housing Tax Credit, except with the Bondholder Representative's prior written consent, which the Bondholder Representative may give or withhold in the Bondholder Representative's sole and reasonable discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the availability of Low Income Housing Tax Credit applicable to the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations ("**Federal Laws**"), and all laws and regulations of the State ("**State Laws**"), if any, applicable to the creation, maintenance and continued availability of the Low Income Housing Tax Credit;

(g) To certify compliance with the set-aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of "placed in service" under Section 42 of the Code, as applicable, and any other information required, and as applicable, for each of the Low Income Housing Tax Credit, at such time periods as required by Federal Laws, or State Laws, as applicable;

(h) To set aside the appropriate number of residential units for households with incomes meeting the required standards of the area median income to qualify for the Low Income Housing Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws, if any), adjusted for family size, and to operate and maintain all such residential units as "low-income units" qualifying for the Low Income Housing Tax Credits under Section 42(i)(3) of the Code and/or State Laws; and



(i) To exercise good faith in all activities relating to the acquisition, construction, operation and maintenance of the Project in accordance with the requirements of Federal Laws and State Laws, if any.

**Section 7.16 Payment of Rebate Amounts.** The Borrower covenants and agrees that it will hire a Rebate Analyst to calculate the Rebate Amount as required under the Indenture and the Credit Agency Regulatory Agreement, once executed, and will provide a copy of each rebate report to the Bondholder Representative, the Issuer and the Trustee. The Borrower further covenants and agrees as follows:

(i) **Delivery of Documents and Money on Computation Dates.** The Borrower shall deliver the following to the Trustee, within fifty (50) days after each Computation Date:

(A) a statement, signed by the Rebate Analyst and the Borrower, stating the Rebate Amount as such Computation Date; and

(B) (1) if the 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 Section 1.148-3(f)(1) of 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 Section 1.148-3(f)(1) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly completed (except for signature) as of such Computation Date.

(ii) **Correction of Underpayment.** If the Borrower 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, **Section 5.6** of the Indenture and **Section 2(f)(i)(B)** of the Bond Regulatory Agreement, has not been paid as required; or

(B) that any payment paid to the United States pursuant to this Section, **Section 5.6** of the Indenture, and **Section 2(f)(ii)(B)(X)** of the Bond Regulatory Agreement shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower or the Trustee), the Borrower shall:

(1) deliver to the Trustee (for deposit to the Rebate Fund) (X) the Rebate Amount that the Borrower failed to pay, plus any interest, specified in Section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within one hundred seventy-five (175) days after such discovery or notice, or (Y) if such

correction payment is not delivered to and received by the Trustee within one hundred seventy-five (175) days after such discovery or notice, the amount determined in accordance with Clause (X) of this subparagraph (2) plus the 100 percent penalty required by Section 1.148-3(h)(1) of the Regulations; and

(2) to the Trustee an Internal Revenue Service Form 8038-T properly completed (except for signature) as of such date.

Notwithstanding any other actions taken pursuant to this **subsection (ii)**, the Borrower shall take such steps as are necessary to prevent the Bonds from becoming “arbitrage bond,” within the meaning of section 148 of the Code.

(iii) **Records.** The Borrower shall retain all of its accounting records relating to the Funds and Accounts established under the Indenture and all calculations made in preparing the statements described in this Section for at least three years after the date the last Bond is discharged.

(iv) **Fees and Expenses.** The Borrower agrees to pay (to the extent not paid pursuant to **Section 4.2**) all of the reasonable fees and expenses of the Rebate Analyst, Bond Counsel, a certified public accountant, and/or any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount.

(v) **No Diversion of Rebatable Arbitrage.** The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value or includes terms that the Borrower would not have included if the Bonds were not subject to Section 148(f) of the Code.

(vi) **Compliance by Trustee.** The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of said Section 148 and the Regulations and rules thereunder relating to the Bonds and the interest thereon, including the employment of a Rebate Analyst for the calculation of rebatable amounts to the United States of America.

Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this **Section 7.16** (except for the obligation to retain accounting records as described in **Section 7.16(iii)**) and the payment of expenses as described in **Section 7.16(iv)**) if the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in Section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee within fifty (50) days after the applicable Computation Date.

In the event that the Trustee receives written notice from the Borrower, the Bondholder Representative, or the Issuer that the Borrower has failed to employ a Rebate Analyst, the Trustee shall notify the Bondholder Representative thereof, and if the Borrower's failure continues for thirty (30) days after the Bondholder Representative has made written demand on the Borrower for performance based on the notice from the Trustee, the Bondholder Representative will use its best efforts to hire a Rebate Analyst to calculate the rebate amount as required under the Indenture, provided that such a Rebate Analyst can be employed for amounts which do not exceed on an annual basis, the moneys that are and will be then available under the Indenture to pay the Rebate Analyst's fee, or from other moneys furnished to the Trustee; in no event shall the Trustee be required to risk or expend its own moneys to employ a Rebate Analyst.

**Section 7.17 Qualifications Under the Texas Local Government Code.** So long as the Bonds remain Outstanding, the Borrower will operate the Project in accordance with the Texas Local Government Code and agrees to take all reasonable actions necessary to qualify and to continue to qualify the Project as a "residential development" under the Texas Local Government Code.

**Section 7.18 Rental Project.** With respect to the residential units in the Project, the Borrower represents, covenants, and warrants that, once available for occupancy, they will be rented or available for rental subject to the limitations contained in this Agreement, each AHAP Contract, each HAP Contract (to the extent each is then executed), each Regulatory and Restrictive Use Agreement, the DSHS Appropriation, the Ground Lease and the requirements of Section 42 of the Code through the Qualified Project Period (unless occupied by or reserved for a resident manager, security personnel, or maintenance personnel reasonably required for the Project), that the Borrower will not give preference in renting residential units to any particular class or group of persons (other than those residential units for which there is a preference for senior families or for working families to the extent required for the maintenance of the Low Income Housing Tax Credit) and other than as required or permitted by each AHAP Contract, each HAP Contract (to the extent each is then executed), the Ground Lease and the Regulatory and Restrictive Use Agreement and/or as otherwise approved by HUD, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses.

**Section 7.19 Certification as to Qualified Project Period.** The Borrower shall provide to the Bondholder Representative, the Issuer, and the Trustee a certificate certifying within ninety (90) days thereof, (i) the date on which ten percent (10%) of the residential units are occupied; and (ii) the date on which fifty percent (50%) of the residential units are occupied.

**Section 7.20 Sales and Use Taxes.** If Bondholder Representative reasonably determines, based upon any duly issued ruling, law, opinion, or regulation (or as the result of the withdrawal of any previously issued ruling, law, opinion, or regulation), that Contractor (or its subcontractors) is not exempt from state sales and use taxes, in such event, if Contractor has not paid such taxes, at the written request of Bondholder Representative, Borrower shall create and maintain a reserve or other account in a manner satisfactory to Bondholder Representative in an amount equal to the aggregate sales and use taxes that Contractor did not pay with respect to the development of the Project because Contractor took the position it was exempt from such sales and use taxes. Borrower agrees Bondholder Representative has not represented to Borrower or to

any other Person, whether sales and use taxes are and shall be due with respect to the Project. Borrower has and does hereby agree to indemnify and hold Bondholder Representative, Issuer, and Trustee harmless from any loss, claims, or causes of action arising as a result of the failure of Borrower or Contractor to pay any such sales and use taxes.

## ARTICLE 8 LEASES

### **Section 8.1 Use of the Project and Lease Approval.**

(a) The Borrower must not change its intended use of the Project without the Bondholder Representative's prior written approval. Without limiting the foregoing, the Retail Space and the Clinic Space shall be leased pursuant to Commercial Leases which qualify as Approved Leases with tenants and on terms acceptable to the Bondholder Representative (and which otherwise complies, as applicable, with all Restrictive and Required Use Agreements).

(b) The Bondholder Representative must approve the Borrower's standard forms of residential lease or rental agreement prior to its use by the Borrower. The Borrower may not materially modify the approved standard forms of residential lease without the Bondholder Representatives prior written consent, together with the approval of all other parties whose consent is required, including without limitation, the Investor Limited Partner, the Trustee, and the Issuer.

(c) The Borrower may enter into residential leases (and amendments thereto) in the ordinary course of business with bona fide third party residential tenants if the Borrower uses the approved standard forms of residential lease without material revision and the lease otherwise qualifies as an Approved Lease, and:

(i) Within fifteen (15) days after the Bondholder Representative's reasonable written request therefor, the Bondholder Representative receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Borrower pertaining to the tenant);

(ii) The Borrower, acting in good faith and exercising commercially reasonable due diligence, has determined that the tenant qualifies as a low-income person for purposes of meeting the requirements for availability of the Low Income Housing Tax Credit;

(iii) The lease reflects an arm's-length transaction; and

(iv) The lease does not affect more than one (1) residential unit within the Project and has a term of not less than six (6) months and not more than twelve (12) months, unless otherwise agreed in writing by Bondholder Representative.

(d) The prior written approval of the Bondholder Representative in the exercise of its reasonable discretion will be required in connection with any lease that does not comply with the foregoing provisions of this **Section 8.1**. If the Borrower at any time fails

to comply with the requirements of this **Section 8.1** or if any Event of Default has occurred and is then continuing, the Bondholder Representative may make written demand on the Borrower to submit all future leases for the Bondholder Representative's approval prior to execution, and Borrower will thereafter comply with that demand.

(e) Notwithstanding the foregoing, any change in use of the Project must be approved by the Issuer and the Project must continue to qualify as a "residential development" within the meaning of the Texas Local Government Code.

**Section 8.2 Purpose and Effect of Lease Approval.** The Bondholder Representative's approval of any residential lease (to the extent required by this Agreement) is for the sole purpose of protecting the Bondholder Representative's and the Issuer's security and preserving the rights of the Issuer, the Trustee and the Bondholder Representative under this Agreement and the Mortgage. No approval by the Bondholder Representative will result in a waiver of any default of the Borrower. In no event will the Bondholder Representative's approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or guarantor.

**Section 8.3 Landlord's Obligations.** The Borrower must perform or will ensure that the Property Manager will perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

## ARTICLE 9

### RESERVED

## ARTICLE 10

### BORROWER'S OPTIONS

**Section 10.1 Principal Prepayments.** The Borrower may prepay all or part of the Loan subject to and in accordance with the terms of the Indenture.

**Section 10.2 Direction of Investments.** Subject to prior written consent of the Bondholder Representative, except during the continuance of an Event of Default, the Borrower shall have the right during the term of this Agreement to direct the Trustee to invest or reinvest all money held for the credit of Funds established by **Article 5** of the Indenture in Permitted Investments subject, however, to the further conditions of **Article 6** of the Indenture.

### **Section 10.3 Termination of Loan Agreement: Required Prepayment.**

1) Except during the continuance of an Event of Default, the Borrower shall have the option of terminating this Agreement if (i) the Bonds have been paid in full or if provision is otherwise made for payment of the Bonds in such manner that the Indenture will be discharged under **Article 7** thereof on or before the date of termination, (ii) such prepayment and termination is allowed by the Mortgage, and (iii) the Borrower provides the Trustee and the Issuer with an opinion of Bond Counsel to the effect that all such conditions have been satisfied and that such action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes; provided that this Agreement may not be terminated unless and until (a) all of the Borrower's obligations under the Loan Documents have been satisfied and (b) all of the

Borrower's obligations with respect to the Issuer's fees and any rebate obligation have been satisfied and the Borrower has so certified to the Issuer and the Trustee. All obligations of the Borrower under **Sections 4.3** and **7.3** and shall survive termination of this Agreement.

2) Notwithstanding the foregoing, the Borrower may not terminate this Agreement unless and until the Trustee has on deposit an amount equal to the sum of the following:

(a) Funds on deposit in any of the Funds established under **Article 5** of the Indenture and available for that purpose which are sufficient to discharge the Indenture in accordance with **Article 7** thereof and to pay amounts due under **Section 11.3**, plus

(b) to the extent not paid under **subsection (a)** above, an amount equal to the Trustee's fees, Issuer Fees, and expenses due or to become due under the Indenture not otherwise paid or provided for pursuant to **Section 4.2** or **4.3** hereof and any other amounts due and unpaid under **Section 7.3** hereof, accrued and to accrue until the Bonds are fully paid and redeemed and all other advances, fees, costs, and expenses reasonably incurred and to be incurred on or before the termination date by the Trustee under the Indenture and by the Issuer and the Trustee under this Agreement and/or the other Loan Documents; provided that in any event, in order to effect prepayment or discharge of the Outstanding Bonds the Borrower shall, prior to the termination date, satisfy the requirements of **Section 7.1** of the Indenture.

3) On the termination date, a closing shall be held at any office mutually agreed upon among the Issuer, the Borrower, the Bondholder Representative, and the Trustee (which closing may be conducted by first-class mail, recognized overnight delivery service, or pursuant to electronic means acceptable to the parties). At the closing the Issuer and the Trustee shall, upon acknowledgment of receipt of the sum set forth in **subsection (2)** above, execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines is necessary to terminate this Agreement and the other Loan Documents. All further obligations of the Borrower hereunder (except as specifically provided in **Sections 4.3** and **7.3**) shall thereupon terminate, provided, however, that the Borrower shall also remain obligated to pay or reimburse the Issuer, the Bondholder Representative, and the Trustee for the payment of all other fees, costs, and expenses unaccounted for in the sum paid in accordance with **subsection (2)** above and reasonably incurred before or subsequent to such closing in connection with the Bonds.

## ARTICLE 11 **EVENTS OF DEFAULT AND REMEDIES**

**Section 11.1 Events of Default.** Any one or more of the following events is an Event of Default under this Agreement, and the term "**Event of Default**", wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree, or order of any court or any order, rule or regulation of any administrative or governmental body:

1) the Borrower shall fail to pay (a) any amount due under **Section 4.2** on the date such payment is due; and (b) any Additional Charges when due and such failure shall continue for ten (10) days after receipt by the Borrower of a written notice to the Borrower by the Issuer, the

Trustee, or the Bondholder Representative stating that such Additional Charges were not received on the due date; or

2) the Borrower shall fail in any respect to observe and perform or shall breach in any respect any other provision, covenant, condition, or agreement on its part under this Agreement and shall fail to remedy such default or breach within thirty (30) days after written notice to Borrower from the Issuer, the Trustee, or the Bondholder Representative, specifying such default or breach and requesting that it be remedied (no such notice and cure will be applicable to any Event of Default arising under any other subsection of this **Section 11.1**); or

3) the occurrence and continuance of an event of default or default by Borrower under and in connection with any of the Subordinate Loan Documents, which is not fully cured or waived within any applicable cure or grace period, or as a result thereof, the holder of that Subordinate Loan and Grant would be entitled to accelerate that Subordinate Loan and Grant; or

4) an Act of Bankruptcy shall occur with respect to the Borrower, the Investor Limited Partner, or a Guarantor, or with respect to the General Partner unless, in the case of an Act of Bankruptcy of the General Partner or a Guarantor, within sixty (60) days after such Act of Bankruptcy, the General Partner or a Guarantor, as applicable, is replaced with an entity reasonably acceptable to the Bondholder Representative; or

5) Except as permitted by **Section 5.2**, the Borrower, a Guarantor, the Investor Limited Partner, or the General Partner dissolves, terminates, or liquidates, unless such Guarantor or the General Partner is replaced with a new guarantor or general partner as applicable, reasonably acceptable to the Bondholder Representative within (30) thirty days after such dissolution, termination, or liquidation, as applicable; or

6) the occurrence and continuance of an event of default or a default shall occur under the Indenture or any Regulatory and Restrictive Use Agreement, once executed, or any Loan Document and all applicable periods for remedying or waiving such event of default has expired or, if no cure period is otherwise specified, the Borrower shall fail to remedy such default within thirty (30) days after notice to Borrower from the Issuer, the Trustee, or the Bondholder Representative, specifying such event of default or default and requesting that it be remedied; or

7) any representation or warranty made by the Borrower herein, or in any document or certificate furnished by or on behalf of the Borrower or a Guarantor to the Issuer and/or the Bondholder Representative, in connection herewith or pursuant hereto shall prove at any time to be, in any material adverse respect, incorrect or misleading as of the date made; or

8) the General Partner ceases for any reason to act in that capacity, and is not replaced with the Investor Limited Partner (or an Affiliate thereof or of National Equity Fund, Inc.) or another substitute general partner reasonably acceptable to the Bondholder Representative within thirty (30) days; or

9) any interest in the Borrower or in any partner in the Borrower is Transferred to any Person if such Transfer would result in a Determination of Taxability or otherwise be in violation of the terms of this Agreement and the Mortgage; or

10) subject to the terms of this Agreement, the Borrower or the Project fails to meet or exceed the Pro Forma Schedule set forth at **Schedule E** herein; or

11) Construction of the Project is not completed by the Bondholder Representative's Required Completion Date (except as may be extended by the terms of this Agreement); or

12) subject to Excusable Delays, Construction of the Project is abandoned or halted prior to the Bondholder Representative's Required Completion Date for any period of thirty (30) consecutive days for any cause not beyond the reasonable control of the Borrower; or

