
LOAN AGREEMENT

Between

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,
as Issuer

and

GULFWAY HOUSING PARTNERS, LP,
as Borrower

Dated as of July 1, 2024

Relating to:

Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(Gulfway Manor)
Series 2024

The interest of the Texas Department of Housing and Community Affairs (the “*Issuer*”) in this Loan Agreement has been assigned (except for “*Reserved Rights of the Issuer*” defined in the Indenture) pursuant to the Trust Indenture, dated as of the date hereof (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the “*Trustee*”), and is subject to the security interest of the Trustee thereunder.

**ARTICLE I
DEFINITIONS**

Section 1.01.	Definitions.....	1
Section 1.02.	Uses of Phrases	2

**ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.01.	Representations, Covenants and Warranties of the Issuer	2
Section 2.02.	Representations, Covenants and Warranties of the Borrower	3

**ARTICLE III
REHABILITATION OF THE PROJECT; ISSUANCE OF THE BONDS**

Section 3.01.	Agreement for Rehabilitation of the Project	8
Section 3.02.	Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds	9
Section 3.03.	Disbursements from the Project Fund.....	9
Section 3.04.	Furnishing Documents to the Trustee	9
Section 3.05.	Establishment of Completion Date	9
Section 3.06.	Borrower Required to Pay in Event Project Fund Insufficient	10
Section 3.07.	Remarketing of Bonds.....	10

**ARTICLE IV
LOAN PROVISIONS**

Section 4.01.	Loan of Proceeds.....	10
Section 4.02.	Amounts Payable	10
Section 4.03.	Fees and Expenses.....	11
Section 4.04.	Obligations of the Borrower Unconditional.....	11
Section 4.05.	Lender Loan and Bridge Loan to the Borrower	12
Section 4.06.	Optional Prepayment.....	12

**ARTICLE V
SPECIAL COVENANTS**

Section 5.01.	No Warranty of Condition or Suitability by the Issuer	12
Section 5.02.	Access to the Project	13
Section 5.03.	Further Assurances and Corrective Instruments	13
Section 5.04.	Issuer and Borrower Representatives.....	13
Section 5.05.	Financing Statements	13
Section 5.06.	Allocation and Use of Proceeds to Eligible Costs	13
Section 5.07.	Restriction on Plans and Specifications	13
Section 5.08.	Requisitions.....	13
Section 5.09.	Covenant with Bondholders.....	14
Section 5.10.	Covenant to Provide Ongoing Disclosure.....	14
Section 5.11.	Borrower Receipt of Insurance or Condemnation Proceeds	14

Section 5.12.	Reporting Requirements of the Borrower	14
Section 5.13.	Indenture	15
Section 5.14.	Financial Information.....	15
Section 5.15.	Tax Credit Requirement.....	15
Section 5.16.	Brokers and Financial Advisors	15
Section 5.17.	Trial by Jury	15
Section 5.18.	Issuer, Trustee and Lender Not in Control; No Partnership.....	16
Section 5.19.	Regulatory Agreement	16
Section 5.20.	Tax Matters	17

ARTICLE VI RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION

Section 6.01.	Restriction on Transfer.....	17
Section 6.02.	Indemnification by Borrower.....	19
Section 6.03.	The Issuer to Grant Security Interest to Trustee	25

ARTICLE VII DEFAULTS AND REMEDIES

Section 7.01.	Defaults Defined	25
Section 7.02.	Remedies on Default.....	26
Section 7.03.	No Remedy Exclusive.....	26
Section 7.04.	No Additional Waiver Implied by One Waiver	26
Section 7.05.	Right to Cure.....	26
Section 7.06.	No Interference or Impairment of Lender Loan.....	27

ARTICLE VIII HAZARDOUS MATERIALS

Section 8.01.	Reserved.....	28
Section 8.02.	Compliance Regarding Hazardous Substances.....	28
Section 8.03.	Notices Regarding Hazardous Substances	28
Section 8.04.	Remedial Work	28
Section 8.05.	Indemnity Regarding Hazardous Substances.....	29
Section 8.06.	Defense of Indemnified Parties.....	30

ARTICLE IX MISCELLANEOUS

Section 9.01.	Term of Agreement.....	30
Section 9.02.	Notices; Publication of Notice	30
Section 9.03.	Nonrecourse Liability of Borrower.....	31
Section 9.04.	No Pecuniary Liability of the Issuer; Issuer May Rely.....	31
Section 9.05.	Binding Effect	33
Section 9.06.	Severability	33
Section 9.07.	Amounts Remaining in Funds.....	33

Section 9.08.	Amendments, Changes and Modifications	33
Section 9.09.	Execution in Counterparts.....	33
Section 9.10.	Applicable Law	33
Section 9.11.	Captions	34
Section 9.12.	Conflict with HUD-Insured Loan and HUD Regulations; Supremacy of Senior Lender Mortgage and HUD Regulatory Agreement	34
Section 9.13.	Third Party Beneficiary.....	35

Exhibit A – Project Description	
Exhibit B – Form of Promissory Note	
Exhibit C – Form of Completion Certificate	

LOAN AGREEMENT

THIS LOAN AGREEMENT (“*Agreement*” or “*Bond Loan Agreement*”) is entered into as of [July 1], 2024, between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (together with its successors and assigns, the “*Issuer*”), and GULFWAY HOUSING PARTNERS, LP, a Texas limited partnership (the “*Borrower*”).

WITNESSETH:

WHEREAS, by virtue of the authority of the laws of the State of Texas (the “*State*”), and particularly the provisions of Chapter 2306, Texas Government Code, as amended (the “*Act*”), the Issuer is authorized to make loans to finance the cost of a “*development*” (as defined in the Act) and to issue bonds, notes or other evidences of indebtedness from time to time for such purposes; and

WHEREAS, the Borrower has requested the Issuer to issue its Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), the proceeds of which will be utilized to make a loan to the Borrower (the “*Bond Loan*”) to finance a portion of the costs of the acquisition, rehabilitation and equipping of an approximately 151-unit multifamily housing residential rental development known as Gulfway Manor Apartments and located in Nueces County, Texas (the “*Project*”); and

WHEREAS, pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance the acquisition, rehabilitation and equipping of the Project and the payment of certain costs of issuance by issuing the Bonds, pursuant to a Trust Indenture dated as of July 1, 2024 (the “*Indenture*”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association, as trustee (the “*Trustee*”); and

WHEREAS, the Bond Loan will be evidenced by this Agreement and a promissory note (the “*Note*”), from the Borrower to the Issuer in the form of *Exhibit B* hereto; and

WHEREAS, in order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer, the Borrower and the Trustee have entered into the Tax Exemption Agreement and the Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

WHEREAS, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** All capitalized, undefined terms used herein shall have the same meanings ascribed thereto in the Indenture.

Section 1.02. **Uses of Phrases.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Holder,” “Owner” and “Person” shall include the plural as well as the singular number. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.01. **Representations, Covenants and Warranties of the Issuer.** The Issuer represents, covenants and warrants that:

(a) The Issuer is a public and official agency of the State. Under the provisions of the Act and the resolution adopted by the Issuer on [June 13], 2024, the Issuer is authorized to enter into the Issuer Documents and to carry out its obligations thereunder. By proper action of its governing body, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer covenants that it will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture.

(c) The Issuer hereby finds and determines that financing the Project by the issuance of the Bonds will further the public purposes of the Act.

(d) No member of the governing body of the Issuer, nor any other officer or employee of the Issuer, has any interest, financial, employment or otherwise, in the Borrower, the Project or in the transactions contemplated hereby.

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

(f) 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.

(g) The Issuer will not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

Section 2.02. **Representations, Covenants and Warranties of the Borrower.** The Borrower represents, covenants and warrants that:

(a) *Good Standing; Single Purpose Covenants.* The Borrower (i) is a limited partnership duly organized and existing in good standing under the laws of the State of Texas, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Exemption Agreement and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower's business and purpose shall consist solely of the ownership, rehabilitation, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness and normal trade accounts payable in the ordinary course of the Borrower's business. The Borrower shall not assume or guaranty any other Person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due. The Borrower shall: maintain books and records and bank accounts separate from those of any other Person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other Person.

(b) *Authority.* The Borrower has full power and authority to (i) execute and deliver the Documents to which it is a party and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of the Documents to which the Borrower is a party have been obtained.

(c) *Binding Agreements.* The Borrower Documents have been properly executed by a duly authorized signatory of Gulfway Housing Management, LLC, general partner of the Borrower (the "*General Partner*"), and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to

certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) *Litigation.* There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened in writing against the Borrower before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents or which in any way would adversely affect the validity or enforceability of the Bonds or the Documents.

(e) *Conflicts; Defaults.* There is (i) no provision of the Borrower's Organizational Documents, or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower affecting any of the Borrower's property and (ii) to the Borrower's knowledge, no provision of law or order of court binding upon the Borrower or affecting any of the Borrower's property, in each case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents and the other financing documents and regulatory agreements to be entered into at closing in connection with this transaction, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(f) *Title to Project, Liens and Encumbrances.* The Borrower is the fee simple owner of the Project, free and clear of all liens or encumbrances other than those encumbrances set forth on Schedule B of Title Proforma File No. [] issued by Chicago Title Insurance Company (the "Permitted Encumbrances"). There exist no liens, encumbrances or other charges against the Project (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances. The Borrower is the sole borrower under the Bond Loan.