13) any governmental, judicial, or legal authority having jurisdiction over the Project orders or requires that Construction of the Project be stopped in whole or in part, for reasons other than Excusable Delays, or any required approval, license, or permit relating to the construction or operation of the Project is withdrawn or suspended, and the order, requirement, withdrawal, or suspension remains in effect for a period of thirty (30) consecutive days; or

14) the Trustee (or the Bondholder Representative, as the case may be) fails to have an enforceable first lien on or security interest in any property given as security for the Loan; provided that this Event of Default shall not extend to any actions or omissions of the Trustee, the Issuer or the Bondholder Representative which in and of itself causes the loss of such first lien; or

15) prior to the Substantial Completion of the Improvements, the Borrower is in material default under the Construction Contract and all applicable periods for remedying such default has expired, or has not been waived, or if no cure period is otherwise specified, the Borrower shall fail to remedy such default within thirty (30) days after written notice from the Issuer, the Trustee, or the Bondholder Representative specifying such default and requesting that it be remedied; or

16) (i) any default (beyond all applicable notice, grace and cure periods set forth in the Partnership Agreement) by the Investor Limited Partner in connection with the payment of the Capital Contributions as and when due and payable under the Partnership Agreement, or (ii) any material reduction in the portion of the Capital Contributions to be used for budgeted items and to pay the Loan as set forth in **Schedule J** (except as a result of an adjustment due to a shortfall in tax credits as provided for in the Partnership Agreement) to be made by the Investor Limited Partner which are not consented to by Bondholder Representative in writing (unless the amount of the reduction is made by the General Partner as an equity contribution or a loan in a manner satisfactory to Bondholder Representative or the amount of the reduction is otherwise made available in the manner satisfactory to Bondholder Representative or the reduction does not affect the amount of the scheduled Capital Contributions listed in **Schedule J** which are to be applied to budgeted items or to the Note); or

17) determination by the Bondholder Representative in its reasonable judgment that there has been a Material Adverse Change or Effect in the Borrower's, the General Partner's, or the Guarantor's financial condition, unless in the case of the General Partner or the Guarantor, the General Partner or the Guarantor is replaced within thirty (30) days after such Material Adverse Change or Effect with a Person reasonably acceptable to Bondholder Representative; or the



occurrence of a Determination of Taxability, unless the Borrower elects for the Note to bear interest at the rate as set forth in **Section 7.14** hereof; or

18) failure of a Subordinate Loan and Grant or the General Partner Contribution to fund as and when provided for in this Agreement for the purposes set forth herein; or

19) the Borrower fails to satisfy any condition to any request for approval of a Requisition or Draw Request in **Schedule D** which is not waived in writing by all required parties or fully cured within 30 days after written notice thereof is provided by Bondholder Representative to Borrower; or

20) the determination by DSHS that the Project is not eligible to receive the DSHS Appropriation or the Project is otherwise not being operated as required by DSHS; or

21) the cancellation, termination, or expiration of the Ground Lease, or

22) failure by any Person to comply with the terms and requirements of an AHAP Contract, a HAP Contract (to the extent each is then executed) or any other requirements of the Issuer, the Authority, or the Bondholder Representative relating to an AHAP Contract or a HAP Contract (to the extent each is then executed), or the modification, amendment, cancellation, or termination of an AHAP Contracts or a HAP Contract (after being executed).

Notwithstanding the foregoing, the Investor Limited Partner and each Guarantor shall have the right (but not the obligation) to cure any event set forth in this **Section 11.1** by the expiration of the cure period available to the Borrower under the terms of this Agreement or the applicable Loan Document. Notwithstanding anything to the contrary in the Loan Documents, upon the occurrence of an Event of Default arising out of: (i) the bankruptcy or insolvency of the General Partner, the Borrower, or any Guarantor or an assignment of assets for the benefit of creditors by any of them, or (ii) the withdrawal from the Borrower of the General Partner, then without in any way limiting or postponing the Bondholder Representative's immediate right (at its opting to pursue its rights and remedies with respect to that Event of Default), the Investor Limited Partner shall have the option, but not the obligation, within 45 days of receipt of written notice of such Event of Default from the Trustee or the Bondholder Representative, to cure that Event of Default by appointing a substitute or additional General Partner or Guarantor acceptable to the Bondholder Representative to act as such General Partner or Guarantor on terms and in a manner satisfactory to the Bondholder Representative; provided that an Affiliate of the Investor Limited Partner or of National Equity Fund, Inc. is deemed acceptable and no prior approval is necessary for such appointment .

**Section 11.2 Remedies.** If an Event of Default exists under this Agreement, the Bondholder Representative may direct the Trustee, as assignee of the rights of the Issuer to exercise any right or remedy that the Issuer has under any of the Loan Documents or that is otherwise available at law or in equity or by statute, and all of such rights and remedies shall be cumulative. The Trustee shall take such actions hereunder and under the Loan Documents as directed in writing by the Bondholder Representative, subject to the procedures of the Indenture relating thereto and the Trustee's rights to indemnification in the Indenture. If any Default or Event of Default occurs and is continuing, the Bondholder Representative's obligation to approve funding under the Loan

Documents shall automatically terminate and the Bondholder Representative may, in its sole discretion, withhold its approval of any one or more Requisitions or any one or more disbursements. The Bondholder Representative may also withhold its approval of any one or more Requisitions or any one or more disbursements during the continuance of a Default or an Event of Default. No disbursement of Loan funds by the Trustee or approval of any one or more Requisitions and/or Draw Request will cure any Default or Event of Default of the Borrower, unless the Bondholder Representative agrees otherwise in writing in each instance. The Bondholder Representative may, upon the occurrence and continuance of an Event of Default but subject to any of the other Loan Documents or the Indenture, instruct the Trustee to redeem the Bonds pursuant to **Section 3.1** of the Indenture.

Notwithstanding anything to the contrary contained in the Indenture, this Agreement, or any of the other Loan Documents, the Bondholder Representative has the right to instruct the Issuer and the Trustee to take any action which the Bondholder Representative, in its good faith discretion, deems prudent in order to enforce any right or remedy of the Issuer or the Trustee under the Loan Documents, provided that such action shall not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes and, with respect to the Trustee, subject in all respects to the express terms and conditions set forth in the Indenture, including, without limitation, **Article 9** thereof.

Following expiration of all applicable notice and cure periods provided herein, if the Borrower commits an Act of Bankruptcy, all of the Borrower's obligations under the Loan Documents shall automatically, ipso facto, become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of the Borrower's obligations under the Loan Documents may become immediately due and payable without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at the Bondholder Representative's option, exercisable in its sole discretion. If such acceleration occurs, the Bondholder Representative may direct the Trustee to apply the undisbursed Loan funds, and the Bondholder Representative may apply any other available Borrower's Sources to the obligations of the Borrower under the Loan Documents, in any order and proportions that the Bondholder Representative in its sole discretion may choose, subject to the requirements of the Indenture with respect to the application of Bond proceeds.

Also upon the occurrence and continuance of any Event of Default that occurs during the Construction of the Project, the Trustee (upon written direction from the Bondholder Representative) or the Bondholder Representative in its sole discretion may enter and take possession of the Project, whether in person, by agent or by court appointed receiver, to take any and all actions which the Bondholder Representative in its sole discretion may consider necessary to complete Construction of the Project, including making changes in plans, specifications, work, or materials and entering into, modifying, or terminating any contractual arrangements (subject to the specific termination provisions of such contractual arrangements), all subject to the Bondholder Representative's right at any time to discontinue any work without liability and cause to be exercised any and all rights and remedies of the Issuer (except for Unassigned Rights) under the Loan Documents in such order and to such extent as the Bondholder Representative determines in its sole and reasonable discretion. If the Bondholder Representative chooses to complete the

Project, it shall not assume any liability to the Borrower or any other Person for completing the Project, or for the manner or quality of Construction of the Project, and the Borrower expressly waives any such liability of the Bondholder Representative for the period prior to the Bondholder Representative's exercise of its rights pursuant to this **Section 11.2**. If the Bondholder Representative or the Trustee exercises any of the rights or remedies provided in this paragraph, that exercise shall not make the Bondholder Representative or the Trustee, or cause the Bondholder Representative or Trustee to be deemed to be, a partner or joint venturer of the Borrower. The Bondholder Representative in its sole discretion may choose to complete Construction in its own name. All reasonable sums which are expended by the Bondholder Representative in completing construction shall be considered to have been disbursed to the Borrower on behalf of the Issuer and shall be secured by the Mortgage and any other collateral held by the Issuer, the Trustee, or the Bondholder Representative in connection with the Loan; any sums of principal shall be considered to be an additional loan to the Borrower bearing interest at the Default Rate, and shall be secured by the Mortgage and any other collateral held in connection with the Loan. For these purposes, the Bondholder Representative, in its sole discretion, may reallocate any line item or cost category of the Budget.

If an Event of Default exists, the Bondholder Representative may for, and on behalf of the Borrower, cure any default or event of default under the Ground Lease.

The Bondholder Representative shall also have, and is hereby granted, a continuing security interest in, lien on, and (if an Event of Default exists) right of set-off against the Capital Contribution Account, the Disbursement Checking Account, the Borrower's Funds Account, and all other deposit and other accounts of the Borrower now or hereafter located at the Bondholder Representative (except for the Funds established pursuant to the Indenture).

Except as otherwise expressly provided in the Loan Documents, the Borrower waives presentment, demand for payment, notice of dishonor and any or all notices or demands in connection with the delivery, acceptance, performance, default or enforcement of the Note and consents to any or all delays, extensions of time, renewals, release of any party to the Note, the Mortgage, this Agreement or any other Loan Document and of any available security therefor, to any party to the Note, the Mortgage, this Agreement, or the other Loan Documents or to the actual holder thereof and any and all waivers or modifications that may be granted or consented to by the Trustee (with the authorization of the Bondholder Representative) with regard to the time of payment or with respect to any other provisions of the Note, the Mortgage, this Agreement or the other Loan Documents, and agrees that no such action, delay or failure to act on the part of the Bondholder Representative shall be construed as a waiver by the Trustee (with the authorization of the Bondholder Representative) of, or otherwise affect, in whole or in part, its right to avail itself of any remedy with respect thereto. No notice to or demand on the Borrower shall be deemed to be a waiver of the obligation of the Borrower or of the right of the Issuer, Trustee, and/or the Bondholder Representative to take further action without further notice or demand as provided in the Note, the Mortgage, this Agreement, or the other Loan Documents.

The parties hereto hereby acknowledge and agree that the Low-Income Housing Tax Credit is an inseparable benefit of ownership of the Project which is transferred with the Transfer of ownership of the Project and that the Low-Income Housing Tax Credit may not be transferred or assigned by Bondholder Representative separately from its security interest in the Project nor by

Borrower and its partners to any other Person separately from the Borrower and its partners' ownership of the Project. In the event that the Bondholder Representative (or its designee) obtains title to and ownership of the Project, the Borrower (or the Investor Limited Partner) shall have no right to claim the Low-Income Housing Tax Credit which is generated by the Project from and after the date on which the Bondholder Representative (or its designee) obtains title to and ownership of the Project. Therefore, only to the extent permitted under applicable Requirements of Law, from and after the date of foreclosure, deed-in-lieu of foreclosure, or otherwise obtaining title to the Project, Bondholder Representative (acting for and on behalf of the Trustee) may exercise and claim ownership and control of the Low Income Housing Tax Credit. In connection with the foregoing, Borrower grants to Bondholder Representative an irrevocable power of attorney, coupled with an interest, which Bondholder Representative may exercise from and after the date of foreclosure, deed-in-lieu of foreclosure, or otherwise obtaining title to the Project, pursuant to which Bondholder Representative may obtain and exercise all rights or documents deemed by the Bondholder Representative to be necessary to obtain, retain, or sell all or any portion of the Low Income Housing Tax Credit (but only to the extent permitted under applicable Requirements of Law).

Upon discovery by Bondholder Representative of any material deviations from the Plans and Specifications or of any defective material or labor being used in the Construction of the Project, Bondholder Representative may immediately order stoppage of construction and demand that any unsatisfactory work be replaced and that the condition be corrected, whether or not any unsatisfactory work has already been incorporated into the Improvements. After issuance of such an order in writing, the condition shall be corrected within thirty (30) days from the date of stoppage by Bondholder Representative, subject to Excusable Delays. Bondholder Representative shall have the right to withhold approval of all further requisitions of the Bond proceeds until the condition is corrected and no other work shall be done on the Improvements without the prior written consent of Bondholder Representative unless, and until, such condition has been fully corrected. Notwithstanding the foregoing, the Bondholder Representative acknowledges that its judgment with regard to any decision to halt work shall be reasonably exercised in light of the scope of the deficiency discovered in comparison to the current ongoing Construction of the Project and the actual impact of such deficiency on Borrower's and Contractor's ability to continue with other portions of the Construction of the Project regardless of the presence of such deficiency.

**Section 11.3 Attorneys Fees and Expenses.** If an Event of Default shall exist under this Agreement and the Issuer, the Bondholder Representative, or the Trustee employ attorneys or actually incur other reasonable expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower shall promptly pay upon written demand therefor, together with a reasonable accounting of such amounts due to the Issuer, the Bondholder Representative, or the Trustee, as applicable.

The Bondholder Representative agrees to accept performance on the part of the Investor Limited Partner or an Affiliate or the Guarantor as though the same had been performed by the Borrower under any of the Loan Documents. The Bondholder Representative will provide Investor Limited Partner and the Guarantor and the Trustee with copies of all notices provided to Borrower hereunder or under the Loan Documents at the time the notice is provided to Borrower.

**Section 11.4 Effect of Waiver.** In the event any agreement contained in this Agreement is breached by any party and thereafter such breach is waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 11.5 The Issuer and the Trustee May File Proofs of Claim.** In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee or the Issuer (with the prior consent of the Trustee), shall be entitled and empowered, by intervention in such proceeding or otherwise:

1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Issuer and Trustee, their agents, and counsel) allowed in such judicial proceeding; and

2) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same.

**Section 11.6 Restoration of Positions.** If a party has instituted any proceeding to enforce any right or remedy under this Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to a party, then and in every such case the parties shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the parties shall continue as though no such proceeding had been instituted.

**Section 11.7 Suits To Protect the Project.** If the Borrower shall fail so to do after 30 days' prior written notice from the Issuer or the Trustee, the Issuer or the Trustee shall have power to institute and to maintain such proceedings as either of them may reasonably deem expedient to prevent any impairment in any material respect of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Agreement, and such suits and proceedings as the Issuer or the Trustee (at the written direction of the Bondholder Representative) may reasonably deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule, or order would have a Material Adverse Change or Effect on the Project or prejudicial to the interests of the Trustee in any material respect.

**Section 11.8 Performance of Third Parties.** The Trustee or the Issuer (with the prior consent of the Trustee) may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

**Section 11.9 Exercise of the Issuer Remedies by Bondholder Representative.** Whenever any Event of Default shall have occurred and be continuing, the Trustee shall not exercise any or all of the rights of the Issuer under this **Section 11** unless and until Trustee is

directed with respect to that Event of Default by the Bondholder Representative and furnished with indemnity satisfactory to it with respect to the exercise of such right.

**Section 11.10 Recourse.** Subject to the terms, provisions, covenants and agreements set forth in this Agreement and the other Loan Documents, Issuer agrees to lend to Borrower, and Borrower agrees to borrow from Issuer, up to the amount of the Loan, which Loan shall be used by Borrower in accordance with the terms of this Agreement. Issuer (and Trustee and Bondholder Representative, as the case may be) shall have full recourse against Borrower and Guarantor, as well as against the Premises, for payment and performance of the Loan and the Loan Documents and for completion of the Improvements substantially in accordance with this Agreement. All payments due from Borrower to Issuer (and Trustee and Bondholder Representative, as the case may be) shall be made without offset or other reduction. Notwithstanding the foregoing, with respect to the requirements of this Agreement, the Note, and the other Loan Documents, nothing herein shall impair or modify the limitation of liabilities provided to limited partners under the Texas Revised Business Organizations Act.

## ARTICLE 12 GENERAL PROVISIONS

**Section 12.1 Amounts Remaining in Funds.** Any amounts remaining in the Funds created under **Article 5** of the Indenture upon cancellation of the liens and trusts of the Indenture shall be distributed as provided in **Section 5.11** of the Indenture.

**Section 12.2 Notices.** All notices, demands, certificates, or other communications hereunder and under each other Loan Document shall be given to all parties identified below, shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given (i) when delivered by hand delivery or facsimile or (ii) five days after such notice is served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Registered or Certified Mail, Return Receipt Requested, bearing adequate postage, or (iii) upon delivery by reputable private courier such as Federal Express, Airborne, DHL, United Parcel Service or similar overnight delivery service, and addressed as hereinafter provided. All parties identified below may, by written notice given by each to the others, designate any address or addresses to which notices, demands, certificates, or other communications to them shall be sent when required as contemplated by this Agreement. Any notice, demand, certificate, report, financial statement, or other communication properly provided by legal counsel on behalf of any party hereunder shall be deemed properly provided by the party represented by such counsel. Until otherwise provided by the respective parties, all notices, demands, certificates, and communications to each of them shall be addressed as follows:

To the Issuer:	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 a copy to: McCall , Parkhurst & Horton L.L.P.  
717 N. Harwood Street  
Ninth Floor  
Dallas, Texas 75201  
Attn: Mark A. Malveaux  
Phone: (214) 754-9224

And to: Ballard Spahr, LLP  
300 East Lombard Street  
18<sup>th</sup> Floor  
Baltimore, Maryland 21202  
Attn: Teri Guarnaccia  
Telephone: (410) 528-5526

To the Borrower: Housing First Oak Springs, LP  
1430 Collier Street  
Austin, Texas 78704  
Attn: David Weden  
Telephone: (512) 440-4001

With a copy to: Locke Lord LLP  
600 Congress Avenue  
Suite 2200  
Austin, Texas 78701  
Attn: Cynthia Bast, Esq.  
Telephone: (512) 305-4707

And to: NEF Assignment Corporation, as nominee  
c/o National Equity Fund, Inc.  
10 S. Riverside Plaza, Suite 1700  
Chicago, IL 60606  
Attn: General Counsel

And to: Barnes & Thornburg LLP  
41 S. High Street, Suite 3300  
Columbus, OH 43215-6104  
Attn: Jordan R. Carr  
Phone: (614) 628-1434  
Attn: Holly H. Heer  
Phone: (614) 628-1458

To the Trustee: BOKF, NA  
Corporate Trust Department  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225

Attn: Kathy McQuiston, Vice President and Trust Officer  
Phone: (214) 932-3061  
Email: kmcquiston@bankoftexas.com

With a copy to: Haynes & Boone  
301 Commerce St., Ste. 2600  
Ft. Worth, Texas 76102  
Attn: Bill Greenhill  
Phone: (817) 347-6602

To the Bondholder  
Representative: Thomas T. Houlihan  
Capital One, National Association  
5444 Westheimer, 6<sup>th</sup> Floor  
Houston, Texas 77056  
Phone: 713-435-5007  
Fax: 713/435-5683  
Email: [thomas.houlihan@capitalone.com](mailto:thomas.houlihan@capitalone.com)

Edward J. Santos  
Capital One Community Development  
299 Park Avenue, 14<sup>th</sup> Floor  
New York, NY 22957  
Phone: (646) 231-9029  
Email: Edward.santos@capitalone.com

With a copy to: Greenberg Traurig, LLP  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Attn: Wayne Yaffee  
Telephone: (713) 374-3655

**Section 12.3 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Bondholder Representative, the Issuer, and the Borrower and their respective successors and assigns. Insofar as this Agreement provides for rights of the Trustee, this Agreement shall also inure to the benefit of the Trustee.

**Section 12.4 NO ORAL AGREEMENT.** THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. If there is any conflict between the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions, and provisions of this Agreement shall prevail as among said parties to this Agreement.



### **Section 12.5 Severability.**

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

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

**Section 12.6 Amendments, Changes and Modifications.** This Agreement may not be modified or amended except by a written agreement signed by the parties hereto. Except as otherwise provided in this Agreement or in the Indenture, subsequent to the issuance of the Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Agreement may not be effectively amended, changed, modified, altered, or terminated without the written consent of Borrower, the holders of not less than a majority of the aggregate principal amount of the Bonds then Outstanding as provided in **Article 11** of the Indenture, and the Issuer. The Bondholder Representative shall have the right to waive or modify, conditionally or unconditionally, the conditions to its approvals and consents provided hereunder, without the consent of any party other than the Borrower.

**Section 12.7 Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.8 Required Approvals.** Consents and approvals required by this Agreement to be obtained from the Bondholder Representative, the Borrower, the Issuer, or the Trustee shall be in writing and shall not be unreasonably withheld, conditioned or delayed unless otherwise specifically provided herein.

**Section 12.9 Limitation on Issuer's Liability.** (a) All obligations of the Issuer incurred under this Agreement, the Bond Regulatory Agreement, and the Indenture shall be limited obligations of the Issuer, payable solely and only from the proceeds of the Bonds and revenues and other amounts derived by the Issuer from the Trust Estate. The Bonds shall be payable solely from the Project Revenues and other funds and property pledged under the Indenture for the payment of the Bonds, and no owner or owners of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer, the State, or any political subdivision or other public body of the State, nor to enforce the payment of the Bonds against any property of the Issuer, the State, or any such political subdivision or other public body, except as provided in the Indenture. No member, officer, agent, director, employee, attorney, or member of the Issuer, including any person executing this Agreement on behalf of the Issuer, shall be liable personally under this Agreement or for any reason relating to the issuance of the Bonds. No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Bonds, or for any

claim based on the Bonds, or otherwise in respect of the Bonds, or based on or in respect of this Agreement or any amendment to this Agreement, against any member, officer, employee, director, agent, attorney, or member of the governing body, as such, of the Issuer, 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 Agreement and as part of the consideration for the issuance of the Bonds, expressly waived and released.

(b) It is expressly understood and agreed by the parties to this Agreement that:

(i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee, the Bondholder Representative, any Holder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer;

(ii) the Issuer 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 Borrower or such other appropriate party; and

(iii) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under the Indenture) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

**Section 12.10 Limitation on Investor Limited Partner's Liability.** (a) The parties to this Agreement hereby acknowledge and agree that the Investor Limited Partner shall not have any liability to the other parties or to any third party as a general partner of the Borrower resulting from any action taken by the Investor Limited Partner pursuant to the Partnership Agreement, unless and until the Investor Limited Partner is admitted to the Borrower entity as a general partner or if arising as a result of the fraud or misrepresentation of the Investor Limited Partner. Except as applicable law provides otherwise, each of the Issuer and the Bondholder Representative agrees that it will not, in connection with any demand, claim or legal action concerning the Loan or Loan Documents, claim that the Investor Limited Partner is liable as a general partner as a result of the Investor Limited Partner allegedly participating in the control of the Borrower for any reason or any action taken by either of them pursuant to its powers as a limited partner under the Partnership Agreement.

(a) No provision, representation, covenant or agreement contained in this Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Issuer pursuant to this Agreement and other moneys held pursuant to the Indenture, other than in the Rebate Fund). No provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State, the Sponsor or any other

political subdivision or public body of the State, the taxing powers of the foregoing, within the meaning of any Constitutional provision or statutory limitation, or any personal or pecuniary liability upon any director, officer, agent or employee of the Issuer or the Sponsor.

(b) All covenants, obligations and agreements of the Issuer contained in this Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Issuer in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer contained in this Agreement or in the Indenture. No provision, covenant or agreement contained in this Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the Issuer contained in this Agreement or in any Bond or for any claim based hereon or otherwise in respect hereof or upon any obligation, covenant, promise, or agreement of the Issuer contained in any agreement, instrument, or certificate executed in connection with the Project or the issuance and sale of the Bonds, against any member of the board of directors of the Issuer, its officers, counsel, financial advisor, or agents, as such, in his or her individual capacity, past, present, or future, or of any successor thereto, whether by virtue of any Constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that no personal liability whatsoever shall attach to, or be incurred by, any member of the governing board, officers, counsel, financial advisors, or agents, as such, in his or her individual capacity, past, present, or future, of the Issuer or of any successor thereto, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the Issuer and the Trustee or the Borrower to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such director, officer, counsel, financial advisor, or agent, is, by the execution of the Bonds, this Agreement, and the Indenture, and as a condition of, and as part of the consideration for, the execution of the Bonds, this Agreement, and the Indenture, expressly waived and released.

**Section 12.11 No Waiver; Consents.** No alleged waiver by the Trustee, the Bondholder Representative, the Borrower, or the Issuer will be effective unless in writing, and no waiver will be construed as a continuing waiver. No waiver may be implied from any delay or failure by the Trustee, the Bondholder Representative, the Borrower, or the Issuer to take action on account of any default or to exercise any right or remedy or any security. Consent by the Trustee, the Bondholder Representative, the Borrower or the Issuer to any act or omission may not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for consent to be obtained in any future or other instance. All rights and remedies are cumulative.

**Section 12.12 Purpose and Effect of Bondholder Representative Approval.** The Bondholder Representative's approval of any matter in connection with the Loan is for the sole

purpose of protecting the Issuer's security and rights of the Trustee and the Bondholder Representative. No such approval will result in a waiver of any Event of Default hereunder.

**Section 12.13 No Commitment to Increase Loan.** From time to time, the Bondholder Representative may approve changes to the Plans and Specifications at the Borrower's request and also require the Borrower to make corrections to the work of construction, all on and subject to the terms and conditions of this Agreement. The Borrower acknowledges that no such action or other action by the Bondholder Representative will in any manner commit or obligate the Bondholder Representative to increase the amount of the Loan.

**Section 12.14 No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of the Bondholder Representative, the Issuer, and the Borrower and their permitted successors and assigns and, to the extent expressly set forth herein, the Trustee. The parties hereto expressly recognize that the Trustee is a third party beneficiary to this Agreement and may enforce any right, remedy or claim conferred, given or granted to Trustee, Issuer, or the Bondholder Representative hereunder. No trust fund is created by this Agreement, and no other Persons have any right of action under this Agreement or any right to the proceeds of the Loan.

**Section 12.15 Authority to File Notices.** The Borrower irrevocably appoints the Bondholder Representative as its attorney-in-fact, with full power of substitution, following the occurrence and during the continuance of an Event of Default to file or record, at the Borrower's cost and expense and in the Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that the Bondholder Representative in its sole discretion considers necessary or desirable to protect the Project, if the Borrower fails to do so after receipt of five days' prior written notice from the Bondholder Representative. Nothing in this **Section 12.15** shall impose any obligations on the Bondholder Representative.

**Section 12.16 Affirmative Action.** The Borrower shall not discriminate in its employment practices against any employee or applicant for employment because of the applicant's race, creed, religion, national origin or ancestry, sex, age, sexual orientation or preference, marital status, color, physical disability, familial status and disability, mental condition or medical condition, including pregnancy, childbirth, or related condition.

**Section 12.17 Actions.** Each of the Trustee, the Bondholder Representative, and the Issuer has the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties, or liabilities relating to the Loan, the Project, or any of the Loan Documents pursuant to the terms of **Section 7.3** hereof and otherwise in this Agreement and the other Loan Documents.

**Section 12.18 Attorneys' Fees.** In any lawsuit or arbitration arising out of or relating to this Agreement, the Loan Documents, or the Loan, including but not limited to any alleged tort action, regardless of which party commences the action, the prevailing party will be entitled to recover from each other party such sums as the court, referee, or arbitrator adjudges to be reasonable attorneys' fees in the lawsuit or proceeding, in addition to reasonable costs and expenses otherwise allowed by law; provided, however, the provision set forth in this sentence shall in no way be construed as permitting a prevailing party to recover attorneys' fees from the Issuer. Any

reasonable attorneys' fees actually incurred by a party in enforcing a judgment in its favor under this Agreement will be recoverable separately from and in addition to any other amount included in the such judgment, and the attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any judgment. In all other situations, including any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, the Borrower agrees to pay all of the Trustee's, the Bondholder Representative's, and the Issuer's costs and expenses, including reasonable attorneys' fees, that may be incurred in any effort to collect or enforce the Loan or any part of it or any term of any Loan Document; from the time(s) incurred until paid in full, all such sums will bear interest at the Default Rate.

**Section 12.19 Assignment of Issuer's Rights.** As security for payment of the Bonds, the Issuer will pledge the amounts payable hereunder and collaterally assign, without recourse or liability, to the Trustee, the Issuer's rights under this Agreement and the Note, including the right to receive payments hereunder (but excluding Unassigned Issuer's Rights), and hereby directs the Borrower to make said payments directly to the Trustee, or otherwise upon the order of the Trustee. The Borrower herewith consents to such collateral assignment and will make payments under this Agreement directly to the Trustee, or otherwise to the order of the Trustee without defense or set off by reason of any dispute between the Borrower and the Issuer, the Trustee, or any Bondholder Representative.

**Section 12.20 Applicable Law.** This Agreement is governed by the laws of the State of Texas without regard to the choice of law rules of that State.

**Section 12.21 Heirs, Successors, and Assigns Participation.** The terms of this Agreement will bind and benefit the heirs, legal representatives, successors, and assigns of the parties; provided, however, that the Borrower may not assign this Agreement or any Loan proceeds, or assign or delegate any of its rights or obligations, without the prior written consent of the Bondholder Representative and the Issuer in each instance. Also without notice to or the consent of the Borrower, the Bondholder Representative, and the Issuer may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Bondholder Representative or the Issuer and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by the Bondholder Representative or the Issuer to the Borrower (whether under this Agreement or otherwise), any financial or other information, data, or material in Bondholder Representative's possession relating to the Borrower, any partners of the Borrower, the Loan, or the Project. Nothing in this Agreement shall impose any restrictions on the ability of the Holders of the Bonds to sell or otherwise transfer the Bonds.

**Section 12.22 Relationships With Other Bondholder Representative Customers.** From time to time, the Bondholder Representative may have business relationships with the Borrower's customers, suppliers, contractors, tenants, partners, shareholders, officers, or directors, or with businesses offering products or services similar to those of the Borrower, or with Persons seeking to invest in, borrow from or lend to the Borrower. The Borrower agrees that the Bondholder Representative may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on the Borrower's financial condition or operations. The Borrower further agrees that in

no event will the Bondholder Representative be obligated to disclose to the Borrower any information concerning any other the Bondholder Representative customer.

**Section 12.23 Disclosure to Title Company.** Without notice to or the consent of the Borrower, the Bondholder Representative may disclose to any title insurance company insuring any interest of the Bondholder Representative under the Mortgage (whether as primary insurer, coinsurer, or reinsurer) any information, data, or material relating to the Borrower, the Loan, or the Project, and related to such title insurance coverage associated with the Project in the Bondholder Representative's possession.

**Section 12.24 Improvement District.** The Borrower may not vote in favor of, or directly or indirectly advocate or assist in, the incorporation of any part of the Project into any improvement or utility district, special assessment district, or other district without the Bondholder Representative's prior written consent in each instance.

**Section 12.25 Restriction on Disposition of Personal Property.** Except for the replacement of personal property made in the ordinary course of the Borrower's business with items of similar value, the Borrower may not sell, convey, or otherwise transfer or dispose of its interest in any tangible personal property in which the Bondholder Representative has a security interest or contract to do any of the foregoing, without the prior written consent of the Bondholder Representative in each instance.

**Section 12.26 Interpretation.** The language of this Agreement must be construed as a whole according to its fair meaning, and not strictly for or against any party. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender and the neuter state will include the other gender and the neuter state. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. The schedules to this Agreement are hereby incorporated in this Agreement.

**Section 12.27 Miscellaneous.** Time is of the essence in the performance by the Borrower of its obligations under this Agreement and the other Loan Documents. Any irreconcilability or inconsistency or conflict between the terms of the Mortgage and the terms of this Agreement or the Indenture shall be governed and controlled by the terms of this Agreement or the Indenture, as applicable. Further, notwithstanding anything herein to the contrary, the Trustee (as assignee of Issuer) shall only enforce the rights and remedies of the Issuer hereunder under the Mortgage, the Indenture (as provided therein), or under this Agreement at the written direction of the Bondholder Representative.

**Section 12.28 Publicity.** The Borrower hereby agrees that the Bondholder Representative may publicize the financing of the Project and, in connection therewith, may erect signs at the Project and use the address, description and a photograph or other illustrative drawing of the Project.

**Section 12.29 Participations.** Borrower acknowledges and agrees that the Bondholder Representative may provide any information the Bondholder Representative may have about Borrower or about any matter relating to this Agreement to the Bondholder Representative, its parent, its subsidiaries, its affiliates or their successors, or to any one or more purchasers or potential purchasers of the Bonds (or interests therein). Borrower agrees that the Bondholder Representative may at any time sell, assign or transfer one or more interests or participations in all or any part of its rights or obligations in the Note and the Bonds to any or more purchasers whether or not related to the Bondholder Representative. Borrower authorizes the Bondholder Representative to disseminate any information it has pertaining to the Loan and the Bonds, including, without limitation, credit information on Borrower, any of its principals, or any other party liable, directly or indirectly for the Loan and the Bonds, to any such assignee or participant or prospective assignee or participant. Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by the Bondholder Representative to satisfy such assignee or participant that the Loan is outstanding in accordance with the terms and provisions of the Note and the Loan Documents.

**Section 12.30 Loan Commission.** The Bondholder Representative is not obligated to pay any brokerage commission or fee in connection with or arising out of the Loan. The Borrower must pay any and all brokerage commissions or fees arising out of or in connection with the Loan as a result of any commitment made by the Borrower.