(g) *Indenture.* The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

(h) *Events Affecting Tax Exemption.* The Borrower has not taken or permitted to be taken any action that would impair the Federal Tax Status of the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Exemption Agreement, and the representations set forth in the Tax Exemption Agreement pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above,

if the Borrower becomes aware of any situation, event or condition that would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower promptly shall give written notice thereof to the Issuer and the Trustee.

(i) *Compliance with Laws and Documents.* The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto with respect to multifamily rental housing and/or qualified residential rental facilities. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of any applicable Governmental Authority and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be obtained all requisite approvals of the Issuer and of any applicable Governmental Authority or other federal and local governmental bodies required for the operation of the Project. The Project is located wholly within the boundaries of the Issuer's jurisdiction.

(j) Compliance by the Borrower with the provisions of the Bond Documents and the Borrower Documents will not involve, to the extent applicable, any prohibited transaction within the meaning of the Employee Retirement Income Security Act of 1974, as amended (sometimes referred to in this subparagraph 2.02(i) as "*ERISA*"), or Section 4975 of the Code. No "employee pension benefit plans", that are subject to Title IV of ERISA (sometimes referred to in this subparagraph 2.02(i) as "*Plans*"), maintained by the Borrower, nor any trust created thereunder, have incurred any "accumulated funding deficiency" as defined in Section 302 of ERISA, to the extent applicable and the present value of all benefits vested under all Plans, if any, did not exceed, as of the last annual valuation date, the value of the assets of the Plans allocable to such vested benefits.

(k) The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis that satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases that comply with all applicable laws.

(l) The Borrower shall, through the term of this Agreement and at no expense to the Issuer, promptly comply or cause compliance with all applicable laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the Americans with Disabilities Act, all federal, State and local environmental, health and safety laws, rules, regulations and orders applicable to or pertaining to the Project and Federal Worker Adjustment and Retraining Notification Act.

(m) *No Material Misstatements.* The representations and warranties of the Borrower contained in the Borrower Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects,

do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(n) The information used in the preparation of the financial statements of the Borrower, the Borrower Documents and any other written statement furnished by the Borrower to the Issuer (including the descriptions and information contained in the Official Statement relating to (i) the Borrower and the Project, (ii) the operations and financial and other affairs of the Borrower, (iii) the application by the Borrower of the proceeds to be received by it from the Bond Loan and (iv) the participation by the Borrower in the transactions contemplated in this Bond Loan Agreement and in the Official Statement, including, without limitation, the information relating to the Borrower in the Official Statement under the caption "Certain Bondholders' Risks"), do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading. There is no fact that the Borrower has not disclosed to the Issuer in writing that materially adversely affects or, so far as the Borrower can now foresee, will materially adversely affect the financial condition of the Borrower, the ability of the Borrower to own and operate the Project or the Borrower's ability to make payments on the Note when and as the same become due and payable.

(o) *Interest of Member or Agent of the Issuer.* To the knowledge of the Borrower, no member of the governing body of the Issuer or other agent of the Issuer has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other Persons, in the loan of the Bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents. There (i) is no completed, pending or threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project or the Borrower and (ii) has been no assertion or exercise of jurisdiction over the Project or the Borrower by any court empowered to exercise bankruptcy powers.

(p) *Tax Returns.* The Borrower will timely file all tax returns for the Borrower, and pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties. No claims with respect to any taxes have been assessed upon the Borrower and remain unpaid.

(q) *No Reliance on the Issuer.* The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner, except to issue the Bonds.

(r) *Fees.* The Borrower shall pay all fees as provided under the Note and in this Agreement, when due and payable without demand pursuant to Section 4.03 hereof, which fees shall be paid to the Trustee for deposit in the Expense Fund.

(s) *Name of Borrower.* The Borrower filed its Certificate of Formation with the State of Texas under the name of Gulfway Housing Partners, LP.

(t) *Governmental Requirements.* To the Borrower's knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of Governmental Authorities having jurisdiction over the Project, all necessary utilities are or will be available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(u) *Condemnation.* No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened in writing, with respect to the Project or any portion thereof.

(v) *Governmental Approvals.* The Borrower has obtained, or will obtain and there are currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, rehabilitation, equipping, financing and operation of the Project.

(w) *No Cease and Desist.* The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

(x) *No Intent of Sale of Project.* The Borrower intends to hold the Project for its own account and has no current plans to sell and has not entered into any agreement to sell any of the Project.

(y) *Notification of Default.* The Borrower agrees to immediately notify the Trustee and the Issuer in writing of any Default, or any event which with notice or the passage of time would constitute a Default.

(z) *Maintenance of Insurance.* The Borrower will promptly cause to be paid all premiums for insurance policies required to be maintained for the Project. The Borrower shall, at all times during the term of the Bond Loan, maintain at its sole cost and expense, for the mutual benefit of the Borrower, the Lender and the Trustee, all of the insurance specified in Section 6.10

of the Lender Disbursement Agreement, as required by Lender and the Issuer and applicable law, and in such amounts and with such maximum deductibles as the Lender and the Issuer may require, as those requirements may change.

(aa) *Lease or Use of Project.* The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project now in effect except for leases to residential tenants in compliance with the Regulatory Agreement.

(bb) *Non-Discrimination.* The Borrower has not and shall not discriminate on the basis of race, creed, religion, color, sex, marital status, 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. The Borrower specifically agrees that the Borrower will not refuse to lease units in the Project to persons whose family includes minor dependents who will occupy such unit, unless such refusal is based upon factors not related to the presence of such minors in the family, which factors may include, but shall not be limited to, negative credit, rental history or potential overcrowding of a unit

(cc) *State Law Verifications.* The Borrower makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended. As used herein, “affiliate” means an entity that controls, is controlled by, or is under common control with the Borrower within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited, notwithstanding anything herein or therein to the contrary.

The Borrower represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153, Texas Government Code, or Section 2270.0201, Texas Government Code. The foregoing representation excludes the Borrower and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.

For purposes of Chapter 2271, Texas Government Code, Chapter 2274, Texas Government Code, and Chapter 2276, Texas Government Code, the Borrower hereby represents that it does not have at least 10 full-time employees.

ARTICLE III

REHABILITATION OF THE PROJECT; ISSUANCE OF THE BONDS

Section 3.01. **Agreement for Rehabilitation of the Project.** (a) The Borrower agrees to make or cause to be made all contracts and do all things necessary for the acquisition, rehabilitation and equipping of the Project. The Borrower further agrees that it will acquire and construct the Project in accordance with approved Plans and Specifications with all reasonable dispatch and use its best efforts to cause acquisition, rehabilitation and equipping of the Project to be completed by

the Completion Date, or as soon thereafter as may be practicable, delays caused by force majeure as defined in Section 7.01 hereof only excepted; but if for any reason such acquisition, rehabilitation and equipping is not completed by said Completion Date, there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.02 hereof to be paid by the Borrower.

(b) The Borrower shall cause the Project to be maintained in good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) and shall not remove, demolish or materially alter the improvements to the Project (except for the performance of the construction or rehabilitation work comprising the Project or removal of aging or obsolete equipment or furnishings in the normal course of business). After completion of repairs, no structural or other material defect or damages to the Development will exist, whether latent or otherwise.

Section 3.02. **Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.** In order to provide funds for the payment of the Qualified Project Costs, the Issuer, concurrently with the execution of this Agreement, will issue, sell and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited into the Project Fund.

Section 3.03. **Disbursements from the Project Fund.** In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project in the manner consistent with the Tax Exemption Agreement. The Trustee shall make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as Exhibit B. The Borrower agrees that the moneys transferred by the Trustee from the Project Fund to any reserve fund required by the Lender Disbursement Agreement shall only be disbursed for Qualified Project Costs as permitted by the Tax Exemption Agreement.

Section 3.04. **Furnishing Documents to the Trustee.** The Borrower agrees to cause such Requisitions to be directed to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof.

Section 3.05. **Establishment of Completion Date.** (a) The Borrower shall evidence completion of the Project and the actual date of completion to the Issuer and the Trustee by an executed Completion Certificate in the form attached hereto as *Exhibit C*, as promptly as practicable, but no more than thirty (30) days after the occurrence of events and conditions referred to in paragraphs (a), (b) and (d) of the Completion Certificate. The Completion Certificate shall be executed by the Borrower and shall state to the best information and belief of the Borrower, after due inquiry, that rehabilitation of the Project has been completed in material compliance with all applicable laws, regulations and agreements, and all costs of labor, services, materials and supplies used in the Project have been paid, all equipment necessary for the operation of the Project has been purchased, installed and paid for, is suitable and sufficient for its intended purposes, and is fully operable, all costs and expenses incurred in connection with the Project have been paid except for amounts not yet due and payable or being diligently contested in good faith by the Borrower, and the Project is suitable and sufficient for its intended purposes. The Trustee may conclusively rely on such Completion Certificate. The Borrower shall also attach to the

Completion Certificate a table of sources and uses showing the final allocation for all sources of funding for the Project.

(b) Notwithstanding anything contained in the Documents to the contrary, the Borrower shall not be able to prepay the Bond Loan and optionally redeem the Bonds unless and until the Project has been completed in accordance with the requirements of this Article III.