**Section 12.31 Compliance with Usury Laws.** Notwithstanding any provision of this Agreement, the Note, or any of the Loan Documents to the contrary, it is hereby agreed that in no event (including without limitation the acceleration of the Note) shall the amount of interest contracted for, charged, received, reserved, or taken in connection with the Loan (including interest on the Note together with any other costs or considerations that constitute interest under applicable law which are contracted for, charged, received, reserved, or taken pursuant to the Loan Documents) ("**Interest**"), cause the rate of interest on the Notes to exceed the maximum lawful rate. For purposes of this **Section 12.31** to the maximum extent permitted by law, Interest shall be: (i) spread over the term of the Loan; (ii) if appropriate, characterized as a premium for the privilege of making an optional prepayment of the Loan; and (iii) computed after giving effect to the provisions of any other Loan Documents which require the cancellation or refunding of Interest. Default Rate Interest, if any (after the application of the foregoing provisions), provided for in this Agreement, the Note, or any of the Loan Documents shall be canceled automatically as of the date of such acceleration or mandatory prepayment or, if theretofore paid, shall be credited on the principal of the Note or if the principal of the Note has been paid in full, refunded to the Borrower. The provisions of this **Section 12.31** shall control all agreements, whether now or hereafter existing and whether written or oral, by the Issuer, the Borrower, the Trustee, and the Holders.

This Agreement is also subject to the condition that amounts paid hereunder representing late payments or penalty charges or the like shall only be payable to the extent permitted by State law or applicable federal law.

**Section 12.32 Right To Contest Liens, Taxes, Etc.** Notwithstanding anything to the contrary set forth in this Agreement and the other Loan Documents, the Borrower will have the right to contest in good faith any claim, charge, demand, levy, or assessment payable to a person

or entity other than the Bondholder Representative, the nonpayment of which would constitute an Event of Default, but only with the Bondholder Representative's written consent. If the Bondholder Representative grants such consent, such nonpayment will not constitute an Event of Default so long as such consent remains effective. The Bondholder Representative will not unreasonably withhold, delay or condition its consent, provided that the Bondholder Representative may reasonably require Borrower to provide a surety bond satisfactory to the Bondholder Representative or deposits with the Bondholder Representative cash collateral sufficient, in the Bondholder Representative's sole and reasonable discretion, to fully discharge such claim, charge, demand, levy or assessment in the event the Borrower should not prevail in such contest. The Bondholder Representative may withdraw such consent at any time if: (a) the Borrower fails to prosecute such contest diligently, in full compliance with all conditions to the Bondholder Representative's consent and in a manner not prejudicial to the Bondholder Representative or to the Project, or (b) the Bondholder Representative, in its sole discretion, determines that such contested claim, charge, demand, levy, or assessment has a Material Adverse Change or Effect on the Project or the Bondholder Representative or that any bond or cash collateral previously accepted by the Bondholder Representative has become insufficient.

**Section 12.33 Americans with Disabilities Act.** The Bondholder Representative and the Borrower shall be in full compliance with all applicable federal and state laws, including those of the Americans with Disabilities Act ("**ADA**"), 42 U.S.C. 12101 et seq. and its implementing regulations. Under the ADA, the Bondholder Representative and the Borrower shall provide for reasonable accommodations to allow qualified individuals access to and participation in their programs, services and activities. In addition, the Bondholder Representative and the Borrower shall not discriminate against individuals with disabilities nor against persons due to their relationship or association with a person with a disability. Firms granted subawards (i.e., subcontractors, subgrants, contracts under loans, etc.) shall comply with the ADA and certify and disclose accordingly. The Bondholder Representative and the Borrower shall provide certificates attesting to compliance with the provisions of this **Section 12.33**.

**Section 12.34 Integration and Relation to Commitment.** The Loan Documents (a) integrate all the terms and conditions mentioned in this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including the Commitment, and (c) are intended by the parties as the final expression of their agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise, or condition is enforceable against any party unless it is contained in the Loan Documents. If there is any conflict among the terms, conditions, and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document (excluding the Indenture), the terms, conditions, and provisions of this Agreement will prevail.

**Section 12.35 Venue.** Notwithstanding anything to the contrary set forth in this Agreement and/or any of the other Loan Documents, the parties hereto hereby agree that the state and federal courts located in Travis County, Texas, shall have exclusive jurisdiction and venue with respect to all actions brought by or against any party under or pursuant to this Agreement.

**Section 12.36 JURY WAIVER.** EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY



**HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

**Section 12.37 Increased Costs.** If any law, regulation or change in any law or regulation or in the interpretation thereof, or any final, non-appealable ruling, decree, judgment, guideline, directive or recommendation (whether or not having the force of law) by any regulatory body, court, central bank, or any administrative or Governmental Authority charged or claiming to be charged with the administration thereof (including, without limitation, a request or requirement which affects the manner in which the Bondholder Representative allocates capital resources to its commitments including its obligations hereunder) shall either (a) impose upon, modify, require, make or deem applicable to the Bondholder Representative or any of its Affiliates, subsidiaries or participants any reserve requirement, special deposit requirement, insurance assessment or similar requirement against or affecting the Loan, or (b) subject the Bondholder Representative or any of its Affiliates, subsidiaries or participants to any tax, charge, fee, deduction or withholding of any kind whatsoever in connection with the Loan or change the basis of taxation of the Bondholder Representative or any of its Affiliates, subsidiaries or participants (other than a change in the rate of tax based on the overall net income of the Bondholder Representative or such participant), or (c) impose any condition upon or cause in any manner the addition of any supplement to or increase of any kind to the Bondholder Representative's or an Affiliate's, subsidiary's or participant's capital or cost base for issuing or owning a participation in the Loan which results in an increase in the capital requirement supporting the Loan, or (d) impose upon, modify, require, make or deem applicable to the Bondholder Representative or any of its Affiliates, subsidiaries or participants any capital requirement, increased capital requirement or similar requirement, such as the deeming of the Loan to be an asset held by the Bondholder Representative or any of its Affiliates, subsidiaries or participants for capital adequacy calculation or other purposes (including, without limitation, a request or requirement which affects the manner in which the Bondholder Representative or any participant allocates capital resources to its commitments including its obligations hereunder or under the Loan), and the result of any events referred to in (a), (b), (c) or (d) above shall be to increase the costs in any way to the Bondholder Representative or any Affiliate, subsidiary or participant of issuing, maintaining or participating in the Loan or reduce the amounts payable by Borrower hereunder or reduce the rate of return on capital, as a consequence of the issuing, maintaining or participating in the Loan, to a level below that which the Bondholder Representative, its Affiliates, subsidiaries or participants could have achieved but for such events; then and in such event, and to the extent such law, regulation or change in law or regulation or the interpretation thereof, or any final non-appealable ruling, decree, judgment, guideline, directive or recommendation allows the terms and conditions of this **Section 12.37** to become operative or enforceable under federal or State law, Borrower shall, promptly upon receipt of written notice to Borrower, together with a reasonable accounting, by the Bondholder

Representative of such increased costs and/or decreased benefits, pay within 60 Business Days of demand therefor to the Bondholder Representative all such additional amounts which, in the Bondholder Representative's or participant's commercially reasonable good faith calculation as allocated to the Loan, shall be sufficient to compensate it for all such increased costs and/or decreased benefits, all as reasonably accounted for and certified by the Bondholder Representative or such participants in said written notice to Borrower. Such certification shall be accompanied by a reasonable accounting concerning the calculation of such increased costs and/or decreased benefits and shall be conclusive and binding on the parties hereto, absent manifest error. In determining such amount, the Bondholder Representative or any participant may use any reasonable averaging or attribution methods.

**Section 12.38 USA Patriot Act Notification.** The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all Financial Institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. What this means for Borrower: When Borrower opens an account, if Borrower is an individual, Bondholder Representative will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Bondholder Representative to identify Borrower, and, if Borrower is not an individual, Bondholder Representative will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Bondholder Representative to identify Borrower. Bondholder Representative may also ask, if Borrower is an individual, to see Borrower's driver's license or other identifying documents, and, if Borrower is not an individual, to see Borrower's legal organizational documents or other identifying documents.

**Section 12.39 WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO SHALL NOT ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST THE OTHERS, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY, THE TRANSACTIONS, THE BONDS, THE LOAN OR THE USE OF THE PROCEEDS THEREOF.

**Section 12.40 No Offset.** All payments due by Borrower to Issuer under the Loan Documents are to be made by the Borrower without offset or other reduction.

*[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

**BORROWER:**

HOUSING FIRST OAK SPRINGS, LP, a Texas  
limited partnership

By: Housing First Oak Springs, GP, LLC, a  
Texas limited liability company, its General  
Partner

By: Austin-Travis County Mental Health  
and Mental Retardation Center (d/b/a  
Integral Care), a community center  
created pursuant to Chapter 534 of  
the Texas Health and Safety Code, its  
manager

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

**ISSUER:**

AUSTIN HOUSING FINANCE CORPORATION

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

Attest:

\_\_\_\_\_  
Secretary

**BONDHOLDER REPRESENTATIVE:**

CAPITAL ONE, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Thomas T. Houlihan, Senior Vice President

ACKNOWLEDGED BY TRUSTEE:

BOKF, NA, a national banking association

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

Kathy McQuiston

Vice President

## **SCHEDULE A**

### **LEGAL DESCRIPTION OF PROJECT**

As described in the Mortgage

**SCHEDULE A-1**

**PERMITTED ENCUMBRANCES**

As described in Exhibit B to the Mortgage



## SCHEDULE B

### PROMISSORY NOTE

\$11,500,000

Austin, Texas  
December 1, 2017

FOR VALUE RECEIVED, HOUSING FIRST OAK SPRINGS, LP, a Texas limited partnership (the "Borrower"), promises to pay in lawful money of the United States of America to the order of the AUSTIN HOUSING FINANCE CORPORATION, its successors or assigns (the "Issuer"), the principal sum of Eleven Million Five Hundred Thousand and No/100 Dollars (\$11,500,000.00), with interest thereon from the date of delivery hereof at the rates per annum on the outstanding principal balance hereon from time to time as provided with respect to the Bonds in the hereinafter referred to Indenture. Terms not otherwise defined in this Note shall have the respective meanings as set forth in the Indenture. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

The principal and interest on this Note shall be payable at the times and in the amounts determined as provided in **Section 4.2** of the Loan Agreement dated as of even date herewith, among the Borrower, the Issuer and Capital One, National Association (the "Loan Agreement"), with the final payment of all outstanding principal and interest on this Note to be paid on November 1, 2019. Both principal and interest under this Note shall be payable at the Operations Office of BOKF, NA, a national banking association, at 5956 Sherry Lane, Suite 1201, Dallas, Texas 75225, Attention: Kathy McQuiston (the "**Trustee**"). The Borrower may make prepayments upon this Note as provided in **Section 10.1** of the Loan Agreement.

This Note is made pursuant to the Loan Agreement wherein, among other things, the Issuer has agreed to loan to the Borrower and the Borrower has agreed to accept a loan in the aggregate principal amount of \$11,500,000.00, being the proceeds from the sale of the Issuer's Multifamily Housing Mortgage Revenue Bonds (Housing First Oak Springs Project) Series 2017, in the principal amount of \$11,500,000.00 (the "Bonds"), said proceeds to be disbursed to the Borrower from time to time in accordance with the provisions of said Agreement. Said Bonds are being issued by the Issuer pursuant to a Trust Indenture dated as of December 1, 2017, between the Issuer and the Trustee (the "Indenture").

During the existence of any Event of Default as described in **Section 11.1** of the Loan Agreement, all unpaid principal of and accrued and unpaid interest on this Note may be declared to be forthwith due and payable in the manner and with the effect provided in the Loan Agreement. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent occurrence of an Event of Default.

The indebtedness evidenced by this Note is secured by among other things a Construction Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated December 1, 2017, and by certain other personal property collateral.

The obligations of the Borrower to make Basic Payments, Additional Charges, and payment of any other amounts due under the Loan Agreement shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution, or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, setoff, recoupment, or counterclaim which the Borrower may have or assert against the Issuer, the Trustee, or any other person and/or entity.

If this Note shall be placed in the hands of an attorney or attorneys for collection, the Borrower agrees to pay, in addition to the amount due hereon, the reasonable costs and expenses of collection, including reasonable attorneys' fees. All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice or protest and notice of dishonor.

The Note is subject to a put option as provide for in the Indenture to require payment on the Construction Term Maturity Date.

Executed as of the date first above written.

HOUSING FIRST OAK SPRINGS, LP, a Texas  
limited partnership

By: Housing First Oak Springs, GP, LLC, a  
Texas limited liability company, its General  
Partner

By: Austin-Travis County Mental Health  
and Mental Retardation Center (d/b/a  
Integral Care), a community center  
created pursuant to Chapter 534 of  
the Texas Health and Safety Code, its  
manager

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

## **ENDORSEMENT**

Pay to the order of BOKF, NA, a national banking association, without recourse, as Trustee under the Indenture referred to in the within mentioned Note, as security for the Bonds issued under the Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**AUSTIN HOUSING FINANCE  
CORPORATION**

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

**SCHEDULE C**  
**PROJECT EXPENSES**  
(Affordable Housing)

The Budget attached as **Schedule C-1** to this Agreement is an analysis, caused to be prepared by the Borrower and approved by the Bondholder Representative, of the total amount needed by the Borrower to construct the Improvements and to perform the Borrower's other obligations under the Loan Documents. The categories of costs are further broken down by line items, each for a specific type of cost associated with construction or performance of the Borrower's obligations under the Loan Documents.

Whenever a revised Budget is required, the Borrower must prepare and submit it for the Bondholder Representative's approval. Any revised Budget approved by the Bondholder Representative will be a more recent version of the analysis provided in the Budget, and must include revised versions of any detailed breakdowns included in the Budget.

**SCHEDULE C-1**

**BUDGET**

[TO BE ADDED]

## **SCHEDULE D**

### **DISBURSEMENT SCHEDULE**

All capitalized terms not defined herein shall be defined as they are defined in the Indenture and the Loan Agreement, as applicable.

#### **1. Conditions to Disbursement**

Before the Bondholder Representative becomes obligated to consent to any disbursement under this Agreement, all conditions to the disbursement must be satisfied at the Borrower's sole cost and expense in a manner acceptable to the Bondholder Representative, or waived in writing by Bondholder Representative. The Borrower acknowledges that delays in disbursements may result from the time necessary for the Bondholder Representative to verify satisfactory fulfillment of any and all conditions to a given disbursement. If the Bondholder Representative in its sole discretion purchases the Bonds or consents to a particular disbursement, before all applicable conditions are satisfied, such fact will not be a waiver of such conditions as to any other disbursement unless that specific condition is waived in writing by the Bondholder Representative.

##### **a. Bond Closing**

The Bondholder Representative is not required to purchase the Bonds until the following requirements have been received, satisfied, or waived in writing by the Bondholder Representative:

1) The Bondholder Representative must have received and approved the Bond Documents and all Loan Documents duly executed and, where required, acknowledged.

2) The Bondholder Representative must have received and approved copies of the fully executed Indenture, Regulatory and Restrictive Use Agreements (as then in effect) and the Ground Lease (and an estoppel certificate from the Ground Lessor on a form satisfactory to the Bondholder Representative).

3) The Bondholder Representative must have received and approved copies of the fully executed Indenture, each Regulatory and Restrictive Use Agreement (as then in effect).

4) The Bondholder Representative must have received evidence that the proceeds of the Bonds will be loaned to the Borrower pursuant to the Loan Agreement and, except for proceeds to be used to pay Costs of Issuance, the proceeds will be deposited in the Project Fund.

5) The Bondholder Representative must have received evidence satisfactory to the Bondholder Representative that the Borrower's Sources, taking into account the amount and timing thereof, are sufficient to pay the Total Project Expenses on a timely basis.

6) The Bondholder Representative must have received evidence of a determination pursuant to Section 42(m)(2)(D) of the Code (confirming a reservation of the Low Income Housing Tax Credit).

7) The Bondholder Representative must have received (x) a copy of the Partnership Agreement; (y) a copy of the filed Certificate of Formation for Borrower and such other evidence of Borrower's and the General Partner's existence and good standing, and (z) copies of all development agreements (including the Development Agreement), management agreements, investment agreements, deficit funding facility agreements, equity notes, purchase options, and other documents and agreements referenced in the Partnership Agreement, and all modifications and amendments thereto, or otherwise required in connection therewith by the Investor Limited Partner;

8) Copies of the fully executed Subordinate Loan Documents (and related Intercreditor Agreements with respect thereto for each Subordinate Loan and Grant), and no event of default is then continuing under the Subordinate Loan Documents;

9) The Mortgage and the Assignment of Mortgage, each Regulatory and Restrictive Use Agreement (as then applicable), and all financing statements required by the Bondholder Representative must be executed and, where required, acknowledged by all parties thereto and each be delivered to a title insurer, in a manner satisfactory to the Bondholder Representative for recording in the office of the county clerk in which the Project is located. If required by the Bondholder Representative, the Borrower and the holder of each lien or encumbrance that is not a Permitted Encumbrance must execute in recordable form a Subordination Agreement, in form and substance acceptable to the Bondholder Representative, to be recorded concurrently with the Mortgage.

10) A title insurer acceptable to the Bondholder Representative must execute an instruction letter in a manner satisfactory to the Bondholder Representative agreeing to issue a loan policy of title insurance satisfying the requirements of **Schedule K** (the "**Title Policy**"), in the amount of the Loan and one in the amount insuring the Mortgage as a first priority encumbrance against the Project, subject only to the Permitted Encumbrances and other exceptions as may be consented to by the Bondholder Representative in writing, together with such endorsements as the Bondholder Representative may require. The Bondholder Representative must have reviewed and approved a current ALTA survey of the Project prepared at the Borrower's expense by a licensed surveyor acceptable to the Bondholder Representative, certified to the Bondholder Representative and the title insurance company.

11) The Borrower shall deliver to the Bondholder Representative copies of or certificates acceptable to the Bondholder Representative evidencing, all policies of insurance required pursuant to the Mortgage and the Bondholder Representative's insurance requirements.

12) The Budget attached to the Agreement as **Schedule C-1** must have been approved by the Bondholder Representative and the Bondholder Representative shall have received and approved a listing of the Borrower's Sources for the funding of the Project (including the sources of the ATCIC Sponsor Fourth Loan (and the timing of the funding of such sources).

13) The Plans and Specifications must have been approved by the Bondholder Representative and by all governmental authorities as needed for lawful commencement of the Construction of the Project.

14) The Capital Contribution Account and the Disbursement Checking Account to be maintained in the name of the Borrower with the Bondholder Representative must be opened with the Bondholder Representative in accordance with the Bondholder Representative's customary policies for the establishment of such accounts.

15) All executed contracts and subcontracts with respect to the Construction of the Project must be acceptable to the Bondholder Representative and be in full force and effect.

16) The Bondholder Representative must have received an environmental disclosure statement prepared and certified by the Borrower using the Bondholder Representative's prescribed form, and the information set forth in it must be acceptable to the Bondholder Representative. If the Bondholder Representative so requires, it must also receive a Phase I Report and (if applicable) a Phase II Report prepared by a consultant acceptable to the Bondholder Representative stating that there are no Hazardous Substances present in, on, under, or around the Project, and that there is no condition or circumstance which warrants further investigation or analysis in the opinion of the preparer of the report. The Bondholder Representative shall also receive satisfactory evidence, if required, of the abatement, removal, disposal, or correction of all unacceptable conditions identified in such reports, and the Borrower must execute an operations and maintenance plan on the Bondholder Representative's form or otherwise acceptable to the Bondholder Representative if asbestos containing materials or lead paint will continue to be present on the Project after abatement.

17) The Bondholder Representative's loan fees required pursuant to the Agreement, and the Issuer's Fees as then due under the Indenture, have been paid as set forth therein. The Borrower shall have paid all of the Bondholder Representative's reasonable costs and fees due in connection with the Loan, including, without limitation, appraisal, administrative, closing, escrow, and title fees (which title fees will include, among other things, for all required endorsements to the Title Policy as provided in **Schedule K**, in such number as the Bondholder Representative specifies), cost engineering fees, environmental fees, and legal expenses. Said items must be paid by the Borrower out of sources other than the Borrower's Sources except to the extent included in the Budget.

18) The Bondholder Representative must have received and approved such financial statements, tax returns, and other financial information which it may require regarding the financial condition of the Borrower, any of its general partners or joint venturers, any guarantors, any other parties, or the Project.

19) The Bondholder Representative must have received and approved certified copies of such of the entity formation documents of the Borrower, General Partner, and the Guarantor, as the Bondholder Representative may require, including, without limitation, a copy of the Partnership Agreement executed by all of the general and limited partners, including, without limitation, all limited partners who will be providing equity contributions to the Borrower.



20) The Bondholder Representative must have received and approved evidence satisfactory to the Bondholder Representative that the Project is exempt from property taxes (including an opinion to that effect from counsel to the Borrower).

21) The Bondholder Representative must have received and approved each AHAP Contract.

22) either (a) a Payment and Performance Bond, or (b) if a Payment and Performance Bond cannot be provided to the Contractor or the primary subcontractor as the case may be, a letter of credit issued by a Financial Institution acceptable to the Bondholder Representative (which in any event shall have a Fitch rating of B or higher and if the institution is not rated by Fitch, then having an S&P rating of A or higher or a Moody's rating of A1 or higher) with a face amount of at least 15% of the budgeted hard costs for the Improvements (which amount shall not include the amount of Contractor profit, overhead and general requirements included in the Construction Contract, to the extent each is budgeted as soft costs) and on a form acceptable to Bondholder Representative. If at any time the Bondholder Representative, in its reasonable discretion, determines that the creditworthiness of the issuer of any letter of credit issued under this Section 1(a)(22) is no longer acceptable, the Borrower shall cause such letter of credit to be replaced within 30 days of written notice thereof with a letter of credit issued by a Financial Institution acceptable to Bondholder Representative, or (c) a dollar amount equal to at least 15% of the budgeted hard costs for the Improvements has been deposited into a blocked account located at the Bondholder Representative. Bondholder Representative shall have received and approved lien waivers for all materials supplied and work performed prior to the Bond Closing in a manner satisfactory to Bondholder Representative.

23) The Bondholder Representative must have received and approved an executed copy of the Architecture Contract and the Construction Contract;

24) The Bondholder Representative must have received evidence satisfactory to the Bondholder Representative that all utilities will be provided which are necessary to develop and occupy the Project, including written assurances from such utility companies as the Bondholder Representative may require. The Bondholder Representative must also receive evidence satisfactory to the Bondholder Representative of the availability of such amounts of potable water as are necessary to develop and occupy the Project, as contemplated by the Agreement.

25) The Bondholder Representative must have received evidence of such zoning (including variances) and other land use entitlements and building permits as may be necessary to lawfully commence and carry on construction of the Improvements to completion, and thereafter to operate and occupy the Project as an apartment complex as contemplated hereby (except that actual issuance of permits necessary to commence construction may be evidenced by a city letter confirming availability of building permit(s) subject only to payment of the applicable fees).

26) The Bondholder Representative must have received an opinion of the Borrower's and a Guarantor's counsel in form, scope, and substance reasonably satisfactory to the Bondholder Representative, covering the due formation and good standing of the Borrower

and the General Partner, the Borrower's authority to enter into the transaction contemplated by the Loan Documents, conflict with applicable laws and other agreements, material litigation, enforceability, and such other matters as the Bondholder Representative shall require. If the Loan Documents include a Guaranty, the Bondholder Representative must have received an opinion of each Guarantor's counsel to the same effect regarding the Guaranty and each Guarantor.

27) The Bondholder Representative must have received evidence satisfactory to it that all of the conditions under any applicable development agreement for the development and construction of the Project have been satisfied in full by the Borrower.

28) The Bondholder Representative must have received and approved a copy of each Regulatory and Restrictive Use Agreement (as then in effect) or similar document affecting the Project in final form.

29) The Bondholder Representative must have received and approved evidence that use of the proceeds of the Bonds will meet the 50% aggregate basis test under Section 42(h)(4)(B) of the Code.

30) The Bondholder Representative must have received and approved the Borrower's standard form of residential lease to be used for the Project.

31) The Bondholder Representative must have received and approved a list of all contractors, subcontractors, and the material suppliers to be employed in connection with the Construction of the Project (setting forth the nature of the work to be performed, the labor and materials to be supplied and the dollar amount of such work or materials). If requested by the Bondholder Representative, the Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed subcontracts with accepted bidders.

32) The Bondholder Representative must have received evidence that (A) the General Partner Contribution has fully funded and been used to pay budgeted items, and (B) the initial funding of the first installment of the Capital Contribution from the Investor Limited Partner, in the amount set forth in **Schedule J** to the Loan Agreement (net of amounts paid for Costs of Issuance and amounts retained by the Investor Limited Partner for its fees as provided in the Partnership Agreement), shall have been deposited in the Capital Contribution Account for the purposes set forth in **Schedule J** to the Loan Agreement (which may occur simultaneously with the Bond Closing).

33) No mechanic's lien shall be recorded against the Project, unless the Borrower has (i) furnished and perfected a surety bond issued by a company satisfactory to the Bondholder Representative and on a form and in an amount satisfactory to Bondholder Representative, or (ii) provided 150% cash deposit with the title company and the title company has deleted such lien from the down date endorsement the Borrower.

34) The Bondholder Representative must have received evidence that the requirements of **Section 4.7** have been met.

35) The Bondholder Representative must have received and approved evidence that ATCIC is a duly existing non-profit corporation.

36) The Bondholder Representative must have received and approved proof in form and substance satisfactory to Bondholder's Representative that the required permits building and otherwise, and authorizations from all appropriate governmental authorities necessary or required in connection with the Construction of the Project have been obtained, or will be obtained when they become necessary (such as a will issue letter), together with copies of all other required governmental permits.

37) The Bondholder Representative must have received and approved a pro forma operating statement for the Project.

38) The Bondholder Representative must have received and approved an Appraisal of the Project, reflecting the Appraisal Value of the Project and which shall include the valuation of the Low Income Housing Tax Credit, anticipated to be available with respect to the Project reflecting a Loan to Value Ratio of not more than 80% (as restricted and as stabilized as is and including value of the Capital Contribution).

39) Bondholder Representative shall have approved and received the identity and experience of the management company, together with all management contracts, development agreements, operating agreements, franchise agreements, or other contractual arrangements affecting the operation of the Project.

40) The Bondholder Representative must have received and approved a market study or any market survey data prepared for Borrower.

41) The Bondholder Representative must have received and approved an agreement from the Contractor, consenting to the assignment of the Construction Contract and the Plans and Specifications to Trustee, and providing for the subordination of all statutory and contractual liens and claims of that Contractor against the Project.

42) Bondholder Representative shall have received and approved the Plans and Specifications (which shall have been approved, as applicable, by the Credit Agency, the Investor Limited Partner and by the Bondholder Representative's Project Engineer) and all applicable departments of the Bondholder Representative, and which shall in any event comply, as applicable, with the Americans with Disabilities Act, as amended.

43) Bondholder Representative shall have received and approved evidence no portion of the Project is in any "wetlands" or is located on or over a ground fault.

44) Bondholder Representative shall have received and approved certificates of a reporting service acceptable to Bondholder Representative, reflecting the results of a search of the central and local Uniform Commercial Code records made not earlier than thirty (30) days prior to the date hereof, showing no filings against Borrower or any of the collateral for the Loan except those, if any, approved by Bondholder Representative or to be paid in connection with the Bond Closing.

45) Bondholder Representative shall have received and approved fully executed copies of the Commercial Leases covering the Retail Space and the Clinic Space, which shall each then qualify as an Approved Lease, and if all or a portion of the Retail Space and/or the

Clinic Space is being treated as a commercial service facility for purposes of qualified basis for the Project under Section 42(d)(4)(c)(iii) of the Code, evidence supporting such determination of qualification.

46) The Collateral Account shall have been opened and funded with proceeds of the ATCIC Sponsor Fourth Loan in a manner satisfactory to the Bondholder Representative.

47) Evidence of the funding sources for the development of the Project.

48) Evidence that there will be a tax abatement for ad valorem tax for the Project in a manner satisfactory to the Bondholder Representative.

(b) Initial Disbursement and Subsequent Disbursements.

After the Bonds have been purchased, the Bondholder Representative is not required to approve any Requisition for disbursements by the Trustee of any Loan proceeds from the Project Fund or to the disbursement or release of any other of the Borrower's Sources held by the Bondholder Representative if:

1) Any of the items set forth in **subsection 1(a)** above, which was not satisfied as a condition of closing, has not been satisfied or specifically waived by the Bondholder Representative in writing as a condition of making disbursements.

2) The Bondholder Representative fails to receive (i) a Draw Request (as defined below) accompanied by such documentation and information as the Bondholder Representative may require, (ii) any other documentation or information that the Bondholder Representative may require under **Section 2** of this Disbursement Schedule, or the Bondholder Representative considers any such Draw Request, documentation or information to be unacceptable. Without limiting the foregoing, if the Draw Request is for amounts in the Project Fund, the Draw Request shall be accompanied by a completed, signed Requisition in the form attached to the Indenture as Exhibit A and if the disbursement is from the Project Fund, such disbursement request shall be accompanied by a completed, signed Requisition in the form of the appropriate Exhibit attached to the Indenture.

3) With respect to any advance or disbursement for hard costs, Bondholder Representative shall not have received an AIA Document G 702 and G 703 (1992 Edition), completed by each appropriate Contractor and certified by the Architect (if required by Bondholder Representative);

4) With respect to any advance for soft costs (including contingencies), Bondholder Representative shall not have received all vouchers, invoices, and other evidence required by Bondholder Representative;

5) Borrower shall not have delivered to Bondholder Representative and its Project Engineer, for their approval, evidence (which shall include a report of an inspection by

its Project Engineer) that (i) construction is proceeding in a manner to ensure completion of the Improvements by the Bondholder's Representative's Required Completion Date; (ii) the amount theretofore invested by Borrower in the Land and the Improvements, together with the Borrower's Sources remaining for the development of the Improvements, are adequate to meet all costs incurred and to be incurred in connection with the Improvements; and (iii) that construction of the Improvements has been substantially in accordance with the Plans and in accordance with the Loan Documents, which shall include, without limitation, any other due diligence with respect to the Project required by Bondholder Representative's Project Engineer;

6) Bondholder Representative shall not have received, at Borrower's cost and expense, a satisfactory "downdate endorsement" and all other endorsements if or as required by Bondholder Representative to the Title Policy in connection with the advance as disbursed;

7) If and to the extent required by the Bondholder Representative, prior to the pouring of a slab and upon completion of that slab, Borrower shall not have delivered a current survey evidencing the intended and actual location of the slab, showing no encroachment. If and to the extent required by Bondholder Representative, Borrower shall have delivered a slab survey, if the proceeds of the advance are for, among other things, costs associated with the slab to the Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area;

8) Any part of the Project then subject to the Mortgage is materially damaged and not repaired (to the extent expressly required by the Loan Agreement), unless the Bondholder Representative receives funds from the Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner in accordance with the terms of the Mortgage.

9) Any part of the Project then subject to the Mortgage, or any interest in any of it, is affected by eminent domain or condemnation proceedings.

10) The Loan is "out of balance" and the Borrower fails to timely comply with any demand by the Bondholder Representative to deposit funds, and/or the Bondholder Representative does not consent to any revised Budget proposed by the Borrower.

11) A Default or an Event of Default is continuing.

12) A default has occurred and is continuing under any of the Requirements.

13) The Investor Limited Partner has failed to contribute any installments of its Capital Contribution when all of the conditions set forth in the Partnership Agreement for the specific installment are satisfied.

14) Funds shall not have been expended by Borrower as approved by the Bondholder Representative or any uncured material default exists under any liens or encumbrances (other than Permitted Encumbrances).

15) Prior to the first disbursement for hard costs, a copy of a filed Affidavit of Commencement, in the form of **Schedule N** attached hereto, is filed within thirty (30) days after commencement of Construction of the Improvements with the County Clerk of Travis County, Texas, and satisfying the requirements of the Texas Property Code, as amended (which shall evidence that commencement of construction of the Improvements began after the date the Mortgage was recorded) is not submitted to Bondholder Representative.

16) If received by the Borrower at the time, the Bondholder Representative shall not have received original recorded counterparts of each Regulatory and Restrictive Use Agreement (if then issued), Mortgage, the Assignment, and the related financing statements, and copies of all documents relating to the conveyance of the land relating to the Project to the Borrower, including, without limitation, the recorded Memorandum of Ground Lease to the Borrower, in a manner satisfactory to the Bondholder Representative.

17) The Borrower fails to satisfy any other conditions to funding set forth in the Loan Documents and required by the Bondholder Representative and such failure is continuing.

(c) Final Hard Cost Disbursement.

The Bondholder Representative is not required to approve the final disbursement for payment of hard costs (including for Retainage) of Loan proceeds by the Trustee from the Project Fund or other funding source until all of the following conditions are satisfied or waived in writing by the Bondholder Representative:

1) The Project must be fully completed in accordance with the Plans and Specifications and all Requirements in all material respects.

2) Thirty-one (31) days have elapsed after the later of (i) "completion" of the Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of filing with the county clerk of Travis County of an Affidavit and Certificate of Completion (the "**Affidavit of Completion**"), executed by Borrower, the Contractor, and Architect, in the form of **Schedule O** attached hereto, or (iii) the date Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

3) The Bondholder Representative must receive evidence that all certificates of occupancy or other permits necessary for occupancy of all of the Project have been obtained from the appropriate governmental authorities.

4) The Bondholder Representative must receive a final Draw Request, accompanied by written certification by the Architect and the Contractor that the Project as completed conform to the Plans and Specifications and all Requirements, (including, without limitation, an AIA G 704 Certificate of Substantial Completion with respect to the Project executed by the Architect) and by such other documentation and information as the Bondholder Representative may require under **Section 2** of this Disbursement Schedule.

5) The Borrower must provide endorsements to the Bondholder Representative's title insurance policy insuring lien free completion of the Project as well as first lien priority of the final disbursement.

6) The Bondholder Representative must receive complete as built Plans and Specifications for the completed Improvements certified by the Architect as being complete and accurate.