Section 3.06. **Borrower Required to Pay in Event Project Fund Insufficient.** In the event the moneys in the Project Fund available for payment of the Costs of the Project are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund. The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that, if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Costs of the Project pursuant to the provisions of this Section 3.06, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement. Notwithstanding the foregoing, the terms, conditions and covenants of this Section 3.06 do not in any way affect the ability of the Issuer to pursue its rights and remedies under the Documents.

Section 3.07. **Remarketing of Bonds.** The Borrower is hereby granted the right to request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and, in consultation with the Remarketing Agent, designate the length of the remarketing period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture.

ARTICLE IV

LOAN PROVISIONS

Section 4.01. **Loan of Proceeds.** The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.03 hereof.

Section 4.02. **Amounts Payable.**

(a) On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered the Capitalized Interest Deposit, if any, to the Trustee for deposit to the Capitalized Interest Account of the Bond Fund.

(b) The Borrower hereby covenants and agrees to repay the Bond Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in the Capitalized Interest Account of the Bond Fund and the Collateral Fund, will enable

the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Indenture. Deposits into the Bond Fund for payments by the Trustee of principal and interest on the Bonds from amounts in the Capitalized Interest Account of the Bond Fund or the Collateral Fund shall be credited against the Borrower's obligation to pay principal and interest on the Bond Loan.

(c) It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (b) of this Section 4.02 are assigned by the Issuer in accordance with the terms of the Indenture to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund and the Expense Fund). The Borrower consents to such assignment.

(d) In the event the Borrower should fail to make any of the payments required in this Section 4.02, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

Section 4.03. **Fees and Expenses.** The Borrower agrees to pay, when due, the Issuer's Fees, the Trustee's Fee and the Rebate Analyst Fee and any and all other costs or expenses at any time incurred by the Issuer, the Trustee, the Dissemination Agent or the Rebate Analyst (including the reasonable fees and expenses of their counsel actually incurred) in connection with the issuance, sale and delivery of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing. Specifically, and without limiting the foregoing, the Borrower agrees to pay to and indemnify any Issuer Indemnified Party (as defined below), the Trustee or any payee designated by the Issuer, within thirty (30) days after receipt of request for payment thereof, all reasonable expenses of the Issuer and the Trustee actually incurred and related to the Project and the financing thereof that are not paid from the funds held under the Indenture, including, without limitation, reasonable legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents.

The obligations of the Borrower under this Section 4.03 shall survive the termination of this Bond Loan Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents.

Section 4.04. **Obligations of the Borrower Unconditional.** The obligations of the Borrower to make the payments required under this Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other Person. Subject to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and the other Documents and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction,

destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any 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, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

Section 4.05. **Lender Loan and Bridge Loan to the Borrower.** To provide and secure funds for the completion of the Project, and to provide for the delivery of a Lender Collateral Deposit and other Preference Proof Funds, the Borrower shall concurrently with the execution and delivery hereof, (a) obtain the Lender Loan from the Lender and enter into the Lender Mortgage and (b) obtain the Bridge Loan from the Bridge Lender. The Borrower will promptly take all necessary actions on its part to close the Lender Loan and the Bridge Loan and to satisfy all other terms and conditions of the Lender Loan and the Bridge Loan and the requirements of the Lender and Bridge Lender, as applicable.

Pursuant to the terms of the Funding Agreement, the Borrower shall cause the Lender and/or Bridge Lender, as applicable, to advance funds in an aggregate amount not to exceed [\$27,500,000] comprising one or more Lender Collateral Deposits or deposits of Bridge Loan proceeds, as applicable, to the Trustee for deposit into the Collateral Fund subject to Section 6.02 of the Indenture.

Section 4.06. **Optional Prepayment.** The Bond Loan is subject to optional prepayment by the Borrower according to the same terms and conditions as an optional redemption of Bonds set forth in Section 3.01 of the Indenture.

ARTICLE V

SPECIAL COVENANTS

Section 5.01. **No Warranty of Condition or Suitability by the Issuer.** The Borrower recognizes, acknowledges and agrees that the Issuer makes no warranty or representation, express or implied or otherwise, with respect to the development or the location, use, description, design, merchantability, condition, workmanship, or fitness, suitability or use for any particular purpose, condition or durability thereof. The Borrower further recognizes that the Issuer makes no representations or warranties of any kind as to the Borrower's title to the Project or ownership thereof or otherwise, 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. These provisions 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 of the State of Texas or another law now or hereafter in effect or otherwise.

Section 5.02. **Access to the Project.** The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the rehabilitation thereof at all reasonable times upon reasonable notice. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times and upon reasonable notice, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

Section 5.03. **Further Assurances and Corrective Instruments.** The Borrower agrees that it will, and will request the Issuer to, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

Section 5.04. **Issuer and Borrower Representatives.** Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

Section 5.05. **Financing Statements.** The Borrower shall file, or shall cause to be filed, and shall deliver copies to the Trustee of, any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorneys' fees) associated therewith.

Section 5.06. **Allocation and Use of Proceeds to Eligible Costs.** Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Bonds, all of the Bond proceeds shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the land on which it is located, and (2) used exclusively to pay costs of acquisition, rehabilitation and equipping of the Project which are includable in the aggregate basis of any building and the land on which the building is located ("*Eligible Costs*") in a manner such that each building satisfies the requirement of Section 42(h)(4)(B) of the Code. Accordingly, none of the proceeds of the Bonds will be deemed to have been used to pay any of the Costs of Issuance for the Bonds or to fund any fund or account other than the Project Fund or an account to be used to pay Eligible Costs.

Section 5.07. **Restriction on Plans and Specifications.** The Borrower will not cause, permit or suffer to exist any material deviations from the Plans and Specifications and will not approve or consent to any construction change directive without the prior approval of the Lender and the Equity Investor.

Section 5.08. **Requisitions.** (a) Beginning on the Closing Date, the Borrower may complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Project Fund to the Borrower to pay Costs of the Project. The Trustee shall be authorized to conclusively rely on such Requisition. Each Requisition shall be signed on behalf of the

Borrower and shall be in the form set forth on Exhibit B to the Indenture. Each Requisition for amounts on deposit in the Project Fund shall state: (1) the number of the Requisition, (2) the amount to be disbursed and the sources of such disbursement, (3) that each obligation described therein is a Cost of the Project, has been properly incurred and has not been the basis for any previous disbursement and (4) that the expenditure of such disbursement when added to all previous disbursements will result in (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance. The Borrower shall submit the Requisitions to the Trustee for payment. Approved Requisitions may be submitted to the Trustee by e-mail or fax.

(b) The amounts deposited into the Project Fund may be disbursed by the Trustee only in accordance with Section 6.02 of the Indenture, including delivery of a written Requisition of the Borrower satisfying the requirements of this Section 5.08 and Section 6.02 of the Indenture.

(c) On the Closing Date, the Borrower shall complete, execute and deliver to the Trustee a Requisition for disbursement of amounts on deposit in the Cost of Issuance Fund to pay Costs of Issuance. Each Requisition shall be signed on behalf of the Borrower and shall be in the form set forth on Exhibit C to the Indenture.

Section 5.09. **Covenant with Bondholders.** The Issuer and the Borrower agree that this Agreement is executed and delivered in part to induce the purchase by others of the Bonds and, accordingly, all covenants and agreements of the Issuer and the Borrower contained in this Agreement are hereby declared to be for the benefit of the Trustee and the Holders of the Bonds from time to time. Notwithstanding the foregoing, the Bondholder's rights to enforce this provision of this Agreement are governed by the terms of the Indenture.

Section 5.10. **Covenant to Provide Ongoing Disclosure.** The Borrower shall enter into a written undertaking for the benefit of the Holders to provide for the continuing disclosure of information about the Bonds, the Borrower and other matters as may be required to cause compliance with Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). Failure of the Borrower to comply with the Rule shall not be a default under the Indenture, this Bond Loan Agreement or any of the other Bond Documents; *provided, however*, the Borrower acknowledges that the Issuer, the Trustee or any Bondholder shall be entitled to bring an action for specific performance to cause the Borrower to comply with the covenant set forth in this Section 5.10.

Section 5.11. **Borrower Receipt of Insurance or Condemnation Proceeds.** In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project from a party other than the Trustee, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Lender for deposit and application in accordance with applicable Lender Loan Documents.

Section 5.12. **Reporting Requirements of the Borrower.** The Borrower will furnish to the Issuer and agencies of the State such periodic reports or statements as are required under the Act, if any, or as such agencies may otherwise reasonably require of the Issuer or the Borrower throughout the term of this Agreement.

Section 5.13. **Indenture.** The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Bond Loan, and this Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

Section 5.14. **Financial Information.** The Borrower agrees that it will have the books and records of the Borrower audited annually by an independent certified public accountant as soon as practicable after the close of each fiscal year of the Borrower, and will furnish within 120 days after the end of each fiscal year to the Trustee, commencing in the fiscal year in which the Completion Certificate is delivered a copy of the audit report certified by such accountant and prepared in accordance with generally accepted accounting principles, which report shall include calculations of the availability of funds for distributions and disclose the amount of distributions to partners of the Borrower for the preceding year. The Borrower acknowledges that the Trustee shall have no obligations under this Section 5.14 other than to receive such statements and, if requested, to furnish such statements to Bondholders.

Section 5.15. **Tax Credit Requirement.** The Issuer, the Trustee and the Borrower each acknowledge that the Borrower intends to cause the Project to satisfy the requirements necessary for low-income housing tax credit (“*Tax Credit*”) pursuant to Section 42 of the Code. In the event that any of the restrictions described in this Agreement conflict with any Tax Credit requirements imposed by Section 42 of the Code, the Issuer, the Trustee and the Borrower each agree that the more restrictive requirements shall control. The provisions of this Section 5.15 are for the benefit of the Borrower and the Trustee shall not have any obligation to enforce this Section 5.15 nor shall it incur any liability to any Person, including without limitation, the Borrower and any other affiliate of the Borrower or the Holders of the Bonds for any failure to meet the requirements of this Section 5.15; and provided further, failure to comply with this Section 5.15 shall not constitute a default or Event of Default under this Agreement.

Section 5.16. **Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with this Bond Loan, other than those disclosed to the Issuer and the Lender and whose fees shall be paid by the Borrower pursuant to a separate agreement. The Borrower and the Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in a way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 5.16 shall survive the expiration and termination of this Agreement and the repayment of the Borrower Obligations.

Section 5.17. **Trial by Jury.** The Borrower hereby agrees not to elect a trial by jury of any issue triable of right by a jury and waives any right to trial by jury fully to the extent that any such right shall hereafter exist with regard to the Documents, or any claim, counterclaim or other action arising in connection therewith. This waiver of right to trial by jury is given knowingly and voluntarily by the Borrower and is intended to encompass individually each instance and each

issue as to which the right to a trial by jury would otherwise accrue. The Trustee is hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver by the Borrower. This Section 5.17 in no way affects the right of the Issuer to elect a trial by jury.

Section 5.18. **Issuer, Trustee and Lender Not in Control; No Partnership.** None of the covenants or other provisions contain in this Bond Loan Agreement shall, or shall be deemed to, give the Issuer, the Trustee or the Lender the right or power to exercise control over the affairs or management of the Borrower, the power of the Issuer, the Trustee and the Lender being limited to the rights to exercise the remedies referred to in the Documents. The relationship between the Borrower and the Issuer, the Trustee, the Lender and the Bondholders is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Documents is intended, nor shall be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Issuer, the Trustee, the Lender or any Bondholder or to create an equity interest in the Project in the Issuer, the Trustee, the Lender or any Bondholder. Neither the Issuer, the Trustee, the Lender nor any Bondholder undertakes or assumes any responsibility or duty to the Borrower or to any other Person with respect to the Project, except as expressly provided in the Documents; and notwithstanding any other provision of the Documents: (1) the Issuer, the Trustee and the Bondholders are not, and shall not be construed as, a partner, joint venture, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members or partners and the Issuer, the Trustee and the Bondholders do not intend to ever assume such status; (2) the Issuer, the Trustee and the Bondholders shall in no event be liable for any of the Borrower Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Issuer, the Trustee and the Bondholders shall not be deemed responsible for or a participant in any acts, omissions or decision to the Borrower or its stockholders, members or partners. The Issuer, the Trustee the Bondholders and the Borrower disclaim any intention to create a partnership, joint venture, agency or common interest in profits or income between the Issuer, the Trustee, the Bondholders and the Borrower or to create an equity an equity interest in the Project of the Issuer, the Trustee or the Bondholders, or any sharing of liabilities, losses, costs or expenses.

Section 5.19. **Regulatory Agreement.** In order to maintain the excludability of interest on the Bonds from gross income for federal income tax purposes and to assure compliance with the Act and other laws of the State, and certain additional requirements of the Issuer, the Borrower has, concurrently with or before the execution and delivery of the Bonds, executed and delivered and will cause to be recorded in the official records of Nueces County, Texas, the Regulatory Agreement. The Borrower covenants to observe and perform its obligations under the Regulatory Agreement and will cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws and the Regulatory Agreement. The Project, when constructed or rehabilitated, will meet the requirements of this Agreement and the Regulatory Agreement and any applicable requirements of the Act and the Code.

The Borrower covenants to file, or cause to be filed, of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such

restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, such restrictions.

Section 5.20. **Tax Matters.**

(a) *Representations and Covenants.* The Borrower represents, warrants and covenants as follows:

(i) The Borrower will not take any action or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the Federal Tax Status of the Bonds. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Exemption Agreement, which is incorporated herein as if set forth fully herein.

(ii) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Agreement.

(iii) Neither the Borrower nor any "related party," within the meaning of Section 1.150-1(b) of the Regulations, to the Borrower shall be permitted to purchase any Bonds in an amount related to the Bond Loan.

(b) *Continuing Compliance.* The requirements stated in this Section 5.20 will survive the defeasance *and* discharge of the Bonds for as long as such matters are relevant to the Federal Tax Status of the Bonds.

ARTICLE VI

RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING; INDEMNIFICATION

Section 6.01. **Restriction on Transfer.** (a) In the event the Borrower intends to sell, lease (except to the tenants who will occupy units in the Project), sublease or otherwise materially encumber the whole of or any part of the Project or sell, assign or otherwise, except as otherwise provided herein, transfer any interest in the Borrower (a "*transfer*"), it shall (i) apply to the Issuer for consent to transfer, *provided* that consent of the Issuer shall not be unreasonably withheld, conditioned or delayed with respect to any transfer which is subject to the approval of the Issuer pursuant to this Section 6.01 and (ii) comply with the provisions of the Regulatory Agreement restricting any such transfer.

(b) In addition, in connection with a proposed transfer, the Borrower and any transferee shall comply with all applicable provisions of the laws and regulations of the State in effect at that time regarding notice to tenants, and tenants' rights generally, including, specifically, the right of first refusal, or any successor legislation thereto. The transferee shall expressly assume the Borrower's duties and obligations under this Agreement and any other Documents to which the Borrower is a party in writing simultaneously with any approved transfer as set forth in this Section 6.01. The Borrower shall make available to the Trustee and the Issuer copies of any documents reflecting an amendment to interests in the Borrower or other organizational documents relating to the sale or other transfer of assets of the Borrower.

(c) Except as otherwise provided for herein, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(d) Except as otherwise provided for herein, no interest in the Borrower and no ownership interest in the General Partner of the Borrower may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise.

(e) Notwithstanding anything to the contrary contained in the subsections above or otherwise in the Borrower Documents, each of the following transactions are hereby deemed to be expressly permitted hereunder and, except to the extent required under the Regulatory Agreement, shall not require any further consent of the Issuer, provided that notice is provided to the Issuer:

(i) Reserved.

(ii) The transfer by the Equity Investor of all or any portion of its interest in the Borrower;

(iii) The pledge and encumbrance of the interests in the Borrower of the Equity Investor to or for the benefit of any financial institution which enables the Equity Investor to make its capital contributions to the Borrower and any subsequent realization by any such lender upon the interests of the Equity Investor in the Borrower;

(iv) The removal and replacement of the General Partner pursuant to the terms of the Organizational Documents and the temporary replacement thereof with the Equity Investor or its affiliate;

(v) Issuance of interests in the Borrower to the Equity Investor equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower;

The Borrower may amend the Organizational Documents to effect the transfers and removals permitted under this Section 6.01(e).

(f) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.

(g) The Borrower will not convert the ownership of the Project into condominium or cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.

(h) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(i) The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred without the prior written consent of the Issuer in its sole and absolute discretion.

(j) The Borrower will not take any action that would adversely affect the Federal Tax Status of the Bonds nor omit or fail to take any action required to maintain the Federal Tax Status of the Bonds.

(k) This Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer (which consent shall be within the reasonable discretion of the Issuer), subject to each of the following conditions:

(i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), adversely affect the Federal Tax Status of the Bonds.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder and under the Regulatory Agreement to the extent of the interest assigned in a form acceptable to the Issuer (an "*Assumption Agreement*").

(iv) Prior to any such assignment, the Borrower will, furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement, which the Borrower shall cause to be recorded and filed, at its sole expense, in the real property records of Nueces County.