7) The Bondholder Representative must receive and approve an ALTA as built survey of the completed Project without any encroachments or exceptions of any kind except as acceptable to the Bondholder Representative in its reasonable determination, prepared by a licensed surveyor, certified to the Bondholder Representative and the title insurer.

8) An affidavit of bills paid and/or lien release, in a form acceptable to Bondholder Representative, executed by each Contractor, Architect, subcontractor, material suppliers, and such other persons or entities as the Bondholder Representative may require to satisfy itself that the Project (and all other improvements to the Land completed through the date of any such affidavit) has been completed lien-free and that the costs of all materials furnished and labor performed in connection with such construction have been paid in full subject to Retainage.

9) An affidavit of bills paid and/or lien release, in a form reasonably acceptable to Bondholder Representative, executed by the Contractor.

10) No Default or Event of Default shall have occurred and be continuing.

## 2. Draw Requests.

Before the Bondholder Representative becomes obligated to make any disbursements from the Capital Contribution Account (if then on deposit with the Bondholder Representative), or of any of the DSHS Third Loan or approve any Requisitions made on the Project Fund, it must receive a written request signed by the Borrower or the Borrower's agent designated in **Section 7** of this Disbursement Schedule, using a form acceptable to the Bondholder Representative ("**Draw Request**"), accompanied by such documentation and information as the Bondholder Representative may reasonably require (if the Draw Request requests amounts in the Project Fund, the Draw Request shall be accompanied by a fully completed, signed Requisition). If the Bondholder Representative approves a Requisition, the Bondholder Representative will then submit the Requisition to the Trustee. In each Draw Request, the Borrower shall request disbursement for one or more specified line item(s) of the Budget. Each Draw Request shall be accompanied by the items required pursuant to **Section 5.2** of the Indenture (which may include, without limitation, the approval of the Issuer). In addition, if an Event of Default is then continuing, each Draw Request shall be accompanied by checks (to be drawn on the Disbursement Checking Account) made out to each of the Borrower's merchants, vendors, materialmen, suppliers, laborers, subcontractors, and other appropriate parties in the amount of the funds owed to such parties after appropriate adjustment for any retainages. The Bondholder Representative shall not be obligated to fund any Draw Request earlier than ten (10) Business Days after receipt of a complete supporting package. Borrower may submit Draw Requests to the Bondholder

Representative no more frequently than once each calendar month, unless the Bondholder Representative has given its prior written consent in each instance.

With each Draw Request, the Borrower shall submit to the Bondholder Representative such items of information and documentation, including invoices, canceled checks, lien waivers, and other evidence as may be required by the Bondholder Representative to show that the Borrower is in compliance with the Loan Documents. All such items must be acceptable in form and substance to the Bondholder Representative.

Each Draw Request shall constitute the Borrower's representation and warranty to the Bondholder Representative that:

The Loan is "in balance" as defined in the Agreement.

All of the documentation submitted with the Draw Request is genuine and unaltered.

All disbursements made to date as well as those being currently requested were and will be in strict compliance with the Budget, unless the Borrower has notified the Bondholder Representative in writing to the contrary and the Bondholder Representative has approved such deviation (unless the Bondholder Representative's consent is not required by the terms of the Agreement).

The funds requested by the Draw Request (whether from the Capital Contribution Account or the Project Fund) will pay in full all invoices received by the Borrower or by the Contractor to the date of the Draw Request (or otherwise the subject of the Draw Request) for labor, materials, and services furnished in connection with the Construction of the Project Fund (net of applicable retainage).

The Borrower has caused or will promptly cause the amounts requested by the Draw Request to be paid to the respective individuals or entities for which such amounts were requested.

All amounts disbursed by the Bondholder Representative pursuant to each previous Draw Request have been paid in the amounts and to the respective individuals or entities for which such amounts were requested.

The payments made pursuant to the Draw Request are for Qualified Project Costs.

### 3. Disbursement Amounts.

For each line item of the Budget, the Bondholder Representative shall approve Requisitions and/or make disbursements of Borrower's Sources in amounts which, when totaled, do not exceed the maximum allocation of funds for that line item, as shown in the Budget, taking into account all prior disbursements, any reallocations of Borrower's Sources made by the Bondholder Representative and all applicable retention requirements (or made by the Borrower and reported to the Bondholder Representative if the approval of the Bondholder Representative



is not required), the Borrower may at any time and from time to time, by written notice to the Bondholder Representative, reallocate from the construction contingency item in the Budget to other items of hard construction costs an aggregate amount equal to the same percentage of the original amount of the construction contingency line item as the then percentage of completion (as determined by the Bondholder Representative's inspector) of the work to be performed under the Construction Contract. Whenever the portion of the work to be performed under the Construction Contract represented by any line item of the Budget has been completed to the reasonable satisfaction of the Bondholder Representative and all costs represented by that line item have been paid in full and statutory lien waivers obtained from the Contractor and all subcontractors and others who or which are to be paid from that line item, the Borrower may at any time and from time to time, by written notice to the Bondholder Representative, reallocate unused funds from that line item to any other one or more line items. If at any time the Bondholder Representative is holding the Borrower's Funds in the Capital Contribution Account, or of deposits of the DSHS Third Loan, and/or the ATCIC Sponsor Fourth Loan, or in the Borrower's Funds Account, the Bondholder Representative shall make all disbursements first from such funds until they are exhausted, in the manner provided in **Section 7** of this Disbursement Schedule. On the first day of each month occurring from and after the date hereof (whether or not the Bondholder Representative disburses or is obligated to disburse or approves a Requisition to disburse any of the proceeds of the Loan and whether or not the Bondholder Representative releases or is obligated to release any funds from the Capital Contribution Account), the Borrower shall pay to the Bondholder Representative a Construction Inspection Fee set forth in **Section 5.18** of the Loan Agreement per inspection. In the event that the Bondholder Representative permits the Borrower to make more than one Draw Request in a month, the Borrower shall pay to the Bondholder Representative the fees for such additional inspection.

Notwithstanding the preceding paragraph, the Borrower shall not be entitled to reallocate from any line item to pay any additional costs resulting from a change which would necessitate the Bondholder Representative's approval under **Section 5.10** of the Loan Agreement or other Section of this Agreement unless and until the Bondholder Representative's approval has been given (as required).

4. Disbursements of Certain Costs Not Requiring Retention.

For each line item of the Budget other than hard costs, if otherwise approved, the Bondholder Representative shall make one or more disbursements to the Borrower or for its account in the amount applied for in Borrower's Draw Request, without retention for Retainage.

5. Disbursements of Costs Requiring Retention.

Retainage shall be withheld from each disbursement from the Project Fund and from the Capital Contribution Account and from disbursements of deposits of the DSHS Third Loan and for payment of artisans and mechanics or any other party who performs labor or service for Construction of the Project under a subcontract with Contractor, or such other general contractor approved by the Bondholder Representative shall be withheld until all conditions to the Bondholder Representative's final disbursement have been satisfied or waived in writing by the Bondholder Representative.

The Borrower, at its option, may request disbursement of the Retainage before requesting the final disbursement of Borrower's Sources, provided that all conditions to the final disbursement have been satisfied or waived in writing by the Bondholder Representative.

6. The Borrower's Funds.

At all time when the Bondholder Representative is holding Borrower's Funds in the Borrower's Funds Account or in the Capital Contribution Account, the Bondholder Representative shall make all disbursements first from Borrower's Funds until they are exhausted, subject however to the condition that 95% of the proceeds of the Bond proceeds be spent on Qualified Project Costs.

7. Disbursement Procedures.

(a) Disbursements.

Disbursements of all of Borrower's Sources shall be made to the Disbursement Checking Account, except as otherwise provided in the Agreement or as otherwise agreed in writing by the Bondholder Representative and the Borrower, and delivered to the Trustee.

(b) Authorized Signers.

All Draw Requests and other documents in connection with the administration of the Loan must be signed by a duly authorized representative of the Borrower listed in **Schedule D-1**.

(c) The Developer Fee.

The Developer Fee is payable only to the extent and at the times specified in the Budget, notwithstanding anything contrary contained in the Partnership Agreement or any other document executed in connection with the Partnership Agreement; provided, however, this provision does not authorize the Borrower to pay any Developer Fee earlier than provided for in the Partnership Agreement.

Notwithstanding anything herein to the contrary, until the full and final payment of the Note, no Developer Fees or overhead shall be paid; provided, however, that notwithstanding the foregoing, if no Event of Default is then existing (or would result from that payment), Developer Fees may be then paid from the Capital Contributions as follows:

1) On the Bond Closing, up to \$319,168.00 of budgeted Developer Fees may be paid from the first Capital Contribution set forth in **Schedule J**.

2) Upon Substantial Completion of the Improvements, up to \$319,168.00 of budgeted Developer Fees may be paid from the second Capital Contribution set forth in **Schedule J**.

All other remaining developer fees (if any) shall be deferred and may be paid on or after the full and final payment of the Note. Notwithstanding the foregoing, in no event may developer fee or overhead be paid in an amount that would exceed the amount permitted under the Partnership Agreement or in any other way violate the Partnership Agreement or the terms of the Subordinate Loan Documents.

**SCHEDULE D-1**

AUTHORIZED SIGNERS

[TO BE ADDED]

## **SCHEDULE E**

### **PRO FORMA SCHEDULE**

Construction Commencement: After the date of Bond Closing and before the date that is thirty (30) days after Bond Closing

Substantial Completion: Fifteen (15) months from the date of Bond Closing (as may be extended for up to an aggregate combined amount of 60 days as a result of Excusable Delays).

Maturity Date: Twenty (20) calendar months after the date of Bond Closing (subject to the put option available on the Construction Term Maturity Date, as may be extended pursuant to **Section 4.2(e)**)

## **SCHEDULE F**

[RESERVED]

## **SCHEDULE G**

### **LIST OF PLANS AND SPECIFICATIONS**

As previously provided to and approved by the Bondholder Representative (a copy of the Plans and Specifications is on file with the Bondholder Representative).

## SCHEDULE H

### INSURANCE REQUIREMENTS

#### General Requirements

1. This document provides a summary of the insurance requirements in the loan documents and if any conflict exists between this document and the loan documents, then the loan documents prevail.

2. All insurance policies must contain the complete address of the property (or a recognizable legal description), be for terms of at least one year, with premium prepaid, be subject to the approval of the Bondholder Representative as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. All policies must have a cancellation provision that provides that the carrier will notify the Bondholder Representative in writing at least ten (10) days in advance of any policy reduction or cancellation for nonpayment of premium, and at least thirty (30) days for any other reason.

3. Blanket or master insurance policies for several buildings or locations are allowed if the property is fully protected as if a separate policy has been issued for 100% of replacement cost of the improvements at the time of the loss and property is identifiable in the policy. Other requirements are as follows:

- **Mortgagee clause:** All insurance policies covering the property must include a standard, non-contributory, mortgagee clause naming EXACTLY: Capital One, National Association, its successors and assigns, 5444 Westheimer Road, 6th Floor, Attention: 31762, Houston, Texas 77056. (a) as an additional insured under all liability insurance policies, (b) as the first mortgagee on all property insurance policies and (c) as the loss payee on all loss of rents or loss of business income insurance policies; (d) in the event of loss, notice of loss is required to be sent to Bondholder Representative.
- **Carriers:** All insurance carriers must be fully licensed and authorized to do business in the state within which the property is located and who have and maintain a rating of at least A from Standard & Poor's or equivalent or if the loan is less than \$15,000,000, have a Best's general policyholder's rating of A or better and a financial size category of V or greater.

#### Property Insurance Requirements

4. The borrower must keep the improvements of the property insured at all times by carriers satisfactory to Bondholder Representative against loss by fire and other hazards.

- **Hazard insurance** is required to provide coverage against loss or damage to the property from fire, windstorm, hail, and such other insurance with respect to the Property or on any replacements or substitutions thereof of additions thereto as may from time to time be required by Bondholder Representative against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, with limitation, sinkhole, mine subsidence, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy. Such insurance must (1) be written on an "All Risk" basis with replacement cost in an amount not less than 100 percent of the replacement cost of the improvements without any deduction for depreciation (Replacement value for the cost of excavations, foundations and footings below the lowest basement floor may be excluded.), and (2) either contain no coinsurance clause or contain a coinsurance clause that is offset by an annually updated "agreed amount endorsement". Borrower shall also maintain insurance against loss



or damage to furniture, furnishing, fixtures, equipment and other items (whether personalty or fixtures) included in the property to the extent applicable. If the hazard policy covers more than one year, an “Inflation Guard” endorsement is required to provide for annual adjustment of the insurance amount based on inflation. “Ordinance or Law Coverage” or “Enforcement” endorsement is required if any of the improvements or the use of the property shall at any time constitute legal nonconforming structures or uses, unless there is evidence acceptable to Bondholder Representative that, in the event of a loss, the municipality will permit Borrower to rebuild to the specifications that existed at the time of the loss. There should be, at a minimum, coverage for the following: (i) loss of undamaged portion of the Mortgaged Premises due to enforcement of any ordinance or law in the overall policy amount; (ii) demolition cost with no less than the full demolition expense of the single largest structure on the Mortgaged Premises; and (iii) increased cost of construction in an amount sufficient to replace or rebuild the single largest structure of the Mortgaged Premises to comply with applicable building codes. The maximum deductible amount is \$25,000.

- **Business/Rent loss insurance** is required for all income properties to cover losses due to fire and other hazards. A minimum of twelve (12) months’ coverage is required. Coverage must be adjusted annually to reflect current rent rolls or revenues.
- **Building ordinance or law coverage** is required where the Property represents a “nonconforming” use under current building, zoning or land use laws or ordinances. This coverage may be waived if Bondholder Representative is provided with satisfactory evidence that, in the event of loss, the municipality will permit the Property to be rebuilt to the specifications of the Property that existed at the time of the loss. Building Ordinance or Law Coverage must include coverage for all of the following:
  - (1) The cost to demolish and clear the site of undamaged parts of the Property as such demolition may be required by enforcement of any building, zoning or land use law or ordinance (The amount of coverage must be no less than the full demolition expense of the single largest structure on the property.)
  - (2) Loss of undamaged portion of the Property due to enforcement of any ordinance or law (The coverage must be in the overall policy amount.)
  - (3) Increased cost of construction to allow the Borrower to rebuild the Property to meet all applicable building codes (Such coverage must be in an amount sufficient to replace or rebuild the single largest structure on the Property in compliance with applicable building codes.)

5. A separate Building Ordinance or Law Coverage Endorsement if the master/blanket policy includes Building Ordinance or Law Coverage for all locations covered under the policy will not be required. Bondholder Representative will approve the amount of coverage on a per property basis.

- **Steam boiler and machinery insurance** is required where steam boilers, pipes, turbines, engines or other pressure vessels are in operation on the Mortgaged property. The policy should be in an amount equal to at least \$2 million or 100% of the full replacement cost of the buildings) housing the equipment. A rider to include electrical machinery and equipment, air conditioning, refrigeration and mechanical objects is recommended and may be required.
- **Flood insurance** is required if the improvements or any part thereof are now or in the future become situated in an area designated by the Federal Emergency Management Agency (“FEMA”) as a special flood hazard

area. Coverage should be in an amount equal to the lesser of (a) replacement cost of the affected improvements or (b) the maximum limit of coverage available through the appropriate National Flood Insurance Administration program. The maximum deductible amount is \$5,000 or one percent of the applicable amount of coverage, whichever is less.

- **Windstorm Insurance** is required in the amount of the insurable value of the Improvements with a deductible amount of the lesser of 2% of coverage or \$200,000.00. The foregoing requirement for windstorm insurance shall be adjusted to reflect then current windstorm insurance requirements for like projects located in the same geographic location of the Improvements (“Comparable Properties”); provided that Bondholder Representative reserves the right to determine what shall be considered Comparable Properties and the right to independently verify such windstorm insurance requirements for Comparable Properties; provided further, Bondholder Representative will consider higher deductibles for the foregoing windstorm insurance requirements based on market trend changes in the multifamily housing industry.

### **Builders Risk Insurance Requirements**

6. Builders risk insurance coverage is required for new construction, renovation or alteration of existing improvements which exceed the lesser of 10% of the principal amount of the loan or \$500,000. The policy should cover “all risks” to the premises and improvements, including materials stored on the property and elsewhere, in an amount equal to 100% of the replacement cost of the improvements, and include the perils of collapse, water damage and flood. A deductible for wind damage in the amount of the greater of (i) 2% of such wind damage, or (ii) \$50,000.00 is permitted. The insurance required under this paragraph shall be made available on or before the first advance of the Capital Contribution or Loan, as applicable, of the Loan or the Capital Contribution, as applicable, for the slab.