Section 6.02. **Indemnification by Borrower.**

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE "ISSUER INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES,

DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS BOND LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS BOND LOAN AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS BOND LOAN AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER INDEMNIFIED PARTIES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER INDEMNIFIED PARTIES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS BOND LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF ISSUER INDEMNIFIED PARTIES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER INDEMNIFIED PARTIES BY THIS BOND LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER INDEMNIFIED PARTIES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS BOND LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF ANY OF THE ISSUER INDEMNIFIED PARTIES SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD SUCH ISSUER INDEMNIFIED PARTIES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING

BROUGHT THEREON, AND UPON TIMELY NOTICE FROM THE ISSUER THE BORROWER SHALL DEFEND THE ISSUER INDEMNIFIED PARTIES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

NOTWITHSTANDING ANY PROVISION OF THIS BOND LOAN AGREEMENT TO THE CONTRARY, THE ISSUER INDEMNIFIED PARTIES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM ANY SUCH PARTY'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

(b) THE BORROWER (THE "*INDEMNITOR*") HEREBY AGREES TO RELEASE THE TRUSTEE AND ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES (COLLECTIVELY, THE "*TRUSTEE INDEMNIFIED PARTIES*") FROM, AND COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, LITIGATION AND COURT COSTS, COSTS INCURRED IN CONNECTION WITH ANY AUDIT BY THE INTERNAL REVENUE SERVICE, AMOUNTS PAID IN SETTLEMENT BY OR WITH THE APPROVAL OF THE BORROWER AND AMOUNTS PAID TO DISCHARGE JUDGMENTS), TAXES, CAUSES OF ACTION, SUITS, DEMANDS AND JUDGMENTS OF ANY NATURE, JOINT OR SEVERAL, BY OR ON BEHALF OF ANY PERSON ARISING OUT OF:

(i) THE APPROVAL OF FINANCING FOR THE PROJECT, OR THE MAKING OF THE BOND LOAN;

(ii) THE ISSUANCE AND SALE OR RESALE OF ANY BONDS OR ANY CERTIFICATIONS OR REPRESENTATIONS MADE BY ANY PERSON OTHER THAN THE PARTY SEEKING INDEMNIFICATION IN CONNECTION THEREWITH, INCLUDING, BUT NOT LIMITED TO, ANY (I) STATEMENT OR INFORMATION MADE BY THE BORROWER WITH RESPECT TO THE BORROWER OR THE PROJECT IN ANY OFFERING DOCUMENT OR MATERIALS REGARDING THE BONDS, THE PROJECT OR THE BORROWER OR IN THE TAX EXEMPTION AGREEMENT OR IN ANY OTHER CERTIFICATE EXECUTED BY THE BORROWER WHICH, AT THE TIME MADE, IS MISLEADING, UNTRUE OR INCORRECT IN ANY MATERIAL RESPECT; (II) UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT OF A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT, WHICH IS MADE AS APPROVED BY THE BORROWER AND IS CONTAINED IN ANY OFFERING MATERIAL RELATING TO THE SALE OF THE BONDS, AS FROM TIME TO TIME AMENDED OR SUPPLEMENTED, OR ARISING OUT OF OR BASED UPON THE OMISSION OR

ALLEGED OMISSION TO STATE IN SUCH OFFERING MATERIAL A MATERIAL FACT RELATING TO THE BORROWER OR THE PROJECT REQUIRED TO BE STATED IN SUCH OFFERING MATERIAL OR NECESSARY IN ORDER TO MAKE THE STATEMENTS IN SUCH OFFERING MATERIAL NOT MISLEADING; OR (III) FAILURE TO PROPERLY REGISTER OR OTHERWISE QUALIFY THE SALE OF BONDS OR FAILURE TO COMPLY WITH ANY LICENSING OR OTHER LAW OR REGULATION WHICH WOULD AFFECT THE MANNER IN WHICH OR TO WHOM THE BONDS COULD BE SOLD;

(iii) THE INTERPRETATION, PERFORMANCE, ENFORCEMENT, BREACH, DEFAULT OR AMENDMENT OF THE BOND LOAN DOCUMENTS OR ANY OTHER DOCUMENTS RELATING TO THE PROJECT OR THE BONDS OR IN CONNECTION WITH ANY FEDERAL OR STATE TAX AUDIT, OR ANY QUESTIONS OR OTHER MATTERS ARISING UNDER SUCH DOCUMENTS;

(iv) THE BORROWER'S FAILURE TO COMPLY WITH ANY REQUIREMENT OF THIS BOND LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT OR THE REGULATORY AGREEMENT;

(v) THE CONDITION OF THE PROJECT (ENVIRONMENTAL OR OTHERWISE), INCLUDING ANY VIOLATION OF ANY LAW, ORDINANCE, COURT ORDER OR REGULATION AFFECTING THE PROJECT OR ANY PART OF IT;

(vi) ANY DAMAGE OR INJURY, ACTUAL OR CLAIMED, OF WHATSOEVER KIND, CAUSE OR CHARACTER TO THE PROJECT (INCLUDING LOSS OF USE OF THE PROJECT) OR PERSONS, OCCURRING OR ALLEGEDLY OCCURRING IN, ON OR ABOUT THE PROJECT OR ARISING OUT OF ANY ACTION OR INACTION OF THE BORROWER OR ANY OF ITS AGENTS, SERVANTS, EMPLOYEES OR LICENSEES, WHETHER OR NOT RELATED TO THE PROJECT, OR RESULTING FROM THE ACQUISITION, REHABILITATION, CONSTRUCTION, DESIGN, REPAIR, OPERATION, USE OR MANAGEMENT OF ALL OR ANY PART OF THE PROJECT;

(vii) ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THE OPERATION OF THE PROJECT, OR THE CONDITIONS, ENVIRONMENTAL OR OTHERWISE, OCCUPANCY, USE, POSSESSION, CONDUCT OR SUPERVISION OF WORK DONE IN OR ABOUT, OR FROM THE PLANNING, DESIGN, REHABILITATION, CONSTRUCTION, REPAIR OR EQUIPPING OF, THE PROJECT OR ANY PART OF IT, INCLUDING, BUT NOT LIMITED TO, THE AMERICANS WITH DISABILITIES ACT; AND

(viii) TO THE EXTENT NOT MENTIONED IN ANY OF THE PRECEDING SUBSECTIONS OF THIS SECTION 6.02, ANY CAUSE WHATSOEVER IN CONNECTION WITH TRANSACTIONS PROVIDED FOR IN THIS AGREEMENT AND THE OTHER BOND LOAN DOCUMENTS OR OTHERWISE IN CONNECTION WITH THE PROJECT, THE BONDS OR THE EXECUTION OR AMENDMENT OF

ANY DOCUMENT RELATING TO THE BONDS OR THE PROJECT OR THE ACCEPTANCE OR ADMINISTRATION OF THE TRUSTS UNDER THE INDENTURE.

THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL REASONABLE COSTS, COUNSEL FEES, EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM.

IF ANY CLAIM SHALL BE MADE OR ANY ACTION SHALL BE BROUGHT AGAINST THE TRUSTEE INDEMNIFIED PARTIES IN RESPECT OF WHICH INDEMNITY CAN BE SOUGHT AGAINST THE BORROWER PURSUANT TO THIS SECTION 6.02(B) OR OTHERWISE, THE TRUSTEE INDEMNIFIED PARTIES SHALL PROMPTLY NOTIFY THE BORROWER IN WRITING, AND THE BORROWER SHALL PROMPTLY ASSUME THE DEFENSE OF SUCH CLAIM OR ACTION, INCLUDING THE EMPLOYMENT OF COUNSEL CHOSEN BY THE BORROWER AND APPROVED BY THE ISSUER OR THE TRUSTEE, THE PAYMENT OF ALL EXPENSES AND THE RIGHT TO NEGOTIATE A SETTLEMENT WITH THE CONSENT AND APPROVAL OF THE ISSUER OR THE TRUSTEE; IF THE BORROWER SHALL HAVE FAILED TO ASSUME THE DEFENSE OF SUCH ACTION OR TO RETAIN COUNSEL REASONABLY SATISFACTORY TO THE ISSUER OR THE TRUSTEE WITHIN A REASONABLE TIME AFTER NOTICE OF THE COMMENCEMENT OF SUCH ACTION, THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF COUNSEL RETAINED BY THE TRUSTEE INDEMNIFIED PARTIES. IF THE TRUSTEE INDEMNIFIED PARTIES ARE ADVISED IN A WRITTEN OPINION OF COUNSEL THAT THERE MAY BE LEGAL DEFENSES AVAILABLE TO THE TRUSTEE INDEMNIFIED PARTIES WHICH ARE ADVERSE TO OR IN CONFLICT WITH THOSE AVAILABLE TO THE BORROWER OR THAT THE DEFENSE OF THE TRUSTEE INDEMNIFIED PARTIES SHOULD BE HANDLED BY SEPARATE COUNSEL, THE BORROWER SHALL NOT HAVE THE RIGHT TO ASSUME THE DEFENSE OF THE TRUSTEE INDEMNIFIED PARTIES, BUT SHALL BE RESPONSIBLE FOR THE REASONABLE FEES AND EXPENSES OF COUNSEL RETAINED BY THE TRUSTEE INDEMNIFIED PARTIES IN ASSUMING SUCH PARTY'S OWN DEFENSE. NOTWITHSTANDING THE FOREGOING, THE TRUSTEE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL WITH RESPECT TO ANY SUCH CLAIM OR IN ANY SUCH ACTION AND TO PARTICIPATE IN THE DEFENSE THEREOF, BUT THE TRUSTEE INDEMNIFIED PARTIES SHALL PAY THE FEES AND EXPENSES OF SUCH COUNSEL UNLESS THE EMPLOYMENT OF SUCH COUNSEL HAS BEEN SPECIFICALLY AUTHORIZED BY THE BORROWER OR UNLESS THE PROVISIONS OF THE IMMEDIATELY PRECEDING SENTENCE ARE APPLICABLE. THE BORROWER SHALL NOT BE LIABLE FOR ANY SETTLEMENT OF ANY SUCH ACTION EFFECTED WITHOUT THE CONSENT OF THE BORROWER, BUT IF SUCH CLAIM OR ACTION IS SETTLED WITH THE CONSENT OF THE BORROWER, OR IF THERE IS A FINAL JUDGMENT FOR THE PLAINTIFF IN ANY SUCH ACTION WITH OR WITHOUT CONSENT, THE BORROWER AGREES TO INDEMNIFY AND HOLD HARMLESS THE TRUSTEE INDEMNIFIED PARTIES FROM AND AGAINST ANY LOSS, LIABILITY OR EXPENSE BY REASON OF SUCH SETTLEMENT OR JUDGMENT.

THE BORROWER SHALL ALSO INDEMNIFY THE TRUSTEE INDEMNIFIED PARTIES FOR ALL REASONABLE COSTS AND EXPENSES, INCLUDING REASONABLE COUNSEL FEES, INCURRED IN: (I) ENFORCING ANY OBLIGATION OF THE BORROWER UNDER THIS AGREEMENT OR ANY RELATED AGREEMENT, (II) TAKING ANY ACTION REQUESTED BY THE BORROWER, (III) TAKING ANY ACTION REQUIRED BY THIS AGREEMENT OR ANY RELATED AGREEMENT, OR (IV) TAKING ANY ACTION CONSIDERED NECESSARY BY THE TRUSTEE INDEMNIFIED PARTIES AND WHICH IS AUTHORIZED BY THIS AGREEMENT OR ANY RELATED AGREEMENT. IF A TRUSTEE INDEMNIFIED PARTY TAKES ANY ACTION UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT EXECUTED IN CONNECTION HERewith FOR THE BENEFIT OF THE BORROWER, IT WILL DO SO IF AND ONLY IF (A) THE TRUSTEE INDEMNIFIED PARTIES ARE A NECESSARY PARTY TO ANY SUCH ACTION OR PROCEEDING, AND (B) THE TRUSTEE INDEMNIFIED PARTIES HAVE RECEIVED SPECIFIC WRITTEN DIRECTION FROM THE BORROWER, AS REQUIRED UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AS TO THE ACTION TO BE TAKEN BY THE TRUSTEE INDEMNIFIED PARTIES.

THIS INDEMNIFICATION SHALL NOT BE AFFECTED BY ANY INVESTIGATION BY OR ON BEHALF OF THE TRUSTEE INDEMNIFIED PARTIES OR BY ANY INFORMATION THE TRUSTEE INDEMNIFIED PARTIES MAY HAVE OR OBTAIN WITH RESPECT THEREOF. THIS INDEMNIFICATION SHALL EXTEND TO AND INCLUDE, WITHOUT LIMITATION, ALL REASONABLE COSTS, COUNSEL FEES, EXPENSES AND LIABILITIES INCURRED IN CONNECTION WITH ANY SUCH CLAIM, OR PROCEEDING BROUGHT WITH RESPECT TO SUCH CLAIM TO THE FULLEST EXTENT PERMITTED BY LAW, **INCLUDING IF AS THE RESULT OF THE NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY OF THE TRUSTEE INDEMNIFIED PARTIES**, UNLESS LIABILITY IS A RESULT OF BAD FAITH, WILLFUL MISCONDUCT OR FRAUD OR NEGLIGENCE ON THE PART OF THE TRUSTEE INDEMNIFIED PARTIES AND THEIR SUCCESSORS AND ASSIGNS. THE INDEMNIFICATION PROVIDED IN THIS ARTICLE VI IS IN ADDITION TO, AND NOT IN SUBSTITUTION OF, THE INDEMNIFICATION PROVISIONS IN OTHER DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THE MAKING OF THE BOND LOAN AND THE ISSUANCE OF THE BONDS.

(c) ALL AMOUNTS PAYABLE TO THE ISSUER UNDER THIS AGREEMENT SHALL BE DEEMED TO BE FEES AND EXPENSES PAYABLE TO THE ISSUER FOR THE PURPOSES OF THE PROVISIONS OF THIS AGREEMENT, AND OF THE INDENTURE DEALING WITH ASSIGNMENT OF THE ISSUER'S RIGHTS UNDER THIS AGREEMENT. THE ISSUER AND ITS MEMBERS, OFFICERS, AGENTS, EMPLOYEES AND THEIR SUCCESSORS AND ASSIGNS SHALL NOT BE LIABLE TO THE BORROWER FOR ANY REASON.

(d) ANY PROVISION OF THIS AGREEMENT OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED AND DELIVERED IN CONNECTION THEREWITH TO THE CONTRARY NOTWITHSTANDING, THE ISSUER RETAINS THE RIGHT TO (I) ENFORCE ANY APPLICABLE FEDERAL OR STATE LAW OR REGULATION OR RESOLUTION OF THE ISSUER, AND (II) ENFORCE ANY RIGHTS ACCORDED TO THE ISSUER BY

FEDERAL OR STATE LAW OR REGULATION OF THE ISSUER, AND NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS AN EXPRESS OR IMPLIED WAIVER THEREOF. THE INDEMNIFICATIONS PROVIDED BY THE INDEMNITOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE SATISFACTION OF THE NOTE, AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 6.03. **The Issuer to Grant Security Interest to Trustee.** The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement and the Note, except for Reserved Rights of the Issuer. The Issuer retains the right to enforce any or all of the Reserved Rights and may take independent action to so enforce such Reserved Rights.

ARTICLE VII

DEFAULTS AND REMEDIES

Section 7.01. **Defaults Defined.** The following shall be "*Defaults*" under this Agreement and the term "*Default*" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) failure by the Borrower to pay any amount required to be paid under (i) subsection (b) of Section 4.02 or (ii) Section 4.03 hereof;

(b) failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section 7.01 or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Regulatory Agreement or the Tax Exemption Agreement, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower by the Issuer or the Trustee; *provided*, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such sixty (60) day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby, as certified to the Issuer and Trustee by the Borrower;

(c) the dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due; or

(d) the occurrence and continuance of an Event of Default under the Indenture.

The provisions of subsection (b) of this Section 7.01 are subject to the following limitation: if by reason of force majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such force majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term “force majeure” as used herein shall mean, without limitation, the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; epidemics; pandemics; or explosions; not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

Section 7.02. **Remedies on Default.** A copy of any notice of default provided to Borrower under any of the Borrower Documents shall also be provided to the Equity Investor and the Lender. Whenever any Default referred to in Section 7.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note, the Regulatory Agreement or any other Document in the event of default thereunder. Any amounts collected pursuant to action taken under this Section 7.02 shall be paid into the Collateral Fund.

Section 7.03. **No Remedy Exclusive.** Subject to Section 10.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article VII, it shall not be necessary to give any notice, other than such notice as may be required in this Article VII. Such rights and remedies as are given to the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

Section 7.04. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.05. **Right to Cure.** Notwithstanding anything to the contrary herein or otherwise in the Borrower Documents, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform under any of the

Borrower Documents and, as a result, a default or event of default occurs or may occur thereunder, the Equity Investor shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided to the Borrower herein or otherwise in the Borrower Documents. Any cure of any event of default by the Equity Investor under the Borrower Documents shall be deemed a cure by Borrower thereunder.

Section 7.06. **No Interference or Impairment of Lender Loan.** Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

- (a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or
- (b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the ability or rights of the Trustee to take any actions permitted under the Indenture or to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Agreement so long as it does not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Notwithstanding anything in this Agreement to the contrary, any right of the Issuer or the Trustee to take any action at law or in equity to enforce the obligations, covenants and agreements of the Borrower under this Agreement which includes any claim for indemnification, damages or any other monetary obligation sought to be enforced shall be subject and subordinate in all respects to the repayment in full of all amounts due under the Lender Loan Documents.

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default of this Agreement has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall

have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

ARTICLE VIII

HAZARDOUS MATERIALS

Section 8.01. **Reserved.**

Section 8.02. **Compliance Regarding Hazardous Substances.** Borrower has complied, will comply, and will use commercially reasonable efforts to cause all tenants and any other Persons who may come upon the Project to comply, with all federal, state and local laws, regulations and ordinances governing or applicable to Hazardous Materials, including those requiring disclosures to prospective and actual buyers or tenants of all or any portion of the Project. The Borrower must comply with the reasonable recommendations of any qualified environmental engineer or other expert engaged by the Borrower, the Issuer or the Equity Investor with respect to the Project.

Section 8.03. **Notices Regarding Hazardous Substances.** The Borrower must promptly notify the Equity Investor and the Issuer in writing (i) if it has actual knowledge that there may be any Hazardous Materials in or around any part of the Project, any improvements constructed on the Project, or the soil, groundwater or soil vapor on or under the Project at a level of concentration that results in the Hazardous Materials being subject to regulation, control, removal or restriction by any governmental agency under any law, regulation or ordinance, or that the Borrower or the Project may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Materials, and (ii) of any claim made or threatened in writing by any Person, other than a governmental agency, against the Borrower arising out of or resulting from any Hazardous Substance being present or released in, on or around any part of the Project, any improvements constructed on the Project or the soil, groundwater or soil vapor on or under the Project (any of the matters described in clauses (i) and (ii) above is a “*Hazardous Materials Claim*”).

Section 8.04. **Remedial Work.** The Borrower must promptly undertake any and all remedial work (“*Remedial Work*”) in response to Hazardous Materials Claims to the extent required by governmental agency or agencies involved, or to comply with the reasonable recommendations set forth in any written environmental assessment report prepared by an engineer retained by the Equity Investor or the Issuer, if such standard requires a higher degree of remediation, and in all events to minimize any impairment to Trustee’s security under the Bond Loan Documents. All Remedial Work must be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer; (ii) pursuant to a detailed written plan for the Remedial Work approved by all public or private agencies or Persons with a legal or contractual right to such approval; (iii) with insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and (iv) only following receipt of any required permits, licenses or approvals. The selection of the Remedial Work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work and the written plan for the

Remedial Work (and any changes thereto) is subject to the prior written approval of the Equity Investor and the Issuer, which approval may not be unreasonably withheld or delayed.

Section 8.05. **Indemnity Regarding Hazardous Substances.** THE INDEMNITOR INDEMNIFIES, DEFENDS AND HOLDS EACH OF THE ISSUER INDEMNIFIED PARTIES AND THE TRUSTEE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL COSTS DIRECTLY OR INDIRECTLY ARISING OUT OF OR RESULTING FROM ANY HAZARDOUS MATERIALS BEING PRESENT OR RELEASED IN, ON OR AROUND ANY PART OF THE PROJECT, OR IN THE SOIL, GROUNDWATER OR SOIL VAPOR ON OR UNDER THE PROJECT (COLLECTIVELY, “INDEMNIFIED COSTS”), ARISING OUT OF OR AS A RESULT OF EVENTS PRIOR TO THE LATER OF THE FULL AND FINAL PAYMENT OF THE BONDS OR BEFORE THE DATE OF A TRANSFER OF THE PROJECT, AS APPLICABLE, INCLUDING:

(i) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY THE ISSUER INDEMNIFIED PARTY OR THE TRUSTEE BY ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AGENCY, INCLUDING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND ALL OF THE ENVIRONMENTAL REGULATORY AUTHORITIES OF THE STATE, AND INCLUDING ANY CLAIM THAT ANY INDEMNIFIED PARTY IS LIABLE FOR ANY SUCH INDEMNIFIED COSTS AS AN “OWNER” OR “OPERATOR” OF THE PROJECT UNDER ANY LAW RELATING TO HAZARDOUS MATERIALS; AND

(ii) ANY CLAIM FOR SUCH INDEMNIFIED COSTS ASSERTED AGAINST ANY THE ISSUER INDEMNIFIED PARTY BY ANY PERSON OTHER THAN A GOVERNMENTAL AGENCY, INCLUDING (I) ANY PERSON WHO MAY PURCHASE OR LEASE ALL OR ANY PORTION OF THE PROJECT FROM BORROWER, FROM ANY INDEMNIFIED PARTY OR FROM ANY OTHER PURCHASER OR LESSEE, (II) ANY PERSON WHO MAY AT ANY TIME HAVE ANY INTEREST IN ALL OR ANY PORTION OF THE PROJECT, (III) ANY PERSON WHO MAY AT ANY TIME BE RESPONSIBLE FOR ANY CLEANUP COSTS OR OTHER INDEMNIFIED PARTY RELATING TO THE PROJECT, AND (IV) ANY PERSON CLAIMING TO HAVE BEEN INJURED IN ANY WAY AS A RESULT OF EXPOSURE TO ANY HAZARDOUS MATERIALS; AND

(iii) ANY INDEMNIFIED COSTS INCURRED BY ANY THE ISSUER INDEMNIFIED PARTY IN THE EXERCISE BY THE ISSUER INDEMNIFIED PARTY OF ITS RIGHTS AND REMEDIES UNDER THIS BOND LOAN AGREEMENT; AND

(iv) ANY INDEMNIFIED COSTS INCURRED BY ANY THE ISSUER INDEMNIFIED PARTY AS A RESULT OF CURRENTLY EXISTING CONDITIONS IN, ON OR AROUND THE PROJECT, WHETHER KNOWN OR UNKNOWN BY THE INDEMNITOR OR THE ISSUER INDEMNIFIED PARTY AT THE TIME THIS BOND LOAN AGREEMENT IS EXECUTED, OR ATTRIBUTABLE TO THE ACTS OR OMISSIONS OF THE INDEMNITOR, ANY OF THE BORROWER’S TENANTS, OR ANY OTHER PERSON IN, ON OR AROUND THE PROJECT WITH THE CONSENT OR UNDER THE DIRECTION OF THE INDEMNITOR; AND

(v) ANY INDEMNIFIED COSTS INCURRED BY ANY INDEMNIFIED PARTY AS A RESULT OF THE DEPOSIT, STORAGE, DISPOSAL, BURIAL, DUMPING, INJECTING, SPILLING, LEAKING, OR OTHER PLACEMENT OR RELEASE IN ON OR FROM THE PROJECT OF HAZARDOUS MATERIALS OR THE VIOLATION OR ALLEGED VIOLATION OF ANY HAZARDOUS MATERIALS LAW OR OFFICIAL INTERPRETATION THEREOF IN CONNECTION WITH THE PROJECT OR THE LAND ON WHICH IT IS LOCATED.

THE OBLIGATIONS OF THE INDEMNITOR UNDER THIS SECTION 8.05 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

Section 8.06. **Defense of Indemnified Parties.** UPON DEMAND BY ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, THE INDEMNITOR MUST DEFEND ANY INVESTIGATION, ACTION OR PROCEEDING INVOLVING ANY INDEMNIFIED COSTS THAT IS BROUGHT OR COMMENCED AGAINST ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY, WHETHER ALONE OR TOGETHER WITH BORROWER OR ANY OTHER PERSON, ALL AT THE BORROWER'S OWN COST AND BY COUNSEL APPROVED BY THE INDEMNIFIED PARTY. IN THE ALTERNATIVE, ANY ISSUER INDEMNIFIED PARTY OR TRUSTEE INDEMNIFIED PARTY MAY ELECT TO CONDUCT ITS OWN DEFENSE AT THE BORROWER'S EXPENSE.

ARTICLE IX

MISCELLANEOUS

Section 9.01. **Term of Agreement.** This Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, *provided*, that the provisions of Sections 5.20 and 6.02 and Article VIII hereof shall survive termination of this Agreement.

Section 9.02. **Notices; Publication of Notice.** (a) All notices, advice, certifications or other communications hereunder between the Issuer and the Borrower shall be sufficiently given and shall be deemed given when delivered by hand or overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, or transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) addressed to the appropriate Notice Address. The Issuer, the Borrower or the Equity Investor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, advice, certifications or other communications shall be sent. Notices to Persons other than the Issuer, the Borrower or the Equity Investor (such as, for example, notices to owners of Bonds) shall be governed by the other applicable provisions of the Indenture.

(b) Whenever the Issuer or the Borrower is required or permitted to give or publish notice of any event or occurrence under this Agreement, such notice shall be given or published in such manner and by such means as the Issuer or the Borrower, as the case may be, shall determine

to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Borrower, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to the Municipal Securities Rulemaking Board's EMMA System or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the Person entitled to receive the notice at such Person's address as shown on the records of the Issuer or the Borrower.

Section 9.03. **Nonrecourse Liability of Borrower.** From and after the date of this Agreement, (i) the liability of the Borrower under this Agreement shall be limited to the Trust Estate, and such amounts as may be invested in accordance with Section 7.01 of the Indenture, and the Issuer and the Trustee shall look exclusively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower under this Agreement shall be limited to the Project and moneys derived from the operation of the Project, and any other security so given for satisfaction thereof; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or its successors, transferees or assigns, in any action or proceeding arising out of this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; *provided, however,* that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or to any trustee under this Agreement, or both, or to exercise any right against the Borrower, on account of any claim for fraud or deceit, and against any other Person on account of any claim for fraud or deceit. Notwithstanding anything herein to the contrary, nothing in this Section 9.03 shall limit the rights of indemnification against the Borrower pursuant to Sections 4.03, 6.02, 8.05 and 8.06 hereof. Furthermore, notwithstanding anything to the contrary, the Borrower shall be fully liable for: (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, (3) payment of the Issuer's Fees, the Trustee's Fee and the Rebate Analyst's Fee and (4) the indemnification and the payment obligations to the Issuer Indemnified Parties under Sections 4.03, 6.02, 8.05 and 8.06 hereof.

The limit on the Borrower's liability set forth in this Section 9.03 shall not, however, be construed, and is not intended to in any way, constitute a release, in whole or in part, of the indebtedness evidenced by this Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Agreement or to alter, limit or affect the liability of any Person who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Agreement.

The provisions of this Section 9.03 shall survive the termination of this Agreement.

Section 9.04. **No Pecuniary Liability of the Issuer; Issuer May Rely.** (a) All obligations of the Issuer incurred under this Agreement, the Regulatory Agreement, the Tax Exemption Agreement and the Indenture shall be limited obligations of the Issuer, payable solely and only from Bond proceeds, Revenues and other amounts derived by the Issuer from the Trust Estate. NO GOVERNING BOARD MEMBER, OFFICER, AGENT, EMPLOYEE, OR ATTORNEY 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 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 DIRECTOR, OFFICER, AGENT, EMPLOYEE, ATTORNEY OR MEMBER 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 ISSUE 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, any Bondholder 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.

(c) 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 and the Expense Fund). No provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State or any other political subdivision or public body of the State, or any personal or pecuniary liability upon any director, officer, agent or employee of the Issuer.

(d) 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 governing body 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 9.05. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

Section 9.06. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.07. **Amounts Remaining in Funds.** It is agreed by the parties hereto that any amounts remaining on deposit under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, shall be used to pay the fees and expenses of the Trustee and the Issuer in accordance with the Indenture and any balance thereafter shall be paid to the Borrower pursuant to the provisions of the Indenture.

Section 9.08. **Amendments, Changes and Modifications.** Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, in accordance with the provisions of the Indenture.

Section 9.09. **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 9.10. **Applicable Law.** This Bond Loan Agreement shall be governed exclusively by and construed in accordance with the internal laws of the State of Texas without

regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

Section 9.11. **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

Section 9.12. **Conflict with HUD-Insured Loan and HUD Regulations; Supremacy of Senior Lender Mortgage and HUD Regulatory Agreement.**

(a) The provisions hereof are subordinate and subject to the Controlling HUD and GNMA Requirements and the Lender Mortgage, the Lender Borrower Note, the HUD Regulatory Agreement and the other Lender Loan Documents. In the event of any conflict between the provisions of this Agreement and the provisions of Controlling HUD and GNMA Requirements or the Lender Loan Documents, the Controlling HUD and GNMA Requirements or the Lender Loan Documents, as applicable, shall control. Any ambiguity or inconsistency will be resolved in favor of, and pursuant to, the Controlling HUD and GNMA Requirements and the terms of the Lender Loan Documents.

(b) Enforcement of this Agreement will not result in any claim against the Project, the undisbursed proceeds of the Lender's loan (the "*HUD-Insured Loan*"), any reserve or deposit required by HUD in connection with the HUD-Insured Loan or the rents or income from the Project (other than available Surplus Cash, as such term is defined in the HUD Regulatory Agreement or as otherwise permitted by HUD).

(c) The Borrower shall not be deemed to be in violation of this Agreement if it shall take (or refrain from taking) any actions required (or prohibited) by HUD pursuant to the Controlling HUD and GNMA Requirements or the Lender Loan Documents.

(d) Any funds held by the Lender in connection with the Project for or on behalf of the Borrower shall be maintained separate and apart from the funds established and held by the Trustee and the various escrows and funds, if any, under the Indenture.

(e) No amendment to this Agreement shall conflict with the provisions of the Controlling HUD and GNMA Requirements or the Lender Loan Documents.

(f) This Agreement shall not be construed to restrict or adversely affect the duties and obligations of the Lender under the contract of mortgage insurance between HUD and the Lender with respect to the Project.

(g) None of the Issuer, the Trustee or any owner of the Bonds has or shall be entitled to assert any claim against the Project, the undisbursed HUD-Insured Loan proceeds, any reserves or deposits required by HUD in connection with the HUD-Insured Loan or the rents or deposits or other income of the property other than "*Surplus Cash*" as defined in the HUD Regulatory Agreement.

(h) Nothing herein is intended to alter or conflict with the terms, conditions, and provisions of the HUD regulations, handbooks, administrative requirements, lender notices and

the Program Obligations (as defined in the HUD Regulatory Agreement) in effect at the time of HUD's endorsement of the Lender Borrower Note, or the documents required to be executed by the Borrower in connection with the endorsement of the Lender Borrower Note; and to the extent that they do so, the HUD regulations, administrative requirements, handbooks, lender notices, the Program Obligations and documents shall control and this Agreement shall be amended or deemed amended so as not to alter or conflict with the aforesaid regulations, documents, administrative requirements, handbooks, notices or Program Obligations. This Section 9.12 shall terminate and be void upon termination of HUD-Insured Loan.

(i) Notwithstanding anything in the Indenture, this Agreement, the Bond Loan Note or the Bond Purchase Agreement to the contrary, in no event shall HUD have any claim to or lien upon the Trust Estate under the Indenture and funds held by the Trustee under the Indenture and pledged to secure the repayment of the Bonds. Further, nothing herein shall restrict the rights and obligations of the parties as they relate to the Bonds and the rights and obligations therein are not subordinated.

(j) The Borrower and the Issuer acknowledge that this Agreement, and all the Borrower's obligations hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provisions of this Agreement to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage), or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) any proceeds of the Lender Borrower Note (collectively, "*Non-Project Sources*"). No claims or actions shall be made (or payable) under this Agreement against the Project, the proceeds of the HUD-Insured Loan, the Lender or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Agreement and all other documents evidencing, implementing, or securing this Agreement (collectively, the "*Subordinate Bond Documents*") are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Agreement or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the HUD Regulatory Agreement), the provisions of the Lender Loan Documents or the Program Obligations shall control. The provisions of this Section 9.12 shall control over any inconsistent provisions in this Agreement or the Subordinate Bond Documents. This Agreement shall not be amended or modified without the prior written consent of HUD.

Section 9.13. **Third Party Beneficiary.** 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 it hereunder.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be executed in their respective official names and attested by their duly authorized officers, all as of the date first above written.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS, as Issuer

By: _____
Name: James B. "Beau" Eccles
Title: Secretary to Board

GULFWAY HOUSING PARTNERS, LP, as Borrower

GULFWAY HOUSING PARTNERS, LP
a Texas limited partnership

By: Gulfway Housing Management, LLC
a Texas limited liability company,
Its: General Partner

By: Vitus Development III, LLC
a Delaware limited liability company,
Its: Sole Member and Manager

By: _____
Stephen R. Whyte, President

Exhibit A

Project Description

The Borrower plans to use the proceeds of the Bond Loan for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by the Borrower of an approximately 151-unit multifamily housing facility and related facilities known as Gulfway Manor Apartments and located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412.

Exhibit B

Form of Promissory Note

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

[\$27,500,000]

July __, 2024

FOR VALUE RECEIVED, Gulfway Housing Partners, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “*Borrower*”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “*Issuer*”) the principal sum of [Twenty Seven Million and Five Hundred Thousand] Dollars, together with interest on the unpaid principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds. All such payments of principal and interest shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office (initially, in St. Paul, Minnesota) of U.S. Bank Trust Company, National Association, a national banking association, or its successor (the “*Trustee*”) as trustee under the Indenture (as hereinafter defined).

The principal and interest shall be payable on the dates that principal and interest on the Bonds are payable, as provided in the Indenture and the Agreement.

This promissory note is the “*Note*” referred to in the Loan Agreement, dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Agreement*”), between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Trust Indenture dated as of July 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “*Indenture*”), between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys’ fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

As long as HUD is the insurer or holder of the Lender Borrower Note on FHA Project No. [115-36038], the following provisions (“HUD Provisions”) shall be in full force and effect (capitalized terms used in the following paragraphs (1)-(7), but not defined herein, shall have the meanings given to them in that certain Subordination Agreement dated as of July 1, 2024, among the Issuer, the Borrower and Merchants Capital Corp., as senior lender):

(1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than one percent (1%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed one percent (1%) of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by this Note;

(2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources;

(3) after the endorsement to the trustee for the Bonds and pledge of this Note under the Bond Indenture, this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except (1) with the prior written approval of HUD, or (2) if transferred to another state agency or wholly-owned corporation of a state entity pursuant to state legislative or executive action;

(4) *Intentionally omitted;*

(5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;

(6) the terms and provisions of this Note are enforceable by HUD against Borrower and Lender and their successors and assigns, to the extent allowed by law. This Note may not be modified or amended without the written consent of HUD, except for modifications or amendments caused by changes in state or federal law which become automatically effective without the consent of the parties to this Note; and provided that any modification or amendment made without HUD’s written consent may cause the Bond Mortgage to be an unpermitted encumbrance; and

(7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

[Signatures continue next page.]

BORROWER:

GULFWAY HOUSING PARTNERS, LP
a Texas limited partnership

By: Gulfway Housing Management, LLC
a Texas limited liability company,
Its: General Partner

By: Vitus Development III, LLC
a Delaware limited liability company,
Its: Sole Member and Manager

By: _____
Stephen R. Whyte, President

ENDORSEMENT

Pay to the order of U.S. Bank Trust Company, National Association, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY
AFFAIRS

By: _____
James B. "Beau" Eccles
Secretary to Board

Dated: _____, 2024

EXHIBIT C

[\$[27,500,000]

Texas Department of Housing and Community Affairs
Multifamily Housing Revenue Bonds
(Gulfway Manor)
Series 2024

COMPLETION CERTIFICATE

Pursuant to Section 3.05 of the Loan Agreement dated as of July 1, 2024 (the “**Bond Loan Agreement**”) between the Texas Department of Housing and Community Affairs (the “**Issuer**”) and Gulfway Housing Partners, LP, a Texas limited partnership (the “**Borrower**”) relating to the captioned Bonds, the undersigned Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Bond Loan Agreement or the Tax Exemption Agreement):

(a) The rehabilitation of the Project was substantially completed and available and suitable for use as multifamily housing on _____ (the “**Completion Date**”).

(b) The acquisition, rehabilitation, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar Governmental Requirements.

(c) The costs of the rehabilitation of the Project financed with the Bond Loan were \$ _____.

(d) The proceeds of the Bonds were used in accordance with Section 9 of the Tax Exemption Agreement, including the requirement that at least 95% of the proceeds of the Bonds be expended for Qualified Project Costs and no more than 2% of the proceeds of the Bonds be expended for Costs of Issuance. The Project will be operated in accordance with the terms of the Tax Exemption Agreement and the Regulatory Agreement.

(e) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Borrower Representative has set his or her hand as of the _____ day of _____, 20__.

Borrower Representative

By: _____