### **Liability Insurance Requirements**

7. The borrower must obtain or be covered by at least \$1 million for bodily injury and property damage for any single occurrence, with a general aggregate limit of \$2 million. However, coverage for bodily injury and property damage for a single occurrence must be increased to \$2 million with a general aggregate limit of \$3 million for properties with elevators. Coverage must include, but not be limited to, the following: (i) swimming pool liability where applicable; (ii) host liquor liability where applicable; (iii) elevator collision liability where applicable (if not included in standard general liability policy); (iv) comprehensive automobile liability (owned, non-owned and/or leased); (v) garage keeper liability, if applicable; (vi) worker’s compensation and employer’s liability when required by applicable law, ordinance or other regulation; (vii) bailee’s liability (added either to property damage or CGL policy); (viii) employee fidelity coverage for third-party managed Property, the Borrower must obtain evidence of such coverage by the manager for the benefit of the Borrower (or the Borrower, if self-managed) in an amount equal to a minimum of three (3) months rental income or gross revenue generated from the Property (added either to property damage or CGL policy). Bondholder Representative may require additional amounts if it is determined that special risks exist. Liability coverage must provide for claims to be made on an occurrence basis. Master/blanket policies are acceptable provided that those policies clearly show that both the occurrence and general aggregate limits contained therein apply per location or per project. The foregoing policies may contain a deductible up to \$5,000.00.

## **Evidence of Insurance**

8. At the closing of the Mortgage loan, the borrower must supply Bondholder Representative with either the original policies or certified true copies thereof, when possible. If an insurance binder or a certificate of insurance and an Evidence of Insurance Form (ACORD Form 27) is provided at closing, the original policy(ies) or certified duplicate copy must be received within sixty (60) days of closing. During the life of the Mortgage loan, renewal policies must be in Bondholder Representative's office at least 30 days prior to the expiration date of the existing policy(ies). Continuous coverage is required by Bondholder Representative, so if a policy is not in Bondholder Representative's possession prior to the expiration date of the existing policy, a policy will be force placed with an insurance carrier of Bondholder Representative's choice. Requirements for the acceptance of other than the original policy of hazard insurance are as follows:

- (4) Receipt of a legible copy of the master of the blanket policy with all related endorsements, including the signature of an officer or authorized agent, indicating the address of the Mortgaged premises and the amount of coverage attributable to the security for the Mortgage.
- (5) Receipt of a copy of the standard non-contributory mortgagee clause as provided above.
- (6) If the policy is a duplicate policy, it must be stamped "true and certified duplicate copy". It must contain duplicates of all riders, forms, attachments and endorsements that are attached to said Master Policy as they relate and apply to the specific property known as "insured premises", on which Bondholder Representative holds the first mortgage.

9. Bondholder Representative will require proof each year (by a Certificate of Insurance) that the borrower has workers' compensation insurance and employer's liability insurance in effect on the Mortgaged Premises. IF THESE COVERAGES ARE PROVIDED BY THE MANAGEMENT COMPANY FOR ITS EMPLOYEES, PLEASE ADVISE.

### **The address of the Bondholder Representative is as follows:**

Capital One, National Association

299 Park Avenue, 14th Floor

New York, New York 10171

Attention: Edward J. Santos

10. Notwithstanding anything to the contrary set forth herein or in any of the other Loan Documents, the foregoing insurance requirements shall be adjusted to reflect then current insurance requirements for like projects located in the same geographic location of the Improvements ("Comparable Properties") provided that Bondholder Representative reserves the right to determine what shall be considered Comparable Properties and to independently verify the insurance requirements for such Comparable Properties. Without limiting the foregoing, Bondholder Representative will consider higher deductibles for the foregoing insurance based on market trend changes in the multifamily industry.

**SCHEDULE I**

[RESERVED]

## SCHEDULE J

### EQUITY FUNDING SCHEDULE

#### INVESTOR EQUITY CONTRIBUTION SCHEDULE

<b><u>INSTALLMENT</u></b>	<b><u>EVENT</u><sup>1/</sup></b>	<b><u>AMOUNT</u></b>	<b><u>PURPOSE</u></b>
1 <sup>2</sup>	Investment Closing	\$ 1,581,422 <sup>3/</sup>	Investor Limited Partner shall retain \$52,000 to reimburse Investor Limited Partner for its closing costs, then pay Bad Costs, then to pay non-deferred developer fee of \$319,168 as and when provided in Partnership Agreement and then to pay Good Costs of Construction (other than deferred items)
2 <sup>2/</sup>	C/O	\$ 5,474,728	Pay budgeted items, then pay budgeted developer fee of \$319,168 and fund a lease-up reserve of \$91,541 and a capital replacement reserve of \$15,000, each as provided in Partnership Agreement, and then pay Loan
3 <sup>2/</sup>	Conversion	\$ 722,708	Pay Loan in full, then to pay budgeted projected items (if any), then fund Operating Reserve up to the aggregate amount of \$212,040 (from all fundings of the Operating Reserve), pay developer fees of \$510,668 and as otherwise provided in the Partnership Agreement
4	Form 8609	\$ 127,667	Pay developer fees as provided in Partnership Agreement
<b>TOTAL CONTRIBUTION</b>		\$ 7,906,525	

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<sup>1/</sup> The funding, timing and amount of the contributions will be made in accordance with the terms and conditions of the Partnership Agreement.

<sup>2/</sup> To be funded into the Capital Contribution Account.

<sup>3/</sup> Funded on a draw basis, net of \$52,000 to reimburse Investor Limited Partner for its due diligence

## **SCHEDULE K**

### **TITLE INSURANCE REQUIREMENTS**

The purpose of this document is to provide information to the Borrower and title company regarding title insurance requirements for loans originated by Capital One, National Association ("Bondholder Representative") which are secured by properties located in the State of Texas and initially intended to be held in Bondholder Representative's own loan portfolio. If one or more of the properties securing the subject loan are in a state other than Texas, Bondholder Representative requires a title commitment rather than a preliminary title report and an ALTA Loan Policy (1970 or 1992) with comprehensive mechanic's lien coverage. For properties located outside the State of Texas, Bondholder Representative provides additional closing and title insurance requirements. For properties located in the State of Texas, this document provides requirements for the commitment to insure title ("Title Commitment"), the interim construction title binder ("Title Binder"), the Mortgagee policy of title insurance ("Title Policy") and for the closing functions and procedures to be performed by the title company ("Escrow Closing"). Time constraints provided in these instructions are very important in order to prevent delays in closing and funding. Additional requirements for a particular loan shall be at the sole discretion of Bondholder Representative.

#### **Title Commitment**

The Title Commitment is required well in advance of closing, must be prepared using the Texas Land Title Association ("TLTA") form T-7 and meet the following requirements:

1. Each title insurance policy must be written by an insurer authorized to do business in the State of Texas, licensed by the Texas Insurance Commission and have an acceptable rating from at least one of the independent rating agencies as follows:
  - (a) "Financial Stability Rating" of "S" (Substantial) or better or a "Statutory Accounting Rating" of "C" (Average) or better from Demotech, Inc.;
  - (b) a "BBB" or better rating from Duff and Phelps Credit Rating Company;
  - (c) a "C" or better rating from LACE Financial Corporation;
  - (d) a "BAA" or better rating from Moody's Investor Service, or
  - (e) a "BBB" or better rating from Standard and Poor's, Inc.

Bondholder Representative reserves the right to approve the title insurance underwriter. Coinsurance will only be allowed with prior written approval of Bondholder Representative. Reinsurance may be required in certain cases. Bondholder Representative must be notified in advance if Coinsurance or Reinsurance is expected or being considered.

2. Name of Insured: The Insured in Schedule A shall be as follows: "Capital One, its successors and assigns".

3. Coverage shall be for the full amount of the loan;
4. The effective date must be within 90 days of the anticipated date of closing; and
5. The Title Commitment must include, as attachments, legible copies of all recorded instruments which are listed as exceptions (both Schedule B and C) to the coverage of the Title Commitment, including legible copies of recorded plats.

### **Title Binder**

Acceptance of a Title Binder in lieu of a Title Policy on construction and development loans is an exception to Bondholder Representative's loan policy and must be approved by Bondholder Representative, which approval may be conditioned on satisfaction of additional loan covenants. In the event that the subject loan involves development or construction and Bondholder Representative has approved its usage, the Title Binder must be prepared using Form T-13 and meet the following requirements:

1. The "pre-start" exception on Item 1(a) of Schedule C must be deleted, and
2. Meet all of the requirements listed below for a Title Policy.

### **Title Policy**

Bondholder Representative may require the title company to deliver a pro forma Title Policy in advance of the loan closing. The Title Policy must be prepared using TLTA form T-2 and meet the following requirements:

1. Name of Insured. The Insured in Schedule A, Paragraph 1, shall be as follows: "Capital One, National Association and each successor in ownership of the indebtedness secured by the insured mortgage, except a successor who is an obligor under the provisions of the Conditions and Stipulations."
2. Description of Mortgage. The description of the deed of trust appearing in Schedule A, Paragraph 3, must include the precise name of the security instrument (e.g. "Multifamily Deed of Trust, Assignment of Rents and Security Agreement"); the names of the parties; the date of the deed of trust; the principal amount of the loan; and recording data, i.e. the recorder's office, the date of recordation and the book and page numbers and/or instrument number. If a separate Assignment of Leases is to be utilized, it should be included in Schedule A, in the same paragraph as the Mortgage as described above.
3. Legal Description. The legal description on the Title Policy must be identical to the legal description contained on the survey. Rights under access easements and off-site utility easements must also be insured.
4. Title Vesting. The name should include partnership/corporate status and state of organization.

5. Lien Status. The insured lien must be shown as a first and superior lien except as to current ad valorem taxes. Schedule B Exceptions must include the following:
- (a) Recording information for each instrument to which it refers.
  - (b) A description of the UCC Financing Statements(s) that will be recorded in the appropriate governmental records, as instructed in the “Escrow Closing Instruction Letter” to be provided by Bondholder Representative’s Counsel, with clerk’s file numbers or other applicable identifying information, along with the date and place of recording.
6. Unacceptable Schedule B Exceptions. The following Schedule B exceptions are not permitted:
- (a) Exception For Taxes Which Are Due And Payable. Any taxes which are due and payable must be paid prior to closing. An exception for future taxes and assessments not yet due and payable is permitted. An exception for taxes due for prior years because of a change in usage (i.e. agricultural exemption or open space exemption) is not permitted. The Tax Deletion Endorsement is required (TLTA form T-30).
  - (b) Survey Exception. A survey has been or will be prepared. A copy of the Title Commitment must be provided to the surveyor as soon as available, together with any documents listed as exceptions to the Title Commitment and describing easements located on or affecting the project. The Bondholder Representative’s Closing Department has contact information regarding the surveyor. The Survey Deletion Endorsement (i.e. area and boundary deletion) is required (Texas Rule P-2). If the title company takes exception to items shown on the survey, a Comprehensive Endorsement (TLTA form T-19) may be required.
  - (c) Blanket Exception. Blanket exceptions of any kind, including those for subordinate liens, are not permitted, except as required by the Texas Title Insurance Rate Rules.
  - (d) Maintenance fee liens not subordinated. Maintenance association fee liens must be subordinated to Bondholder Representative’s first lien. Unless waived in writing by Bondholder Representative, a subordination agreement will be required before closing for review and approval by Bondholder Representative’s Counsel if those liens are not already subordinated.
  - (e) Mechanics’ And Materialmen’s Lien Exception. Except on construction or development loans, there will be no exception for mechanics’ and materialmen’s liens. On construction or development loans, it is permitted to have a blanket exception for mechanic’s and materialmen’s liens recorded after the date of recording of Bondholder Representative’s deed of trust, and upon completion of improvements, a TLTA T-3 Endorsement Form must be issued deleting any mechanic’s and materialmen’s lien exceptions. If there are any special requirements (e.g., stipulations against liens, owner’s affidavits, etc.) which must be met, Bondholder Representative must be notified immediately.



- (f) All laundry leases and other commercial leases creating possessory rights must be subordinated to Bondholder Representative's first lien, and subordination/estoppel certificates must be signed for each. The seller/owner must be contacted regarding this requirement if the title search reveals any such lease(s). Subordination agreements must be approved by Bondholder Representative in advance.
  - (g) Bondholder Representative reserves the right to object to any title exception, including the preprinted exceptions contained in TLTA Form T-2.
7. UCC Searches. Except when waived by Bondholder Representative, UCC searches must be conducted at the expense of borrower, at both the state and county levels, of the appropriate UCC filing records for any filings in the name of the borrower, the owner(s) and the project name. If the borrower/owner is a corporation, the searches shall be in the name of the corporation; if the borrower/owner is a partnership, the searches shall be in the name of the partnership and in the name of each manager thereof; and if the project is owned by one or more individuals, then the searches shall be in the names of such individuals and any trade name employed by them. Bondholder Representative's Closing Department must be contacted to verify names to search. Copies of items which create security interests against the named party must be ordered to determine if they affect the insured. Results of searches must be sent to Bondholder Representative's Closing Department as soon as they are available.
8. Tax Certificates. Tax certificates for ad valorem property taxes must be ordered from all applicable taxing authorities, including associations when applicable. Tax Certificates must be sent to Bondholder Representative's Closing Department as soon as they are available.
9. Required Endorsements and Policy Provisions. The following endorsements are typically required with the final Title Policy. The final determination of required endorsements will be provided in the Escrow Closing Instruction Letter prepared by Bondholder Representative's Counsel.
- (a) Any arbitration provisions of the Title Policy must be deleted.
  - (b) The exception for parties in possession must be deleted upon satisfactory inspection by the Title Company.
  - (c) If the insured property is within a planned unit development, a Planned Unit Development Endorsement (TLTA form T-17).
  - (d) When required by Bondholder Representative at the time of conversion to the permanent financing, a Comprehensive Endorsement (TLTA form T-19).
  - (e) If access to the insured property is by easement, an Access Endorsement (TLTA form T-23) and the Title Policy must include the easement as part of the insured property on Schedule A.

- (f) If the legal description of the insured property describes two or more adjacent tracts of property, a Contiguity Endorsement (TLTA form T-25).
  - (g) Tax Deletion Endorsement (TLTA form T-30).
  - (h) If the property is for residential usage, an Environmental Protection Lien Endorsement (TLTA form T-36).
  - (i) Bondholder Representative may require other endorsements or express insurance, including but not limited to the following: First Loss Endorsement (TLTA form T-14), Last Dollar Endorsement (TLTA form T-15), Aggregation Endorsement (TLTA form T-16), Adjustable Rate Endorsement (TLTA form T-33), Revolving Credit Endorsement (TLTA form T-35).
10. Required Delivery. The final Title Policy, with all required endorsements, must be in Bondholder Representative's office within seventy-two (72) hours of funding.

### **Escrow Closing**

Bondholder Representative requires the title insurer or its affiliate or agent to act as escrow agent for the loan proceeds and to conduct the closing.

1. Disbursement and Insured Closing Letter. If the title company is an agent of the title insurer, it will be necessary to have the title insurance company provide Bondholder Representative with an insured closing protection letter from the title insurer prior to closing. The title company should contact the Bondholder Representative's Closing Department to determine if an insured closing letter is on file. The original letter should be addressed to Bondholder Representative. The insured closing protection letter must authorize the title company to close the loan and disburse the loan proceeds in accordance with an Escrow Closing Instruction Letter to be provided by Bondholder Representative or Bondholder Representative's Counsel prior to closing. A copy of the HUD- 1 Settlement Statement should be faxed to Bondholder Representative at least 24 hours prior to closing. Bondholder Representative must approve in advance any fee attorney to be utilized and will not disburse funds through a fee attorney.
2. Pay-off Estimates. Bondholder Representative does not obtain estimates of the pay-off figures for existing indebtedness secured by the project. It will be the responsibility of the title company to obtain in writing and verify the amount(s) required to retire any and all outstanding loans and, in cooperation with the borrower (or seller, if any), to arrange for satisfactory releases of existing mortgages and termination statements of existing financing statements.
3. Costs and Expenses. Bondholder Representative's Closing Department shall provide a separate letter prior to closing which details all Bondholder Representative related settlement charges. The services and costs of the escrow agent and title insurance company are to be performed without cost to the Bondholder Representative or Bondholder Representative's Counsel. Arrangements with the borrower should be made for the payment of all such costs. The escrow agent should collect adequate funds from the

borrower to send the Financing Statements by overnight mail to a recording service to ensure the documents will be received back from the county and state to meet the delivery requirements listed in this document.

4. Title Policy. The Title Policy must be issued by the title insurance underwriter specified in the title commitment furnished for the loan closing.
5. Property Insurance. Bondholder Representative's Closing Department will be responsible for reviewing and approving the required insurance policies. The escrow agent will be required to verify with Bondholder Representative's Closing Department, prior to funding, that insurance coverages are adequate.
6. Loan Documents and Closing. Bondholder Representative's Counsel prepares loan documents and an Escrow Closing Instruction Letter. Any changes made on legal documents at closing must be approved in advance by Bondholder Representative's Counsel. The title company is responsible for the completion, execution, attestation and notarization, where necessary of each of the loan documents in accordance with the Escrow Closing Instruction Letter.
7. Disbursing Funds. Loan funds necessary for closing by Bondholder Representative are wired to the escrow agent. Funds may be disbursed only at such time as:
  - a. The loan documents are properly executed,
  - b. The escrow agent is in a position to deliver the Title Policy and required endorsements to the Bondholder Representative pursuant to the Title Commitment and in compliance with the terms of this document and the Escrow Closing Instruction Letter,
  - c. All water charges, sewer assessments, special assessments and real estate taxes currently due and payable are paid, or the escrow agent has arranged to pay, from loan proceeds or borrower funds, any of these items which are due and not yet paid,
  - d. All prior financing statements filed in the name of the borrower, as debtor, with the office of the Secretary of State are satisfied and released or the escrow agent has arranged to pay, from loan proceeds, any item which has not yet been paid and shall obtain a release,
  - e. The required insurance coverages acceptable to Bondholder Representative are in place and have been paid for, and
  - f. The Bondholder Representative's Closing Department has provided instructions in person or by facsimile to disburse the loan funds in accordance with the approved Settlement Statement.

8. Document Recording. It is essential that recordation of the Deed of Trust and the Financing Statement (UCC-1) (the “Recorded Documents”) take place on the same day as the loan funding whenever possible. Therefore, documents should be hand-carried to the county clerk’s office. If documents are going out of town, including those to the Secretary of State’s office, they should be sent by overnight delivery to a recording service or local agent of the title company in anticipation of the wire transfer being received, so that they will be in the recording office when the funding is to occur. Bondholder Representative must have one recorder-certified copy of each recorded document no later than seventy two hours following the closing. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder’s receipt reflecting the recording date.
9. Post-closing.
  - a. **If not received by Bondholder Representative at closing, Bondholder Representative’s Closing Department must receive the following within twenty four hours after closing:**
    - (1) One (1) original and one (1) certified copy of the Note.
    - (2) One (1) original and one (1) certified copy of each Guaranty (if more than one).
    - (3) One (1) original and one (1) certified copy of each of the loan documents.
    - (4) One (1) original and one (1) certified copy of the resolutions of the borrower.
    - (5) Two (2) certified copies of the HUD- 1 Settlement Statement.
    - (6) Payment for loan fees, preliminary interest and escrow reserves should be made out in separate checks, payable to Capital One, National Association.
  - b. **Within seventy-two (72) hours after closing, Bondholder Representative must receive the following:**
    - (1) One (1) original and one (1) certified copy of the Mortgagee Title Policy (or Title Binder) including “jackets”, with all required endorsements.
    - (2) One (1) recorder certified copy of each of the Recorded Documents. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder’s receipt reflecting the recording date.
    - (3) One (1) recorder-certified copy of each of the UCCs. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder’s receipt reflecting the recording date.
  - c. **Within twenty-one (21) days after closing, Bondholder Representative must receive the following:**

- (1) The original Recorded Documents.
- (2) The original UCCs.

### **Confirmation and Notification**

Bondholder Representative must be notified immediately to confirm ability of title company and escrow agent to meet the above requirements and deadlines. For closing review purposes, the Title Commitment and title exception documents will be reviewed by Bondholder Representative's Counsel and Bondholder Representative's Closing Department. Please contact Bondholder Representative's Closing Department for contact information regarding Bondholder Representative's Counsel. The Bondholder Representative's Closing Department contact information is as follows:

Capital One, National Association  
5444 Westheimer, 6th Floor  
Attn: 31762  
Houston, Texas 77056

## **SCHEDULE L**

### **SURVEY REQUIREMENTS**

1. The purpose of this document is to provide information to the borrower, surveyor, and title company regarding survey requirements for loans originated by Capital One, National Association ("Bondholder Representative") that are initially intended to be held in Bondholder Representative's own loan portfolio. Please note that Bondholder Representative requires a current survey on all commercial real estate loans. Since Bondholder Representative requires that the certification on the survey be addressed to the borrower, the title company and the Bondholder Representative, usually an existing survey is inadequate for loan purposes. Bondholder Representative will accept revised or updated surveys meeting the Survey Requirements as detailed in this document. Any questions concerning these requirements should be directed to Bondholder Representative's Closing Department. It is recommended that the borrower reference these requirements when obtaining bids and engaging qualified surveyors.

2. A satisfactory survey is required prior to closing of all Loans. An acceptable "slab" survey is required prior to application for the first construction advance for building foundations. An "as built" survey is typically required by the title company to obtain a completion endorsement and thus may be required at the sole discretion of Bondholder Representative upon completion of the improvements.

3. Surveys must be acceptable to the title insurance company insuring the lien of the Mortgage for purposes of insuring title free and clear of any survey exceptions. Surveys must either be prepared in accordance with the latest approved version of the Minimum Standard Detail Requirements for American Land Title Association ("ALTA") Land Title Surveys, jointly established and adopted by ALTA, ACSM and NSPS, and must meet the requirements of the Urban Survey thereunder, or if the subject property is located in the State of Texas, the survey may be prepared in accordance with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey (Land Title, Urban). The legal description of the Mortgaged property shown on the face of the survey must conform to the legal description shown in the title insurance commitment for the title insurance policy for the Mortgaged property or the legal description shown in the title insurance commitment must be changed to conform to the survey. If the title insurance commitment refers to a recorded plat, then such plat with appropriate recording references must be indicated on the survey.

1. Field Note Description. Surveys should contain a certified metes and bounds description and should comply with the following requirements:
  - a. Survey should be of a scale of at least one inch equals fifty feet and should identify the scale used (example 1" = 50').
  - b. The beginning point should be established by a monument located at the beginning point, or by reference to a nearby monument and to the point of commencement.
  - c. The sides of the property should be described by giving the distances and bearings of each. Instead of bearings, the interior angle method is acceptable if the beginning

point is on a dedicated public street line or a fixed line on other property, or if the course of the first side can be otherwise properly fixed.

- d. The distances, bearings, and angles should be taken from an instrument survey by a registered professional engineer or registered public surveyor.
  - e. Curved courses should be described by data including: length of arc, radius of circle for the arc and chord distance and bearing.
  - f. The legal description should be a single perimeter description of the entire property. Division of the property with separate parcels is not acceptable unless it serves a special purpose of the Mortgage and is approved by in advance by Bondholder Representative. Division is necessary, however, if the plot is located on two sides of a public way. It is acceptable to describe an easement appurtenant to a fee parcel by using a separate parcel description.
  - g. The description should include a reference to all streets, alleys, and other rights-of-way that abut the property surveyed, and the width of all rights-of-way mentioned should be given the first time these rights-of-way are referenced to.
  - h. For each boundary line abutting a street, road, alley or other means of access, the description must, in calling the boundary line, state that the boundary line and the right-of-way line are the same.
  - i. If the property surveyed has been recorded on a map or plat as part of an abstract or subdivision, reference to such recording data should be made.
  - j. The total acreage and square footage of the land must be shown.
  - k. The metes and bounds description must return to the point of commencement.
2. Lot and Block Description. If the property is included within a properly established recorded subdivision or addition, then a lot and block description or reserve description will be an acceptable substitute for a metes and bounds description, provided that the lot and block description or reserve description completely and properly identifies the name or designation of the recorded subdivision or addition and gives the recording information therefor.
3. Map or Plat. Surveys should also contain a certified map or plat clearly showing the following:
- a. The property to be covered by the Mortgage.
  - b. The point of beginning of said property and its relation to the monument from which it is fixed.
  - c. Corners or boundary stakes, stating material (1/2" I.P., 4" x 4" Concrete, initials or markings) and whether found by surveyor or set by surveyor.



- d. All distances, angles and other calls shown in the legal description.
- e. Direction arrow (North).
- f. If the property has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot, block lines (with distances and bearings), and numbers must be shown.
- g. All easements appurtenant to said property showing recording information therefor by volume and page, width thereof, and encroachments thereon. In the event easements affect the parcel, but cannot be shown with specificity, you should contact Bondholder Representative, as blanket easements are generally not permitted.
- h. The boundary lines of the street or streets abutting the property with the name and width of said streets and whether paved, blacktop, gravel or dirt.
- i. The distance from the nearest intersecting street or road to the property.
- j. All encroachments and protrusions if any, from or upon the land or any improvements thereon or upon any easement, building setback line or other restricted area, with exact measurements.
- k. Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersections(s).
- l. Flood zone designation (with property annotation based on Federal Flood Insurance Rate Maps on the State or local equivalent, by scaled map location and graphic plotting only).
- m. Identify and show, if possible, setback, height and bulk restrictions of record or disclosed by applicable restrictive covenant, recorded plat, zoning or building codes (identifying the source in each case, by volume and page reference, if applicable). If none, so state.
- n. The exterior dimensions of all buildings at ground level with horizontal lengths of all sides and the relation thereof by distances to (i) all boundary lines of the property, (ii) easements, (iii) established building lines and (iv) street lines.
- o. All street addresses of all improvements on the subject property.
- p. Substantial, visible improvements (in addition to buildings) such as signs, parking areas (showing number and stripping) or structures, swimming pools, driveways, fences, sidewalks, stoops, landscaping, etc.
- q. Parking areas and, if striped, the striping and the type (e.g., handicapped, motorcycle, regular, etc.) and the number of parking spaces.

- r. Indication of access to a public way such as curb cuts, or driveways marked.
- s. Location of utilities serving or existing on the property including points of ingress to and egress as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information).
- t. A legend of all symbols used in the survey.
- u. The scale of all distances and dimensions on the plat.
- v. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements.
- w. Significant observations not otherwise disclosed, including, but not limited to visible evidence of unusual subsurface matters and general knowledge about the neighborhood (such as condemnation of the area by the US Environmental Protection Agency (EPA) or restricted building heights imposed by the Federal Aviation Administration (FAA)).
- x. Areas devoted or restricted in reciprocal easement agreements, showing the limits of any off-site appurtenant easements and the outline of any buildings within the reciprocal easement.
- y. A note stating that the legal description describes the same property as the title commitment.
- z. Observable evidence of earth moving work, building construction or building additions within recent months.
- aa. Any changes in street right of way lines, either completed or proposed and available from the controlling jurisdiction, observable evidence of recent street or sidewalk construction or repairs.
- ab. Observable evidence of site use as a solid waste dump, sump or sanitary landfill.
- ac. The number of stories of all structures and the types of materials comprising the exterior walls and roofs of all buildings.
- ad. The mean highwater base line or other legal boundary of any bodies of water adjoining or located on the premises.
- ae. Observable evidence of cemeteries.
- 4. Surveyor's Certification. To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client): This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements

for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1-4,7-9, 11 and 16 of Table A thereof. The fieldwork was completed on \_\_\_\_\_ *[date of Plat or Map]*: \_\_\_\_\_ *(Surveyor's signature, printed name and seal with Registration/License Number)*.

5. Seal and Date. Immediately below the certification must appear the signature, seal and registration number of the registered public surveyor who made the survey, or under whose supervision the survey was made, and the date of the survey must be dated within 90 days of the closing date.

**4. For closing review purposes, it is requested that copies of the survey be provided to the Bondholder Representative's Closing Department, Bondholder Representative's Counsel and the title company escrow officer as soon as available, but in any event at least three business days prior to the closing date. Please contact Bondholder Representative's Closing Department for contact information regarding Bondholder Representative's Counsel and the title company. The Bondholder Representative's Closing Department contact information is as follows:**

**Ricardo Ifill  
ricardo.ifill@capitalonebank.com  
Phone (212) 216-8940  
Fax: (917) 351-0344**

**SCHEDULE M**  
**TAX CREDIT ALLOCATION**  
**FOLLOWS THIS PAGE**

**SCHEDULE N**

**AFFIDAVIT OF COMMENCEMENT**

THE STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS                 §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of Austin Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), manager of Housing First Oak Springs, GP, LLC, general partner of HOUSING FIRST OAK SPRINGS, LP ("Owner"), and \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ ("Original Contractor"), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

1.       The Owner is the owner a leasehold interest in and to the real property (the "Land") situated in Travis County, Texas, more particularly described in **Exhibit A**, attached hereto and made a part hereof for all purposes, on which building and other related improvements (the "Improvements") are being constructed or renovated.

2.       The address of Owner is:

HOUSING FIRST OAK SPRINGS, LP  
1430 College Street  
Austin, Texas 78704

3.       The address of Original Contractor is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4.       The name and address of any other original contractor, presently known, after reasonable inquiry, to the Affiants, to the Owner or to the Original Contractor, that is furnishing, or will furnish, labor, service, or materials, for the construction of the Improvements, and the nature of such labor, service or materials, is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Work on the Improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements) actually commenced on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_.m.

6. This affidavit has been jointly made by Owner and Original Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

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

OWNER:

HOUSING FIRST OAK SPRINGS, LP, a Texas limited partnership

By: Housing First Oak Springs, GP, LLC, a Texas limited liability company, its General Partner

By: Austin-Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), a community center created pursuant to Chapter 534 of the Texas Health and Safety Code, its manager

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

CONTRACTOR:

\_\_\_\_\_

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

STATE OF TEXAS                               §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2017, by David Evans, \_\_\_ of Austin -Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), a community center created pursuant to Chapter 534 of the Texas Health and Safety Code, on behalf of said community center, the manager of Housing First Oak Springs, GP, LLC, a Texas limited liability company, acting in its capacity as general partner of HOUSING FIRST OAK SPRINGS, LP, a Texas limited partnership.

Notary Public, State of Texas

[illegible]

SUBSCRIBED AND SWORN BEFORE ME, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a Texas \_\_\_\_\_, on behalf of said \_\_\_\_\_.

Notary Public, State of Texas



## SCHEDULE O

### AFFIDAVIT AND CERTIFICATE OF COMPLETION

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

BEFORE US, the undersigned authorities, on this day personally appeared \_\_\_\_\_ of \_\_\_\_\_ ("Architect"), \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ ("Original Contractor"), and \_\_\_\_\_, \_\_\_\_\_ of Austin -Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), manager of Housing First Oak Springs, GP, LLC, general partner of HOUSING FIRST OAK SPRINGS, LP ("Owner"), known by us to be the persons whose names are subscribed below, and who, being by first duly sworn, did on their oath state and certify as follows:

1. Owner, whose address is 1430 College Street, Austin, Texas 78704, is the owner of a leasehold interest in the real property situated in Travis County, Texas, more particularly described on **Exhibit A**, on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is \_\_\_\_\_.

2. The Improvements under the original contract between the Owner and the Original Contractor (including all on-site and off-site Improvements) have been completed on \_\_\_\_\_, 2017, in accordance with the approved Plans and Specifications listed on the attached **Exhibit B**.

3. After reasonable investigation, to the best of their knowledge, (a) the Project complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on-site in constructing the Improvements or incorporated into the Project, other than in compliance with applicable law.

4. All utility services necessary for the proper operation of the Improvements for its intended purpose are connected to and in sufficient capacity at the Project, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the Improvements to be served by gas), electricity and telephone facilities (in the case of Owner, this statement being made to the best of Owner's knowledge).

5. After reasonable investigation, to the best of our knowledge, the condition of the soil of the Project is adequate to support the Improvements.

6. The Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to the best of Owner's knowledge).

Architect did and does hereby additionally state and certify as follows:

- (a) Design and as built conditions for the Project are such that no drainage or surface or other water other than normal surface drainage will drain across or rest upon either the Project or land of others; and
- (b) None of the Improvements creates or will create an encroachment over, across or upon any of the Premises boundary lines, building liens, setbacks, rights-of-way or easements.
- (c) None of the Improvements creates or will create an encroachment over, across or upon any of the Project boundary lines, building liens, setbacks, rights-of-way or easements, and no buildings or other Improvements on adjoining land create such an encroachment.

The Owner did and does hereby additionally state and certify as follows: All roads and rights-of-way necessary for the utilization of the Project for its intended purposes have been completed or acquired.

7. Notice. ANY SUBCONTRACTOR OR OTHER LIEN CLAIMANT MAY NOT HAVE A LIEN ON RETAINED FUNDS UNLESS THE CLAIMANT FILES AN AFFIDAVIT CLAIMING A LIEN NO LATER THAN THE 30<sup>TH</sup> DAY AFTER THE DATE OF COMPLETION.

AFFIANT "ARCHITECT":

\_\_\_\_\_

SUBSCRIBED AND SWORN BEFORE ME, on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

AFFIANT "ORIGINAL CONTRACTOR":

\_\_\_\_\_

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

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

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

SUBSCRIBED AND SWORN BEFORE ME, on this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_ by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

AFFIANT "OWNER":

HOUSING FIRST OAK SPRINGS, LP, a Texas  
limited partnership

By: Housing First Oak Springs, GP, LLC, a  
Texas limited liability company, its General  
Partner

By: Austin-Travis County Mental Health  
and Mental Retardation Center (d/b/a  
Integral Care), a community center  
created pursuant to Chapter 534 of  
the Texas Health and Safety Code, its  
manager

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

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by David Evans, \_\_\_ of Austin -Travis County Mental Health and Mental Retardation Center (d/b/a Integral Care), a community center created pursuant to Chapter 534 of the Texas Health and Safety Code, on behalf of said community center, the manager of Housing First Oak Springs, GP, LLC, a Texas limited liability company, acting in its capacity as general partner of HOUSING FIRST OAK SPRINGS, LP, a Texas limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas