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**FUNDING LOAN AGREEMENT**

**by and among**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**

**BOKE, NA**

**and**

**COMMUNITY HOUSING INVESTMENT PARTNERS II, LP**

**Dated as of [July 1], 2025**

**Relating to:**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Note  
(The Legacy on Kiest) Series 2025**

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## **FUNDING LOAN AGREEMENT**

This **FUNDING LOAN AGREEMENT** (as amended, modified or supplemented from time to time, this “Funding Loan Agreement”), dated as of [July 1], 2025, is made and entered into by and among **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the state of Texas (together with its successors and assigns, the “Governmental Lender”), **BOKF, NA**, a national banking association (together with its successors and assigns, the “Fiscal Agent”) and **COMMUNITY HOUSING INVESTMENT PARTNERS II, LP**, a Delaware limited partnership, as Funding Lender (together with any successor Funding Lender hereunder and their respective successors and assigns, the “Funding Lender”).

### **WITNESSETH:**

**WHEREAS**, the Governmental Lender is authorized under Chapter 2306, Texas Government Code, as amended, as amended (the “Act”) to make mortgage loans to housing sponsors to provide financing with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Governmental Lender may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Borrower has applied to the Governmental Lender for a loan (the “Borrower Loan”) to finance the acquisition, construction and equipping of a multifamily rental housing development consisting of total of approximately 180 units and related personal property and equipment, located in Dallas, Texas, and to be known as “The Legacy on Kiest” (the “Project Facilities” or “Project”); and

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be used by the Governmental Lender to make a mortgage loan to the Borrower pursuant to that certain Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”) to provide for the financing of the acquisition, construction and equipping of the Project Facilities; and;

**WHEREAS**, pursuant to the Borrower Loan Agreement, the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note dated the Closing Date (the “Borrower Note”) and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project Facilities pursuant to a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (With Power of Sale) dated as of the date hereof, made by the Borrower to the Governmental Lender and assigned to the Fiscal Agent covering the Project Facilities of even date herewith (the “Mortgage”); and

**WHEREAS**, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note of even date herewith (the “Governmental Note”) evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement; all things necessary to make the Governmental Note and Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed; and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE COVENANTS AND UNDERTAKINGS HEREIN EXPRESSED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO AGREE AS FOLLOWS:

## **ARTICLE I DEFINITIONS**

**Section 1.1     Defined Terms.** In addition to terms defined elsewhere in this Funding Loan Agreement, the following words and terms as used in this Funding Loan Agreement and the preambles hereto shall have the following meanings unless the context or use clearly indicates another or different meaning or intent.

**“Accountant”** means [Novogradac & Company LLP], or such other accounting firm approved in writing by the Controlling Person.

**“Accounts”** means the accounts created and held under Sections 4.1 and 4.2 of the Funding Loan Agreement.

**“Act”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Advance”** means any advances of the proceeds of the Funding Loan or other sources made or approved by the Funding Lender or the Controlling Person pursuant to the terms of the Borrower Loan Agreement.

**“Affiliate”** means, with respect to any designated Person, each Person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another designated Person, pursuant to the organizational document(s) of an entity or by other express, written agreement.

**“Amortization Term”** shall have the meaning set forth in the Schedule of Financial Terms.

**“Annual Budget”** means, for any Fiscal Year, the capital and operating budget adopted by the Borrower and approved by the Controlling Person, or deemed approved, pursuant to Section 6.24 of the Borrower Loan Agreement.

**“Anti-Terrorism Regulations”** shall have the meaning ascribed to such term in Section 6.23 of the Borrower Loan Agreement.

**“Approved Transferee”** means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, or (2) an “accredited investor” as defined in Rule 501(a)(1), (2), (3), (7) or (8) of Regulation D promulgated under the Securities Act.

**“Approving Opinion of Governmental Lender Counsel”** means the opinion of Governmental Lender Counsel delivered pursuant to Section 2.5(b)(x) of this Funding Loan Agreement with respect to the excludability of interest on the Governmental Note from gross income for federal income tax purposes or other matters specified in this Funding Loan Agreement, which opinion shall be addressed to the Funding Lender, the Fiscal Agent, the Controlling Person and the Governmental Lender.

**“Architect”** means, collectively, (i) [Rickhaus Design, LLC] (design architect) and (ii) [Arrive Architecture Group (architect of record)].

**“Architect’s Agreement”** means the contract dated [\_\_\_\_], 2025, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of final completion, among other things, as the same may be amended, modified or supplemented from time to time.

**“Assignment of Capital Contributions”** means the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Funding Lender.

**“Assignment of Management Agreement and Consent”** means the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Funding Lender, consented to by the Managing Agent.

**“Assignment of Prime Subcontract”** means the Assignment of Prime Subcontract dated as of the date hereof, made by the Borrower and the Contractor in favor of the Funding Lender.

**“Assignment of Project Documents”** means the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Funding Lender.

**“Authorized Amount”** shall mean the amount specified on the Schedule of Financial Terms as the principal amount of the Funding Loan under this Funding Loan Agreement.

**“Authorized Person”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are identified in the certificate attached to the Borrower Loan Agreement as Exhibit D-1. Changes to the initial Authorized Persons of the Borrower must be submitted pursuant to the form attached to the Borrower Loan Agreement as Exhibit D-2.

**“Bankruptcy Code”** means Title 11 of the United States Code, as amended, and any successor statute or statutes having substantially the same function.

**“Borrower”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Borrower Loan”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Borrower Loan Agreement”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Borrower Loan Documents”** means the Funding Loan Documents executed by the Borrower and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Borrower Loan or any portion thereof.

**“Borrower Note”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Business Day”** means any day on which the offices of the Funding Lender, are open for business and on which The New York Stock Exchange is not closed.

**“Capital Expenditures”** means the capital expenditures relating to any construction, renovation, rehabilitation, repair and replacement of the Improvements or made pursuant to the recommendations of the Engineering Consultant.

**“Capitalized Interest Account”** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Change Order”** means a change made to the Plans and Specifications relating to the Project Facilities, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

**“Closing Date”** means the date on which the Governmental Note is delivered by the Governmental Lender to the Funding Lender in exchange for the purchase price thereof.

**“Closing Memorandum”** means Closing Memorandum signed by the Controlling Person and the Borrower with respect to the initial disbursement of Funding Loan proceeds and other amounts specified therein.

**“Code”** means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference is deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

**“Collateral”** means all property of the Borrower in which the Fiscal Agent or Funding Lender is granted a security interest to secure payment of the Borrower Note or Governmental Note.

**“Completion”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

- (i) the Controlling Person shall have received from the Borrower a schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial Completion, in form and substance approved by the Controlling Person, executed by the Borrower, Contractor, and Architect;

- (ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Controlling Person. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of



completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

(iii) as to all such Governmental Actions, no appeal or other action or proceeding challenging any such Governmental Actions shall have been filed or, if filed and decided, there shall have been no appeal (or further appeal) taken and all other statutory appeal periods must have expired, and there shall be no claim, litigation or governmental proceeding pending against the Borrower or the Project Facilities challenging the validity or the issuance of any zoning, subdivision or other land use ordinance, variance, permit or approval, or any Governmental Action of the kind described in this subparagraph (iii). In addition, as to all of such permits, approvals and certificates having statutory, regulatory or otherwise expressly specified and determinable appeal periods, such periods, if any, must have expired without an appeal having been taken (or any such appeal shall have been denied or shall have affirmed the granting of such Governmental Action); and

(iv) the Controlling Person has determined that construction or rehabilitation, as the case may be, of the Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project;

(v) the Completion Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person and the Governmental Lender and shall be reasonably acceptable to the Controlling Person; and

(vi) the Estimated Use of Proceeds Compliance Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person.

**“Completion Date”** means the date by which the construction of the Improvements must achieve Completion. The initial Completion Date is set forth in the Schedule of Financial Terms; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion, upon delivery of such other information and funds as reasonably requested by the Controlling Person or the Funding Lender. The approval of the Controlling Person shall not be unreasonably withheld, conditioned or delayed in connection with any reasonably required extension of the Completion Date as a result of any Force Majeure event.

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

**“Condemnation Award”** means the total condemnation proceeds actually paid by the condemnor as a result of the condemnation of all or any part of the property subject to the Mortgage less the actual costs incurred, including attorneys’ fees, in obtaining such award.

**“Construction Closeout Deliveries”** means, with respect to the Project Facilities, that each of the following conditions has been satisfied:

(i) All conditions to Completion have been satisfied;

(ii) the Controlling Person shall have received a copy of the final Plans and Specifications containing all Change Orders and there shall have been no Material Change Orders other than Material Change Orders approved by the Controlling Person;

(iii) the Controlling Person shall have received from the Architect, and the Engineering Consultant shall have approved, a certificate of the Architect in the form attached as *Exhibit A* to the form of Construction Closeout Deliveries Certificate of completion attached as *Schedule 9* to the Borrower Loan Agreement and otherwise customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

(iv) all Work set forth in the Plans and Specifications for the Project Facilities shall have been incorporated into the Improvements at the Project Facilities;

(v) except for Permitted Encumbrances and Impositions not then due and payable, the Project Facilities shall be free of any and all private or governmental charges, claims or Liens (filed or not) of any nature, excepting only the liens and security interests in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) and any other encumbrances approved by the Controlling Person in writing;

(vi) with respect to all contractors and subcontractors and materialmen (for contracts less than \$50,000, only as required by the Title Company; provided that the Title Company insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release (or a conditional waiver and release conditioned solely upon receipt of final payment) of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities and true copies thereof have been delivered to the Controlling Person;

(vii) the Construction Deliveries Closeout Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person;

(viii) and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances;

(ix) if construction work resulted in new structures or expansion of foot prints of the existing structures, the Controlling Person shall have received an as-built ALTA/NSPS Survey certified to the Fiscal Agent, the Funding Lender and the Controlling Person;

(x) the Final Use of Proceeds Compliance Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person, with a copy to the Governmental Lender, and shall be reasonably acceptable to the Controlling Person; and

(xi) the Borrower has, in form and substance acceptable to the Controlling Person, completed the Environmental Completion Conditions.

**"Construction Contract"** means the guaranteed maximum price contract, dated on or about [\_\_\_\_], 2025, between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**"Construction Monitoring Fee"** shall have the meaning set forth in the Schedule of Financial Terms.

**"Contamination"** means the release, discharge, disposal, or presence of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising

from the Project Facilities and emanating into or upon any land or water or air, or otherwise into the environment.

**“Contractor”** means [DHFC The Legacy on Kiest General Contractor, LLC].

**“Control”** (including, with the correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means, as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such other Person, or of the Person, whether through contract, stock ownership, partnership interests, membership, voting rights, governing boards, committees, divisions or other bodies with one or more common members, directors, trustees or other managers, or otherwise.

**“Controlling Person”** means any entity designated in writing by the Funding Lender to act as a Controlling Person hereunder, in accordance with Article VIII hereof. If at any time a Controlling Person has not been designated by the Funding Lender, all references herein and in other Funding Loan Documents to “Controlling Person” shall refer to the Funding Lender. The initial Controlling Person is R4 Servicer LLC.

**“Cost Certification”** means a final cost certification with respect to the Project Facilities, in form and substance acceptable to the Controlling Person, prepared by the Accountant or another independent firm approved by the Controlling Person.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund established by the Fiscal Agent pursuant to Section 4.2 hereof.

**“Costs of Issuance”** shall have the meaning ascribed thereto in the Tax Exemption Agreement.

**“Costs of Issuance Deposit”** means the deposit to be made by the Borrower with the Fiscal Agent on the Closing Date, as specified in the Closing Memorandum, which amount shall be comprised of sources other than the proceeds of the Funding Loan.

**“Counsel”** means an attorney, or firm of attorneys, admitted to practice law before the highest court of any state in the United States of America or the District of Columbia, including Governmental Lender Counsel.

**“Debt Service Schedule”** means the schedule of debt service payments with respect to the Borrower Note, together with any replacement thereof, each as delivered by the Controlling Person pursuant to Section 2.1(f) of the Borrower Loan Agreement.

**“Default”** means an event or condition which is, or which after giving notice or lapse of time or both would be, an Event of Default.

**“Default Interest”** means interest payable at the Default Rate.

**“Default Rate”** means a rate per annum equal to ten percent (10%) per annum; provided that such rate shall in no event exceed the Maximum Lawful Rate.

**“Determination of Taxability”** means a determination that the interest accrued or paid on the Governmental Note is included in gross income of the Noteowners or former Noteowners for federal income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(i) the day on which the Borrower, the Governmental Lender, the Funding Lender or any Noteowner is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

(ii) the day on which the Borrower receives notice from the Funding Lender in writing that the Funding Lender has received (1) a notice in writing by any Noteowner or former Noteowner that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Noteowner or former Noteowner that asserts in effect that the interest on the Governmental Note received by such Noteowner or former Noteowner is included in the gross income of such Noteowner or former Noteowner for federal income tax purposes, or (2) an opinion of Governmental Lender Counsel that concludes in effect that the interest on the Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

(iii) the day on which the Borrower, the Governmental Lender, the Funding Lender or any Noteowner is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service or a technical advice memorandum issued by the national office of the Internal Revenue Service that the interest on the Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes; or

(iv) the day on which the Borrower, the Governmental Lender, the Funding Lender or any Noteowner is advised in writing by Counsel that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Borrower has been given written notice and an opportunity to participate and defend that the interest on the Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

provided, however, no Determination of Taxability shall occur to the extent that the interest on any of the Governmental Note is included in the gross income of any Noteowner or former Noteowner for federal income tax purposes solely because such Governmental Note was held by a Person who is a “substantial user” of the Project Facilities or a “related person” to such a “substantial user” (as such terms are used in section 147(a) of the Code); provided further that, no Determination of Taxability shall occur under clause (i) or (ii) of this definition unless there has been a reasonable opportunity to contest any such notice or determination, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined. To the extent that an agreement is reached with the Internal Revenue Service in order to allow the Governmental Note to continue to be treated as tax-exempt, no Determination of Taxability shall be deemed to have occurred.

**“Developer”** means LDG Multifamily, LLC, a Kentucky limited liability company, authorized to conduct its business in the State, together with its successors and assigns approved by the Controlling Person.

**“Developer Fee Pledge”** means the Developer Limited Guaranty, Pledge and Security Agreement dated as of the date hereof from Developer in favor of the Funding Lender.

**“Development Budget”** means the budget for the implementation and completion of the acquisition, construction and equipping of the Project Facilities, initially as attached to the Borrower Loan Agreement as Schedule 3, together with any modifications or amendments thereto made in accordance with the Borrower Loan Agreement and with the prior written consent of the Controlling Person.

**“Effective Gross Revenues”** of the Borrower means, for the Testing Period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) Underwritten Economic Vacancy, or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, or any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person. Notwithstanding any of the foregoing to the contrary, Effective Gross Revenues shall exclude: (i) revenues from portable tenant vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit, (ii) interest income, and (iii) business interruption insurance proceeds.

**“Engineer’s Agreement”** means the agreement, if any, between the Borrower and the structural engineer for the Project Facilities approved by the Controlling Person, relating to the construction of the Improvements, as the same may be amended, modified or supplemented from time to time.

**“Engineering Consultant”** means a consultant licensed to practice in the State and chosen by the Controlling Person.

**“Environmental Audit”** means the written Phase I environmental site assessment for the Project Facilities prepared by Partner Engineering and Science, Inc. dated [ ] (Partner Project Number: [ ]).

**“Environmental Completion Conditions”** shall have the meaning set forth in Section [14.15.1] of the Partnership Agreement.

**“Environmental Indemnity”** means the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and Guarantor in favor of the Funding Lender.

**“Environmental Laws”** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (i) Contamination, (ii) activities at any of the Project Facilities, (iii) repairs or construction/renovation of any Improvements, (iv) handling of any materials at any of the Project Facilities, (v) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (vi) storage, distribution, use, treatment, transport or disposal of any waste at or connected with any activity at any of the Project Facilities, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 42 U.S.C. §§ 9601 et seq., as amended from time to time; the Hazardous Materials Transportation Act 49 U.S.C. §§ 5101 et seq., as amended from time to time; the Resource Conservation and Recovery Act 42 U.S.C. §§ 6901 et seq., as amended from time to time; the Federal Water Pollution Control Act 33 U.S.C. §§ 1251 et seq., as amended from time to time; and comparable State statutes.

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) any other natural resources, (iii) a floodplain or other flood hazard area as

defined pursuant to any applicable state Legal Requirements, (iv) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (v) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

**“EPA”** shall have the meaning ascribed to such term in Section 6.14(e) of the Borrower Loan Agreement.

**“Equity Account”** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Equity Subaccount”** means the account of that name created as a subaccount in the Capitalized Interest Account pursuant to Section 4.2 of this Funding Loan Agreement.

**“ERISA”** shall have the meaning ascribed to such term in Section 5.11 of the Borrower Loan Agreement.

**“ERISA Affiliate”** shall have the meaning ascribed to such term in Section 5.11 of the Borrower Loan Agreement.

**“Event of Default”** means, with respect to this Funding Loan Agreement, any of the events specified in Section 5.1 hereof, or with respect to the Borrower Loan Agreement, any of the events specified in Section 7.1 thereof.

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person in an amount equal to the greater of: (i) the actual amount of aggregate annualized Expenses for the Testing Period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) Underwritten Expenses.

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

**“Federal Tax Status”** means, as to the Governmental Note, the status under existing law of the interest on the Governmental Note as excludable from gross income for federal income tax purposes (subject to the exceptions contained in the Approving Opinion of Governmental Lender Counsel).

**“Financing Statements”** means any and all financing statements (including continuation statements) or other instruments filed or recorded to perfect the Security Interest created in this Funding Loan Agreement.

**“First Loan Payment Date”** shall have the meaning set forth in the Schedule of Financial Terms.

**“First Monthly Tax and Insurance Escrow Payment Date”** shall have the meaning set forth in the Schedule of Financial Terms

**“First Optional Call Date”** shall have the meaning set forth in the Schedule of Financial Terms.

**“First Par Call Date”** shall have the meaning set forth in the Schedule of Financial Terms.

**“First Principal Payment Date”** shall have the meaning set forth in the Schedule of Financial Terms.

**“First Put Date”** shall have the meaning set forth in the Schedule of Financial Terms.

**“Fiscal Agent”** shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

**“Fiscal Year”** means the annual accounting year of the Borrower, which currently begins on January 1 of each calendar year.

**“Fitch”** means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Governmental Lender and the Funding Lender.

**“Force Majeure”** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

**“Funding Lender”** shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

**“Funding Loan”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Funding Loan Agreement”** shall have the meaning given to such term in the first paragraph hereof.

**“Funding Loan Documents”** means, collectively, the Governmental Note, this Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, the Ground Lease, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Governmental Lender Assignment, the Replacement Reserve Agreement, the Assignment of Project Documents, the Assignment of Prime Subcontract, the General Partner Pledge, the Special Limited Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Subordination Agreement, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Governmental Note, including all modifications, amendments or supplements thereto.

**“Funding Loan Proceeds Account”** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Funding Loan Proceeds Subaccount”** means the account of that name created as a subaccount in the Capitalized Interest Account pursuant to Section 4.2 of this Funding Loan Agreement.

**“Governmental Note Payment Fund”** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“GAAP”** means generally accepted accounting principles in effect in the United States from time to time, consistently applied.

**“General Partner”** means DHFC The Legacy on Kiest GP, LLC, a Texas limited liability company, authorized to conduct its business in the State, the general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

**“General Partner Pledge”** means the Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the General Partner, in favor of the Funding Lender.

**“Government Obligations”** means noncallable, non-redeemable (i) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (ii) obligations issued by an agency or instrumentality of the United States of America, the full and timely payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (i) or (ii) issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), which obligations, in either case, are not subject to redemption prior to maturity at less than par at the option of anyone other than the holder thereof.

**“Governmental Action”** means all permits, authorizations, registrations, consents, certifications, approvals, waivers, exceptions, variances, claims, orders, judgments and decrees, licenses, exemptions, publications, filings, and notices to and declarations of or with any Governmental Authority and shall include all permits and licenses required to construct, use, operate and maintain any of the Project Facilities.

**“Governmental Authority”** means any federal, state, or local governmental or quasi - governmental subdivision, authority, or other instrumentality thereof and any entity asserting or exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and having jurisdiction over the Borrower and/or the Project Facilities.

**“Governmental Lender”** shall have the meaning set forth in the first paragraph of this Funding Loan Agreement.

**“Governmental Lender Administration Fee”** means the fee payable annually in advance to the Governmental Lender on each [July 1], in the amount of 0.10% per annum of the aggregate principal amount of Governmental Note outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Governmental Lender Administration Fee in advance to the Governmental Lender for the period from the Closing Date to [June 30, 2027]. The Fiscal Agent will remit to the Governmental Lender (upon receipt of an invoice from the Governmental Lender), payable solely from funds provided by the Borrower, all payments of the Governmental Lender Administration Fee due on or after [July 1, 2027].

**“Governmental Lender Assignment”** means that certain Assignment of Deed of Trust and Funding Loan Documents dated of even date with this Funding Loan Agreement from the Governmental Lender to the Fiscal Agent and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Governmental Lender Compliance Fee”** means the fee payable annually in advance to the Governmental Lender on each [July 1], in the amount of \$25 per Low-Income Unit (as defined in the Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Governmental Lender Compliance Fee shall be paid on the



Closing Date. The Fiscal Agent will remit to the Governmental Lender (upon receipt of an invoice from the Governmental Lender), solely from funds provided by the Borrower, all payments of the Governmental Lender Compliance Fee due on or after [July 1], 2028. The Governmental Lender Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

**“Governmental Lender Counsel”** means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt obligations, selected by the Governmental Lender, and reasonably acceptable to the Controlling Person, and initially means Bracewell LLP.

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

**“Governmental Note”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“Ground Lease”** means that certain Ground Lease dated as of [July 1], 2025, by and between the Borrower and the Ground Lessor, pursuant to which the Borrower holds a leasehold interest in the real property upon which the Project Facilities are situated, as the same may be amended, modified or supplemented from time to time.

**“Ground Lessor”** means DHFC The Legacy on Kiest Landowner, LLC, a Texas limited liability company, as landlord under the Ground Lease, together with its successors and assigns in such capacity.

**“Guarantor”** means, collectively, jointly and severally, the Guarantors identified on the Schedule of Financial Terms hereto, together with their respective permitted successors and assigns.

**“Guaranty of Completion”** means the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Funding Lender.

**“Guaranty of Debt Service and Stabilization”** means the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Funding Lender.

**“Guaranty of Recourse Obligations”** means the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Funding Lender.

**“Hazardous Substances”** means (a) petroleum or derivatives thereof or chemical products, whether in liquid, solid, or gaseous form, or any fraction or by product thereof, (b) asbestos or asbestos containing materials, (c) polychlorinated biphenyls (pcbs), (d) radon gas, (e) underground storage tanks, (f) any explosive or radioactive substances, (g) lead or lead based paint, or (h) any other pollutant, contaminant, substance, material, waste or mixture which is or shall be listed, defined, or otherwise determined by any governmental authority to be hazardous, toxic, dangerous or otherwise regulated, controlled or giving rise to liability under any Environmental Laws, including but not limited to Mold, medical waste and other bio-hazardous materials and any chemicals, pollutants, contaminant, substance, material, waste or mixture defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

**“Impositions”** means, with respect to the Project Facilities, all taxes including, without limitation, all real and personal property taxes, water charges and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Project Facilities.

**“Improvements”** means all buildings and other improvements included in the Project Facilities.

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Governmental Lender, the Controlling Person, the Funding Lender or to the Noteowners from time to time, now existing and hereafter arising, under or in connection with this Funding Loan Agreement or any of the other Funding Loan Documents, the Taxable Loan Documents or the Subordinate Debt Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Funding Lender, the Governmental Lender or the Noteowners from time to time of the Governmental Note.

**“Indemnified Parties”** shall have the meaning given to such term in Section 2.5 of the Borrower Loan Agreement.

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

**“Insurance Proceeds”** means the total proceeds of insurance actually paid or payable by an insurance company in respect of the required insurance on the Project Facilities, less the actual costs incurred, including attorneys’ fees, in the collection of such proceeds.

**“Interest Rate”** shall have the meaning set forth in the Schedule of Financial Terms.

**“Investor Limited Partner”** means R4 LKTX Acquisition LLC, a Delaware limited liability company, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

**“Investor Letter”** means that certain Investor Letter, substantially in the form attached hereto as Exhibit B.

**“Lease”** shall have the meaning assigned to such term in the Mortgage.

**“Legal Requirements”** means all statutes, codes, laws, ordinances, regulations, rules, policies, guidance or other federal, state, local and municipal requirements of any Governmental Authority whether now or hereafter enacted or adopted, and all judgments, decrees, injunctions, writs, orders or like action of an arbitrator or a court or other Governmental Authority of competent jurisdiction (including those pertaining to health, safety or the environment).

**“Lien”** means any lien, mortgage, security interest, tax lien, pledge, encumbrance, conditional sale or title retention arrangement, or any other interest in property designed to secure the repayment of indebtedness, whether arising by agreement or under any statute or law, or otherwise.

**“Loan Payment Date”** means (i) the first Business Day of each month, commencing on the First Loan Payment Date, and (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

**“Major Contract”** shall mean any subcontract for labor or materials, or both, in connection with the Improvements which is for an aggregate contract price equal to or greater than \$500,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders.

**“Management Agreement”** shall have the meaning ascribed to such term in Section 6.19 of the Borrower Loan Agreement.

**“Managing Agent”** means Solidago Residential Services, LLC, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

**“Material Change Order”** means, with respect to the Project Facilities, a Change Order that (i) would result in an increase or decrease of \$50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person’s determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

**“Material Contract”** means each mortgage, agreement or other written instrument or contract to which the Borrower is a party or by which any of its assets are bound (including, without limitation, any employment or executive compensation agreement, collective bargaining agreement, agreement relating to an Obligation, agreement for the acquisition, construction, repair or disposition of real or personal property, agreement for the purchasing or furnishing of services, operating lease, joint venture agreement, agreement relating to the acquisition or disposition of an Affiliate or agreement of merger or consolidation) that (i) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (ii) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

**“Maturity Date”** means the date set forth on the Schedule of Financial Terms.

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

**“Maximum Permanent Loan Amount”** shall mean the amount specified on the Schedule of Financial Terms.

**“Memo of Ground Lease”** means that certain Memorandum of Ground Lease, effective as of [July 1], 2025, between the Borrower and the Ground Lessor, evidencing the Ground Lease, and filed in the land records of Dallas County, Texas, on or about the Closing Date, as the same may be amended, modified or supplemented from time to time with the prior written consent of the Controlling Person.

**“Minimum Beneficial Ownership Amount”** means an amount of no less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan.

**“Minimum Coverage”** shall mean the debt service coverage ratio set forth on the Schedule of Financial Terms.

**“Minimum Permanent Loan Amount”** shall mean the amount specified on the Schedule of Financial Terms.

**“Minimum Physical Occupancy”** shall mean the minimum percentage of occupancy set forth on the Schedule of Financial Terms.

**“Moisture Management Program”** shall have the meaning ascribed to such term in Section 6.14(e) of the Borrower Loan Agreement.

**“Mold”** shall have the meaning ascribed to such term in Section 6.14(e) of the Borrower Loan Agreement.

**“Monthly Tax and Insurance Amount”** means an amount equal to [the sum of (i) one-twelfth (1/12th) of the annual Impositions, plus (ii) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Borrower Loan Agreement], as any such amounts may be increased if the Controlling Person determines that funds in the Tax and Insurance Escrow Fund will be insufficient to pay Impositions and insurance premiums when due.

**“Moody’s”** means Moody’s Ratings, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Governmental Lender and the Funding Lender.

**“Mortgage”** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**“MSRB”** means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

**“Noteowner”** or **“owner of the Governmental Note”** means the owner, or as applicable, collectively the owners, of the Governmental Note as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.6(e) of this Funding Loan Agreement.

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations of the Borrower under the Ground Lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

**“OFAC Violation”** shall have the meaning ascribed to such term in Section 6.23 of the Borrower Loan Agreement.

**“Operating Reserve Account”** means the Operating Reserve Account created pursuant to Section 8.4 of the Borrower Loan Agreement prior to the occurrence of an Operating Reserve Trigger and thereafter the Account of that name created pursuant to the Funding Loan Agreement.

**“Operating Reserve Amount”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Operating Reserve Trigger”** shall have the meaning ascribed to such term in Section 8.4 of the Borrower Loan Agreement.

**“Ordinary Fiscal Agent’s Fees and Expenses”** means (a) an acceptance fee of \$2,000 payable on the Closing Date; and (b) the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to \$4,500 and shall be payable annually in advance on the Closing Date and each annual anniversary thereof.

**“Origination Fee”** shall mean the origination fee set forth on the Schedule of Financial Terms and payable pursuant to Section 2.2(a) of the Borrower Loan Agreement.

**“Outside Stabilization Date”** means the date by which Stabilization must be achieved as specified on the Schedule of Financial Terms.

**“Partnership Agreement”** means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of the Closing Date, as the foregoing may be amended, modified, supplemented or restated from time to time.

**“PBGC”** shall have the meaning ascribed to such term in Section 5.11 of the Borrower Loan Agreement.

**“Permitted Encumbrances”** means only:

- (i) the Ground Lease, as evidenced by the Memo of Ground Lease;
- (ii) the Regulatory Agreement;
- (iii) the Mortgage;
- (iv) the liens securing the Taxable Construction Loan;
- (v) the liens securing the Subordinate Debt;
- (vi) Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;

(vii) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and

(viii) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

**“Permitted Investments”** means any one or more of the following investments, if and to the extent the same are then legal investments under the applicable laws of the State for moneys proposed to be invested therein:

- (i) Government Obligations;
- (ii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iii) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody’s or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody’s;
- (iv) Prime commercial paper rated either “A-1” by S&P or “P-1” by Moody’s and, if rated by both, not less than “A-1” by S&P and “P-1” by Moody’s;
- (v) Bankers’ acceptances drawn on and accepted by commercial banks;
- (vi) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (v) of this definition including, without limitation, any such money market fund or trust for which the Funding Lender, or an affiliate of the Funding Lender, serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian; and
- (vii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person.

**“Permitted Transfer”** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner or the Special Limited Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner or the Special Limited Partner, (iii) a transfer of partnership interests in Borrower to the Investor Limited Partner, (iv) a transfer of the limited partner interests of the Investor Limited Partner in the Borrower to an Affiliate of such Investor Limited Partner, (v) a transfer of indirect shares or ownership interests in the Investor Limited Partner so long as the direct ownership interests in the Investor Limited Partner are owned or controlled directly or indirectly by R4 Capital, (vi) a transfer of any shares or ownership interests in the Investor Limited Partner

after the contributions by the owners of the Investor Limited Partner of all installments of capital contributions required to be made by the Investor Limited Partner under the Partnership Agreement, (vii) transfers of any interests in the General Partner or the Special Limited Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the General Partner or the Special Limited Partner pursuant to the Partnership Agreement, (ix) after the payment in full of all capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

**“Person”** means any individual, for-profit or not-for-profit corporation, partnership, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

**“Plans and Specifications”** means, with respect to the Project Facilities, the plans and specifications for the construction of Improvements prepared by the Architect and more particularly identified on Schedule 4 attached to the Borrower Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Borrower Loan Agreement through Change Orders or otherwise.

**“Pledged Revenues”** shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Reserved Rights) derived from or in connection with the Funding Loan Documents, including all Borrower payments due under the Borrower Loan Agreement and the Borrower Note and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

**“Prime Subcontract”** means the prime subcontract for the construction of the Project Facilities, dated as of [\_\_\_\_], between the Contractor and Prime Subcontractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**“Prime Subcontractor”** means [Xpert Design and Construction, LLC].

**“Project Costs”** means the costs, fees, and expenses associated with the acquisition, construction, and equipping of the Project Facilities for use as affordable rental housing including but not limited to the cost of materials, appliances, equipment, and other items of tangible personal property, the fees and expenses of architects, contractors, engineers, attorneys, accountants, developers, surveyors, payment of capitalized interest, payment of certain costs and expenses incidental to the issuance of the Governmental Note and payment of any other costs shown on the Development Budget.

**“Project Facilities”** or **“Project”** means the approximately 180-unit multifamily residential housing project located or to be located at 2621 Southerland Avenue, Dallas, Dallas County, Texas 75203 and related personal property and equipment, the acquisition, construction and equipping of which are being financed by the proceeds of the Funding Loan.

**“Proposed Budget”** shall have the meaning given to such term in Section 6.24 of the Borrower Loan Agreement.

**“Project Fund”** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Punchlist Items”** means any items necessary at the time of the issuance of a temporary use and occupancy permit to complete fully the construction of the Project Facilities in accordance with the Plans and Specifications for the Project Facilities, or required for the issuance of a final certificate of occupancy or its equivalent.

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

**“Rebate Amount”** shall have the meaning given to such term in the Tax Exemption Agreement.

**“Rebate Analyst”** shall have the meaning given to such term in the Tax Exemption Agreement.

**“Rebate Fund”** means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.2 hereof.

**“Regulations”** means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, dated of even date with this Funding Loan Agreement, among the Governmental Lender, the Fiscal Agent, the Ground Lessor, as “Fee Owner”, and the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Regulatory Agreement Default”** shall have the meaning given to such term in Section 7.9(b) of the Borrower Loan Agreement.

**“Rents”** shall have the meaning assigned to such term in the Mortgage.

**“Replacement Reserve Agreement”** means the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Funding Lender.

**“Replacement Reserve Fund”** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Required Equity Funds”** means all installments of equity contributions to be made to the Borrower by the Investor Limited Partner through the Stabilization Date and funding of the Operating Reserve Account, subject to and in accordance with the terms of the Partnership Agreement.

**“Requisition”** means, with respect to the Project Fund, a requisition in the form attached to the Borrower Loan Agreement as *Exhibit B*, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Funding Loan pursuant to the terms of the Borrower Loan Agreement, and with respect to the Costs of Issuance Fund, the requisition in the form of **Exhibit C** to this Funding Loan Agreement required to be submitted in connection with disbursements from the Costs of Issuance Fund.



**“Reserved Rights”** of the Governmental Lender means (a) all of the Governmental Lender’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Governmental Lender to amounts payable to it pursuant to Section 2.2 of the Borrower Loan Agreement, including the Governmental Lender Fees; (c) all rights of the Governmental Lender to receive any Rebate Amount required to be rebated to the United States of America under the Code in connection with the Governmental Note, as described in the Tax Exemption Agreement; (d) all rights of the Governmental Lender to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder and under the Borrower Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Governmental Lender of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Borrower Loan Agreement, in the Tax Exemption Agreement and in the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Governmental Lender set forth in this Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, or the Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Governmental Note, (2) the loss or destruction of the Governmental Note, (3) the limited liability of the Governmental Lender as provided in the Act, this Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, or the Borrower Note, (4) no liability of the Governmental Lender to third parties, and (5) no warranties of suitability or merchantability by the Governmental Lender; (g) all rights of the Governmental Lender in connection with any amendment to or modification of this Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, the Borrower Note; and (h) any and all limitations of the Governmental Lender’s liability and the Governmental Lender’s disclaimers of warranties set forth in this Funding Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement or the Borrower Loan Agreement, and the Governmental Lender’s right to inspect and audit the books, records and permits of the Borrower and the Project.

**“Resolution”** means the resolution of the Governmental Lender adopted on [June 12, 2025], authorizing the issuance and sale of the Governmental Note, and the execution of this Funding Loan Agreement, the Borrower Loan Agreement and the other Funding Loan Documents to which the Governmental Lender is a party.

**“Retainage”** means the greater of: (i) a holdback of the percentage of the hard costs of construction of the Improvements under each contract or subcontract set forth on the Schedule of Financial Terms or (ii) the amount required to be held back pursuant to the Construction Contract.

**“Sale”** means the direct or indirect sale, agreement to sell, assignment, transfer, conveyance, hypothecation, lien, mortgage, grant of a security interest in or a deed to secure debt or deed of trust with respect to, encumbrance, lease, sublease or other disposition of the Project Facilities, or any part thereof or interest therein whether voluntary, involuntary, by operation of law or otherwise, other than (i) the leasing of individual residential units to tenants, (ii) the extension, amendment, renewal or replacement of commercial leases currently in effect, and (iii) the grant of easements for utilities and similar purposes in the ordinary course provided, such easements do not impair the use of the Project Facilities or diminish the value of the Project Facilities. “Sale” shall also include the direct or indirect sale, transfer, assignment, pledge, hypothecation or conveyance of legal or beneficial ownership of (a) equity ownership interests in the Borrower, (b) a controlling interest in the aggregate, at any time or times, of the equity ownership interests in the General Partner, or (c) the substitution of a new General Partner in the Borrower without the Controlling Person’s written consent, which it may withhold in its sole discretion; provided, however, that “Sale” shall not include a Permitted Transfer.

**“S&P”** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be

dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Governmental Lender and the Funding Lender.

“**Schedule of Financial Terms**” shall mean Schedule A to this Funding Loan Agreement, as modified from time to time pursuant to Section 6.1 hereof.

“**Secondary Market Transaction**” shall have the meaning given to such term in Section 10.12(a) of the Borrower Loan Agreement.

“**Securities**” shall have the meaning given to such term in Section 10.12(a) of the Borrower Loan Agreement.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security**” shall have the meaning given to such term in Section 2.1 of this Funding Loan Agreement.

“**Security Interest**” or “**Security Interests**” means the security interests created herein and shall have the meanings set forth in the U.C.C.

“**Special Limited Partner**” means LDG The Legacy on Kiest SLP, LLC, a Texas limited liability company and its successors and assigns.

“**Special Limited Partner Pledge**” means the Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the Special Limited Partner, in favor of the Funding Lender.

“**Stabilization**” means the point at which (i) the Improvements have met Minimum Physical Occupancy by credit-worthy, qualified tenants meeting the requirements of the Funding Loan Documents in each month of the Testing Period; (ii) the ratio of Stabilized NOI in each month of the Testing Period to maximum principal, interest, Governmental Lender Fees and Fiscal Agent Fees payable in any month other than the month in which the Maturity Date occurs on the amount of Borrower Note to be outstanding after the Stabilization Date equals or exceeds the Minimum Coverage; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Funding Loan Documents; (iv) the Project Facilities shall have achieved Completion and satisfied each of the Construction Closeout Deliveries; (v) the Borrower Note has been repaid in part in an amount not less than the amount required pursuant to Section 7(c)(iii) of the Borrower Note; (vi) if required to be funded at Stabilization per the Schedule of Financial Terms, the Borrower shall have deposited an amount equal to the Operating Reserve Amount, or such other amount as approved by the Controlling Person, in the Operating Reserve Account; and (vii) the Taxable Construction Loan has been repaid in full, as determined by the Controlling Person.

“**Stabilization Date**” means the earlier to occur of: (i) the date specified by the Controlling Person that all of the conditions to achievement of Stabilization have been satisfied; or (ii) the Outside Stabilization Date, as the same may be extended pursuant to Section 6.37 of the Borrower Loan Agreement.

“**Stabilized NOI**” means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Controlling Person.

“**State**” means the State of Texas.

**“Subordinate Debt”** means the loan(s) in the maximum amount set forth in the Schedule of Financial Terms from the Subordinate Lender to the Borrower, evidenced and secured by the Subordinate Debt Documents.

**“Subordinate Debt Account”** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Subordinate Debt Documents”** means all documents evidencing or securing the Subordinate Debt or otherwise executed and delivered by the Borrower in connection therewith or as a condition of the advance of the proceeds thereof, together with a subordination agreement executed by lender of such Subordinate Debt, all in form and substance acceptable to the Controlling Person.

**“Subordinate Lender”** shall mean the Subordinate Lender(s) specified on the Schedule of Financial Terms.

**“Subordination Agreement”** means the Subordination Agreement(s) dated on or about the Closing Date made by Subordinate Lender, as subordinate lender, and Borrower in favor of the Fiscal Agent and Funding Lender, as may be amended, modified or supplemented from time to time.

**“Surplus Funding Loan Proceeds”** means all drawn but unexpended moneys and any unliquidated investments with respect thereto remaining upon final completion and after payment in full of the Project Costs, except for Funding Loan proceeds retained to pay for Project Costs not then due and payable.

**“Tax Abatement”** means the full exemption from ad valorem real estate taxes pursuant to Section 394.905, Texas Local Government Code, as amended.

**“Tax and Insurance Escrow Fund”** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Tax Exemption Agreement”** means the Tax Exemption Certificate and Agreement dated of even date with this Funding Loan Agreement, among the Governmental Lender, the Borrower and the Fiscal Agent, and any and all amendments or supplements thereto.

**“Taxable Construction Loan”** shall mean the loan from the Taxable Construction Lender to Borrower in an original amount not to exceed \$[9,700,000], as evidenced by the Taxable Loan Documents.

**“Taxable Construction Lender”** shall mean the Funding Lender, or its successor pursuant to the Taxable Loan Documents.

**“Taxable Loan Account”** shall mean the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Taxable Loan Documents”** shall mean, collectively, all instruments, agreements and other documents evidencing, securing or governing the Taxable Construction Loan.

**“Taxable Loan Payment Fund”** shall mean the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**“Testing Period”** means the period for testing set forth on the Schedule of Financial Terms immediately preceding the date of such determination.

**“Third Party Costs”** means the ongoing Governmental Lender Fees, Fiscal Agent Fees and the fees of the Rebate Analysts or any other third party in connection with the Governmental Note.

**“Title Company”** means the title insurance company insuring the lien of the Mortgage on the Closing Date together with any successor title company approved by the Controlling Person.

**“Title Policy”** means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Fiscal Agent and/or Funding Lender, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Controlling Person.

**“U.C.C.”** means the Uniform Commercial Code of the State as now in effect or hereafter amended.

**“Underwriter Group”** shall have the meaning given to such term in Section 10.12 of the Borrower Loan Agreement.

**“Underwritten Expenses”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Underwritten Economic Vacancy”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Underwritten Management Fee”** means the percentage of gross income specified on the Schedule of Financial Terms received from the Project Facilities on account of rents, service fees, late charges, penalties and other charges under Leases.

**“Underwritten Permanent Loan Amount”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Work”** means the items of construction of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2     Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Funding Loan Agreement:

(a) All terms defined in the Borrower Loan Agreement and not defined herein shall have the meaning given to such terms in the Borrower Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Funding Loan Agreement nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Funding Loan Agreement to particular Articles or Sections are references to Articles or Sections of this Funding Loan Agreement, unless otherwise indicated.

**ARTICLE II**  
**SOURCE OF PAYMENTS, GENERAL TERMS AND PROVISIONS OF THE**  
**GOVERNMENTAL NOTE**

**Section 2.1     Security.** To secure the payment of the Funding Loan and the Governmental Note, to declare the terms and conditions on which the Funding Loan and the Governmental Note are secured, and in consideration of the terms and provisions of the funding of the Funding Loan by the Funding Lender, the Governmental Lender does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Reserved Rights) (said property, rights and privileges being herein collectively called, the “Security”):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project Facilities and including, without limitation, all Pledged Revenues, Borrower payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by Fiscal Agent under this Funding Loan Agreement and any amounts held at any time in the Funding Loan Proceeds Account, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent or Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 2.1 for the payment of the principal of, premium, if any, and interest on the Governmental Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 2.2     Delivery of Security.** To provide security for the payment of the Funding Loan and the Governmental Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Note its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Fiscal Agent, with a copy to the Funding Lender, as applicable, the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing (all of which may be provided electronically):

- (a)     The Borrower Note endorsed without recourse to the Fiscal Agent by the Governmental Lender;
- (b)     The executed Borrower Loan Agreement and Regulatory Agreement;
- (c)     The executed Mortgage and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Mortgage from the Governmental Lender to the Fiscal Agent, in recordable form;
- (d)     Uniform Commercial Code financing statements or other chattel security documents giving notice of the Fiscal Agent's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and
- (e)     Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

The Governmental Lender shall, at the expense of the Borrower, deliver and deposit (or cause to be delivered and deposited) with the Fiscal Agent and Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Fiscal Agent's and/or the Funding Lender's lien and security interest in and to the Security.

**Section 2.3     Source of Payment of Funding Loan and Other Obligations.** The Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the State, or any political subdivision thereof (except the Governmental Lender, to the limited extent set forth herein) nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Note or any of the Governmental Lender's agreements or obligations with respect to the Funding Loan, the Governmental Note, or hereunder, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. The Governmental Lender has no taxing power.

**Section 2.4     Form of Governmental Note; Initial Note.**

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

(b) The Initial Note shall be identical to the form of Governmental Note attached as Exhibit A; provided, the Initial Note shall be payable to the Funding Lender and registered by the Comptroller. The provisions of Exhibit A may be rearranged or re-ordered for purposes of the Initial Note.

**Section 2.5     Delivery of Governmental Note, Conditions to Closing.**

(a) The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Chair or Vice Chair of the Governmental Lender and attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Governmental Lender and shall bear an impression or a facsimile of the seal of the Governmental Lender. The manual or facsimile signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the execution and delivery of the Governmental Note or shall not have held such offices at the date of the Governmental Note. Following execution by the Governmental Lender, the Governmental Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Funding Loan Agreement unless and until a certificate of authentication or registration on such Governmental Note substantially in the form contained on Exhibit A attached hereto shall have been duly executed by the Fiscal Agent or the Comptroller, as applicable. The certificate of authentication or registration appearing on the Governmental Note shall be deemed to have been duly executed by the Fiscal Agent or Comptroller, as applicable, if manually signed by an authorized officer or employee of the Fiscal Agent or the Comptroller, as applicable. Such registration certification of the Comptroller or authentication certificate of the Fiscal Agent shall be conclusive evidence that the Governmental Note so registered or authenticated has been duly executed, registered, or authenticated and delivered.

(b) Prior to the authentication by the Fiscal Agent and delivery to the Funding Lender of the Governmental Note, and as a condition to closing of the Funding Loan, there shall be filed with and/or delivered to the Fiscal Agent (all of which may be provided electronically):

- (i) *Intentionally omitted*; and
- (ii) A certified copy of the Resolution; and
- (iii) An executed counterpart of each of the documents specifically listed in the definitions of Funding Loan Documents and Taxable Loan Documents; and
- (iv) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Borrower Loan Agreement; and
- (v) A copy of completed IRS Form 8038 to be filed by or on behalf of the Governmental Lender pursuant to Section 149(e) of the Code; and
- (vi) An executed counterpart of the Tax Exemption Agreement; and
- (vii) The Initial Note registered by the Comptroller and an Opinion of the Office of the Attorney General of the State of Texas (the “Texas Attorney General”) approving the Governmental Note; and
- (viii) The executed Borrower Note and an endorsement of the Borrower Note by the Governmental Lender in favor of the Fiscal Agent; and

(ix) An opinion of Governmental Lender Counsel or Counsel to the Governmental Lender to the effect that this Funding Loan Agreement, the Borrower Loan Agreement, the Governmental Note, the Regulatory Agreement, the Governmental Lender Assignment and the Tax Exemption Agreement have been duly authorized, executed and delivered by the Governmental Lender, and the Governmental Note constitutes a valid and legally binding special limited of the Governmental Lender and this Funding Loan Agreement, the Borrower Loan Agreement, the Governmental Note, the Regulatory Agreement, the Governmental Lender Assignment and the Tax Exemption Agreement constitute valid and legally binding agreements of the Governmental Lender, each enforceable in accordance with their terms subject to customary exceptions; and

(x) The Approving Opinion of Governmental Lender Counsel that under existing law, interest on the Governmental Note will be excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, subject to customary exceptions; and

(xi) A supplemental opinion of Governmental Lender Counsel, addressed to the Governmental Lender, the Fiscal Agent and the Funding Lender, that, under existing law, the Governmental Note may be offered and sold without registration under the Securities Act, and that the Funding Loan Agreement is not required to be qualified under the Trust Indenture Act of 1939, as amended; and

(xii) An opinion of Counsel for the Borrower to the effect that the documents specifically listed in the definition of Funding Loan Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower; and

(xiii) The purchase price of \$[30,000,000] for the Governmental Note from the Funding Lender; and

(xiv) The written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Funding Lender upon receipt by the Fiscal Agent of the purchase price for the Governmental Note; and

(xv) All amounts required to be deposited in the funds and accounts created in Section 4.2 hereof, pursuant to the Closing Memorandum; and

(xvi) An executed Investor Letter from the Funding Lender; and

(xvii) Such other documents as may be required by the Governmental Lender, Funding Lender, Governmental Lender Counsel, or Controlling Person.

The Fiscal Agent shall deem the requirements of clauses (iv) and (xvii) satisfied upon delivery to the Fiscal Agent of the opinions referenced in Sections 2.5(b)(ix) and 2.5(b)(x) hereof.

## **Section 2.6 Required Transferee Representations; Participations; Sale and Assignment.**

(a) The Funding Lender shall deliver to the Governmental Lender an Investor Letter in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Note and the Funding Loan or (ii) any portion of or a participation interest in the Governmental Note and the Funding



Loan, to the extent permitted by Section 2.6(c) below; provided that such sale shall be only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent, an Investor Letter in substantially the form attached hereto as Exhibit B; and provided further, that, any such sale will be in compliance with section 6(e) of the Tax Exemption Agreement. In connection with any sale, assignment or transfer of the Governmental Note and the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Governmental Note.

(c) Notwithstanding the other provisions of this Section 2.6, no beneficial ownership interest in the Governmental Note and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount.

(d) No service charge shall be made for any sale or assignment of any portion of the Governmental Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the Funding Lender or assignee of the Funding Loan or portion thereof.

(e) The Governmental Note, or any interest therein, shall be in fully-registered form transferable to subsequent holders only on the registration books which shall be maintained by the Fiscal Agent for such purpose and which shall be open to inspection by the Governmental Lender and Funding Lender. The Governmental Note shall not be transferred through the services of The Depository Trust Company or any other third party registrar.

(f) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Note.

(g) Other than to receive an Investor Letter as provided herein, the Fiscal Agent shall have no obligation to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Funding Loan Agreement or under applicable law with respect to any transfer of the Governmental Note or any interest therein or the Funding Loan.

**Section 2.7 Authority.** The Governmental Lender represents and warrants that (i) it is duly authorized under the laws of the State to issue the Governmental Note, and to execute, deliver and perform the terms of the Borrower Loan Agreement and this Funding Loan Agreement; (ii) all action on its part for the issuance of the Governmental Note and execution and delivery of the Funding Loan Documents to which it is a party has been duly taken; (iii) the Governmental Note, upon execution and delivery, and the Funding Loan Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Governmental Lender in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles and principles of sovereign immunity; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security (other than to the Fiscal Agent as described herein); (v) it has not received any payments under the Borrower Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Borrower Loan Agreement; and (vii) the execution, delivery and performance of the Funding Loan Documents to which it is a party and issuance of the Governmental Note is not in contravention of law or any agreement, instrument, trust indenture or other undertaking to which it is a party or by which it is bound and no other

approval, consent or notice from any governmental agency is required on the part of the Governmental Lender.

**Section 2.8     No Litigation.** The Governmental Lender represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Governmental Lender, threatened against or affecting the Governmental Lender wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Governmental Note, this Funding Loan Agreement or the other Funding Loan Documents to which the Governmental Lender is a party, or (ii) the Federal Tax Status of the Governmental Note.

**Section 2.9     Further Assurances.** The Governmental Lender covenants that it will cooperate to the extent necessary with the Borrower and the Funding Lender in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Governmental Lender in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such amendments hereto and such further acts, instruments and transfers as the Funding Lender may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Governmental Lender shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Borrower Loan Agreement without the prior written consent of the Funding Lender, which consent shall be governed by Article VI hereof.

**Section 2.10     No Other Encumbrances; No Dissolution.** The Governmental Lender covenants that, (i) except as otherwise provided herein and in the Borrower Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Governmental Note is outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Governmental Note having assumed its obligations hereunder and under the Governmental Note.

**Section 2.11     Limited Obligations.** Notwithstanding any other provision of this Funding Loan Agreement to the contrary, the Governmental Note is not and never shall become a general obligation of the Governmental Lender, but to the extent provided in and except as otherwise permitted by this Funding Loan Agreement, the Governmental Note shall be a limited obligation of the Governmental Lender and the principal of, premium, if any, thereon shall be payable equally and ratably solely from and secured solely by the Security, including the Pledged Revenues.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, ANY OBLIGATION THAT THE GOVERNMENTAL LENDER MAY INCUR UNDER THIS FUNDING LOAN AGREEMENT OR UNDER ANY INSTRUMENT EXECUTED IN CONNECTION HERewith THAT SHALL ENTAIL THE EXPENDITURE OF MONEY SHALL NOT BE A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, BUT SHALL BE A LIMITED OBLIGATION PAYABLE SOLELY FROM THE SECURITY, INCLUDING THE PLEDGED REVENUES. THE GOVERNMENTAL NOTE SHALL CONSTITUTE A VALID CLAIM OF THE RESPECTIVE HOLDERS THEREOF AGAINST THE SECURITY, WHICH IS PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY AND INTEREST ON THE GOVERNMENTAL NOTE AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS FUNDING LOAN AGREEMENT. THE GOVERNMENTAL NOTE, TOGETHER WITH INTEREST THEREON, SHALL BE A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER GIVING RISE TO NO CHARGE AGAINST THE GOVERNMENTAL LENDER'S GENERAL CREDIT AND PAYABLE SOLELY FROM, AND CONSTITUTE CLAIMS OF THE HOLDERS THEREOF AGAINST ONLY, THE SECURITY. THE

PRINCIPAL OF, PREMIUM, IF ANY AND INTEREST ON THE GOVERNMENTAL NOTE SHALL NOT BE DEEMED TO CONSTITUTE DEBT OF THE GOVERNMENTAL LENDER (EXCEPT TO THE EXTENT OF THE SECURITY). **THE GOVERNMENTAL NOTE IS NOT AND DOES NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.**

**Section 2.12    No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Governmental Lender contained herein or in the Governmental Note or the other Funding Loan Documents to which the Governmental Lender is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, governing board member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Governmental Lender or of any successor entity, either directly or through the Governmental Lender or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, governing board member, officer, agent, attorney or employee as such, past, present or future, of the Governmental Lender or of any successor entity, either directly or through the Governmental Lender or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Governmental Note or between the Governmental Lender and the Funding Lender, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against the Governmental Lender or any successor entity, and any director, governing board member, officer, agent, attorney and employee thereof is, by the execution of this Funding Loan Agreement and as a condition of, and as part of the consideration for, the execution of this Funding Loan Agreement, expressly waived and released.

### **ARTICLE III**

#### **INTEREST RATE, PAYMENT AND PREPAYMENT OF GOVERNMENTAL NOTE**

**Section 3.1    Origination, Maturity Date and Authorized Amount of Governmental Note.** The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

**Section 3.2    Principal and Interest Payments.**

(a) Interest shall be paid on the outstanding principal amount of the Governmental Note at the rate or rates set forth and computed on the basis set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(b) The outstanding principal amount of the Governmental Note and of the Funding Loan as of any given date shall be the Authorized Amount, less any payments of principal of the Governmental Note previously received upon payment of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The Fiscal Agent shall keep a record of all principal repayments made under the Governmental Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Note and the Funding Loan.

(c) The payment or prepayment of principal, interest and premium, if any, due on the Funding Loan and the Governmental Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Note.

(d) All payments on the Governmental Note shall be payable in lawful currency of the United States.

(e) The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Note and all agreements made in the Governmental Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto including Chapter 1204 of the Texas Government Code and other applicable laws of the State of Texas. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. In no event shall the interest on the Governmental Note exceed the Maximum Lawful Rate. This paragraph shall control every other provision of the Governmental Note, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Governmental Note.

(f) Notwithstanding any other provision of this Funding Loan Agreement to the contrary, THE GOVERNMENTAL LENDER SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON, THE GOVERNMENTAL NOTE SOLELY OUT OF THE SECURITY, INCLUDING PLEDGED REVENUES. THE GOVERNMENTAL NOTE SHALL BE A SPECIAL LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER PAYABLE SOLELY FROM THE SECURITY, INCLUDING PLEDGED REVENUES. THE GOVERNMENTAL NOTE SHALL CONSTITUTE A VALID CLAIM OF THE RESPECTIVE NOTEOWNERS THEREOF AGAINST THE SECURITY, WHICH IS PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THIS FUNDING LOAN AGREEMENT.

**Section 3.3     Funding.** The Funding Loan is originated and fully drawn on the Closing Date. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent for deposit to the Funding Loan Proceeds Account of the Project Fund on the Closing Date.

**Section 3.4     Prepayment of Governmental Note.** The Governmental Note is subject to voluntary and mandatory prepayment and redemption as follows:

(a)     The Governmental Note shall be subject to voluntary prepayment and redemption in full or in part from funds on deposit in the Governmental Note Payment Fund to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a redemption price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any acceleration premium or other amounts payable under the Borrower Note or the Borrower Loan Agreement through the date of prepayment. The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Note to be redeemed, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b)     The Governmental Note shall be subject to mandatory prepayment and redemption in whole or in part upon prepayment of the Borrower Note at the direction of the Funding Lender or Controlling Person in accordance with the terms of the Borrower Note at a redemption price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus acceleration premium or any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

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

**Section 3.5     Notice of Prepayment.** Notice of prepayment of the Governmental Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to Funding Lender, the Governmental Lender and Fiscal Agent in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Note is required to be given.

## **ARTICLE IV FUNDS AND ACCOUNTS**

**Section 4.1     Authorization to Create Funds and Accounts.** Except as provided herein and the Borrower Loan Agreement, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender and the Controlling Person, if any, and any designee of the Funding Lender or the Controlling Person, are authorized to establish and create, or direct the Fiscal Agent to establish and create, from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender or the Controlling Person pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 4.2     Establishment of Funds and Accounts; Applications of Proceeds of the Funding Loan and Other Amounts.**

- (a)     The following are hereby created and established as special trust funds:
  - (i)     the Project Fund, consisting of:

- (A) the Funding Loan Proceeds Account;
- (B) the Taxable Loan Account;
- (C) the Equity Account;
- (D) the Capitalized Interest Account (containing a Funding Loan Proceeds Subaccount and an Equity Subaccount);and
- (E) the Subordinate Debt Account.
- (ii) the Governmental Note Payment Fund;
- (iii) the Replacement Reserve Fund;
- (iv) the Tax and Insurance Escrow Fund;
- (v) the Rebate Fund;
- (vi) the Costs of Issuance Fund (containing a Funding Loan Proceeds Subaccount and an Equity Subaccount); and
- (vii) the Taxable Loan Payment Fund.

(b) All the funds, accounts and subaccounts created by subsection (a) of this Section shall be held by the Fiscal Agent in trust for application only in accordance with the provisions of this Funding Loan Agreement.

(c) The initial disbursement of the Funding Loan will be applied in accordance with the Closing Memorandum. Following the disbursements set forth in the Closing Memorandum, the Fiscal Agent shall receive and deposit into the respective fund, account or subaccount specified the amounts, if any, provided in the Closing Memorandum.

#### **Section 4.3     Governmental Note Payment Fund.**

(a) There is hereby separately created and established with the Fiscal Agent the Governmental Note Payment Fund. There shall be deposited in the Governmental Note Payment Fund (i) all payments by the Borrower pursuant to the Borrower Note or the Borrower Loan Agreement, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Fiscal Agent under the Borrower Loan Agreement.

(b) Moneys in the Governmental Note Payment Fund shall be held in trust for the Noteowners and, except as otherwise expressly provided herein, shall be used solely for the payment of the regularly scheduled principal of and interest on the Funding Loan, for the payment of principal and interest upon maturity, whether stated or accelerated, or upon mandatory or optional prepayment and redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in the Borrower Loan Agreement.

(c) After final payment in full of the Governmental Note and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, any amounts remaining in the Governmental Note Payment Fund shall be paid to the Borrower.

#### **Section 4.4     Project Fund.**

(a) The Fiscal Agent shall deposit all amounts specified in the Closing Memorandum into the specified accounts and subaccounts of the Project Fund and the Costs of Issuance Fund. On the Closing Date, the Fiscal Agent will receive and deposit the Funding Loan into the Funding Loan Proceeds Account of the Project Fund. The Fiscal Agent will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Investor Limited Partner, in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. The Fiscal Agent will receive and deposit into the Taxable Loan Account amounts received as future advances of Taxable Construction Loan. The Fiscal Agent shall deposit any other amounts received, to the extent not otherwise directed herein, in such Accounts as directed by Controlling Person.

(b) The Fiscal Agent is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person in accordance with the provisions of the Borrower Loan Agreement. Except as otherwise consented to in writing by the Controlling Person, through approval of a Requisition or otherwise, moneys in the Project Fund shall be applied for payment or reimbursement of Project Costs and, unless the Fiscal Agent receives a Favorable Opinion of Governmental Lender Counsel (which shall also be addressed to the Governmental Lender and the Funding Lender) at least 95% of moneys on deposit in the Funding Loan Proceeds Account of the Project Fund shall be applied to Qualified Project Costs. No later than the Stabilization Date, all Surplus Funding Loan Proceeds remaining in the Funding Loan Proceeds Account of the Project Fund shall either be applied to any required prepayment of the Borrower Note, if any, or, upon receipt by the Fiscal Agent of a Favorable Opinion of Governmental Lender Counsel (which shall also be addressed to the Governmental Lender and the Funding Lender), applied to another use, in each case as directed in writing by the Controlling Person. All remaining amounts in the Equity Account of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Fiscal Agent shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Governmental Note Payment Fund to pay interest on the Funding Loan accruing up to and including: (i) the Completion Date with respect to amounts in the Funding Loan Proceeds Subaccount; and (ii) the Stabilization Date with respect to the Equity Subaccount without submission of any Requisition. The Fiscal Agent shall and is hereby further authorized to transfer funds from any other Account of the Project Fund to the Capitalized Interest Account or directly to the Governmental Note Payment Fund to pay interest on the Governmental Note accruing up to achievement of Stabilization at the written direction (including e-mail) of the Controlling Person.

(d) The Fiscal Agent shall deposit all payments received from the Borrower with respect to the Taxable Construction Loan into the Taxable Loan Payment Fund and will transfer any such payment to the Taxable Construction Lender on behalf of the Borrower as provided in written instructions from the Controlling Person.

**Section 4.5     Tax and Insurance Escrow Fund.** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Fiscal Agent from the Borrower pursuant to Section 8.2 of the Borrower Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under any of the

Funding Loan Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Governmental Note and the fees and expenses of the Governmental Lender and the Fiscal Agent and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower. If the Controlling Person determines that the Tax and Insurance Escrow Fund is over-funded for any reason, the Controlling Person may direct the Fiscal Agent to return all or a portion of the moneys in the Tax and Insurance Escrow Fund to the Borrower.

**Section 4.6     Replacement Reserve Fund.** There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Fiscal Agent from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Fiscal Agent upon receipt of a written request therefor executed by the Borrower and approved in writing by the Controlling Person, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under the Funding Loan Documents, in whatever amounts and whatever order the Controlling Person may determine. Upon the later to occur of (i) the payment in full of the Governmental Note upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, and (ii) the expiration of the State Reserve Period (as defined in the Regulatory Agreement), any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable. If the Controlling Person determines that the Replacement Reserve Fund is over-funded for any reason, the Controlling Person may direct the Fiscal Agent to return all or a portion of the moneys in the Replacement Reserve Fund to the Borrower.

**Section 4.7     Operating Reserve Account.** Upon the occurrence of an Operating Reserve Trigger, there shall be deposited in the Operating Reserve Account all moneys received for such purpose pursuant to Section 8.4 of the Borrower Loan Agreement; provided, however, prior to the occurrence of an Operating Reserve Trigger, the Operating Reserve Account shall be established and maintained by the Borrower, and the funds therein shall be held and disbursed in accordance with Section 8.4 of the Borrower Loan Agreement. Upon the occurrence of an Operating Reserve Trigger, funds shall be disbursed from the Operating Reserve Account, at the request of the Borrower, but only with the Controlling Person's written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Fiscal Agent from the Borrower of a written request together with the written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed, the Fiscal Agent shall disburse funds from the Operating Reserve Account in accordance with such written request. Upon the occurrence of an Operating Reserve Trigger, all moneys and investments in the Operating Reserve Account may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under the Funding Loan Documents, in whatever amounts and whatever order the Controlling Person may determine. Interest earnings on amounts held in the Operating Reserve Account shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Controlling Person. Upon payment in full of the Governmental Note and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, any amounts remaining in the Operating Reserve Account shall be paid to the Borrower.



**Section 4.8     Rebate Fund.** The Rebate Fund shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Funding Lender. The Rebate Fund is established for the purpose of complying with section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, shall be held in trust and applied solely as provided in this Section and in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Security and is not subject to any lien under this Funding Loan Agreement. Notwithstanding the foregoing, the Fiscal Agent with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

**Section 4.9     Costs of Issuance Fund.** The Fiscal Agent shall use money on deposit to the credit of the Costs of Issuance Fund to pay the Costs of Issuance on the Closing Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit C hereto to be given to the Fiscal Agent by the Borrower on the Closing Date, along with appropriate invoices for such expenses. Amounts in the Costs of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment income on amounts on deposit in the Costs of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Costs of Issuance Fund one (1) month after the Closing Date shall be (i) if derived from proceeds of the Funding Loan, transferred to the Funding Loan Proceeds Account of the Project Fund and (ii) if derived from the Costs of Issuance Deposit, transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Costs of Issuance Fund.

**Section 4.10     Transfers Between Funds and Accounts; Use of Amounts in Funds and Accounts.** The Fiscal Agent shall transfer moneys between Accounts as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required with respect to a transfer pursuant to Section 4.4(c) above or following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments hereunder may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under any of the Funding Loan Documents, in whatever amounts and in whatever order the Controlling Person may determine.

**Section 4.11     Records.**

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Funding Loan, subject to the inspection of the Governmental Lender or the Funding Lender and its representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender will at any and all times, upon the reasonable request of the Controlling Person, the Borrower or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender relating to the Project and the Funding Loan, if any, and to make copies thereof.

**Section 4.12     Investment of Funds.** Amounts held in any funds or accounts created pursuant to this Funding Loan Agreement shall be invested in Permitted Investments, subject in all cases to the restrictions set forth in the Tax Exemption Agreement, at the written direction of the Borrower, with the consent of the Controlling Person. Written direction may include electronic direction. As applicable, absent written direction, the Fiscal Agent shall invest funds into the Cavanal Hill Government Securities

Money Market Fund Administrative Class (CUSIP 14956P836) as standing instructions; *provided, however*, if such fund is no longer available, then funds shall be held uninvested in the absence of written direction.

#### **Section 4.13 Tax Covenants.**

(a) *Governmental Lender's Covenants.* The Governmental Lender represents, covenants and agrees that:

(i) the Governmental Lender will comply with all applicable requirements of the Code that are necessary to preserve the excludability of interest on the Governmental Note from gross income for federal income tax purposes, all as set forth in the Tax Exemption Agreement.

(ii) the Governmental Lender will not knowingly 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.

(b) *Fiscal Agent's Representations and Covenants.* The Fiscal Agent represents, covenants and agrees that it will not take any action inconsistent with its obligations expressly stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein; provided that the Fiscal Agent shall be deemed to have complied with such obligations, covenants and requirements and shall have no liability to the extent it follows the written direction of the Borrower, the Governmental Lender, the Governmental Lender Counsel or the Rebate Analyst, or in the absence of written direction, Section 4.12 hereof.

(c) *Change in Law.* To the extent that published rulings of the Internal Revenue Service or amendments to the Code or the Regulations modify the covenants of the Governmental Lender or the Fiscal Agent that are set forth in this Funding Loan Agreement or that are necessary for interest on the Governmental Note to be excludable from gross income for federal income tax purposes, the Fiscal Agent and the Governmental Lender will comply with such modifications upon the written direction of Governmental Lender Counsel specifying such modifications; provided any such modifications shall be subject to the prior written consent of the Controlling Person and shall be evidenced by an amendment entered into pursuant to Article VI.

### **ARTICLE V DEFAULT PROVISIONS AND REMEDIES**

**Section 5.1 Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

(a) Failure to pay interest on the Governmental Note when and as the same shall have become due;

(b) Failure to pay the principal of or any premium on the Governmental Note when and as the same shall become due, whether at the stated maturity or prepayment date thereof or by acceleration;

(c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Governmental Lender included in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days after written notice to the Governmental

Lender and the Borrower has been given by the Funding Lender or by the Controlling Person (with a copy to the Funding Lender); or

(d) The occurrence of an Event of Default under the Borrower Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Funding Loan Documents to which the Borrower is a party and continuation of such failure beyond the expiration of any notice, grace or cure period provided in the Borrower Loan Agreement or the Funding Loan Documents (as applicable).

Notwithstanding anything to the contrary contained herein, the Governmental Lender, the Fiscal Agent and the Funding Lender hereby agrees that the Investor Limited Partner shall have the right, but not the obligation to cure any Event of Default hereunder or under the Borrower Loan Agreement.

**Section 5.2 Acceleration.** Upon the occurrence of an Event of Default under Section 5.1 above, the Funding Lender may, by notice in writing sent to the Governmental Lender, the Borrower and the Controlling Person, declare the principal of the Governmental Note (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Funding Lender may exercise such rights as it may have under the Borrower Loan Agreement and the Borrower Note to declare all amounts thereunder to be immediately due and payable. In such event, there shall be due and payable on the Governmental Note an amount equal to the total principal amount of all such Governmental Note, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Governmental Note on the date of payment, and acceleration premium (if applicable).

**Section 5.3 Other Remedies; Rights of Noteowners.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Funding Lender may, with or without taking action under Section 5.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Funding Loan Documents.

(b) No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Funding Lender, the Controlling Person, the Fiscal Agent or the Noteowners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender, the Fiscal Agent, the Controlling Person or to the Noteowners hereunder or now or hereafter existing.

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

(d) No waiver of any Default or Event of Default hereunder, whether by the Funding Lender or by the Noteowners, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Funding Lender (or the Fiscal Agent for the benefit of Funding Lender), as the assignee of substantially all right, title and interest of the Governmental Lender in and to the Borrower Loan Agreement and the Borrower Note, shall be empowered to enforce each and every right granted to the Governmental Lender under the Borrower Loan Agreement and the Borrower Note other than Reserved Rights.

**Section 5.4     Right of Controlling Person to Direct Proceedings.** Anything in this Funding Loan Agreement to the contrary notwithstanding, the Controlling Person shall, until revoked by an instrument or instruments in writing executed and delivered by the Funding Lender to the Governmental Lender, the Borrower, the Fiscal Agent and the Controlling Person, have the right to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Funding Loan Agreement.

**Section 5.5     Discontinuance of Default Proceedings.** In case the Funding Lender shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender and the Funding Lender shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Governmental Lender and the Funding Lender shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 5.6     Waiver.** The Funding Lender may waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Governmental Note in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Governmental Note and all fees and expenses of the Funding Lender and the Governmental Lender shall have been paid or provided for.

**Section 5.7     Application of Moneys.** All moneys received by the Funding Lender (or the Fiscal Agent on the benefit of the Funding Lender) pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Governmental Note Payment Fund and, after payment (out of moneys derived from a source other than moneys held for the payment of Governmental Note) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Funding Lender (or the Fiscal Agent on the benefit of the Funding Lender), including reasonable attorneys' fees, and all other outstanding fees and expenses of the Funding Lender, and (ii) any sums due to the Governmental Lender or Fiscal Agent under the Borrower Loan Agreement, including payment of the Governmental Lender Fees and Ordinary Fiscal Agent's Fees and Expenses, such moneys shall be applied in the order set forth below:

(a) Unless the entire principal of the Governmental Note shall have become or been declared due and payable, all such moneys shall be applied:

**First:** To the payment of all installments of interest then due on the Governmental Note in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and acceleration premium, if any, of the Governmental Note which shall have become due, with interest on such Governmental Note from the respective dates upon which they became due (at the rate borne by the Governmental Note, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full the Governmental Note due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of all amounts owed under the Taxable Construction Loan;

**Fourth:** To the payment of the amounts required to reimburse the Governmental Lender and the owners of the Governmental Note for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

**Fifth:** The balance shall be paid to the Borrower after payment of any required Rebate Amount.

(b) If the principal of the Governmental Note shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Governmental Note, without preference or priority as between principal, premium, or interest, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal of the Governmental Note shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of the Governmental Note shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Funding Lender may by written notice to the Fiscal Agent direct the application of funds other than in the manner set forth in Section 5.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Governmental Note.

## **ARTICLE VI AMENDMENTS TO FUNDING LOAN AGREEMENT AND BORROWER LOAN AGREEMENT**

**Section 6.1**     **Amendments to Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement, including the “basic loan terms” specified on the Schedule of Financial Terms and the Governmental Note may be amended or waived only by an instrument signed by the Funding Lender, the Controlling Person, the Borrower, the Governmental Lender and the Fiscal Agent; provided, however, the Fiscal Agent shall not be obligated to enter into any amendment that adversely affects the Fiscal Agent’s rights, duties or immunities. Notwithstanding the foregoing, any of the “other terms” set forth on the Schedule of Financial Terms may be amended or waived by an instrument signed by the Controlling Person and consented to by the Borrower. Controlling Person may, at its election and at the sole expense of the Borrower, require delivery of a Favorable Opinion of Governmental Lender Counsel in connection with any such amendment or waiver.

**Section 6.2**     **Amendments to the Borrower Loan Agreement, the Borrower Note or the Mortgage.**

(a) The Governmental Lender shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Borrower Loan Agreement, the Borrower Note or the Mortgage without the prior written consent of the Funding Lender, the Borrower and the Controlling Person.

(b) Notwithstanding anything to the contrary contained herein or therein, the Fiscal Agent, as assignee of the Governmental Lender, and the Borrower may, without the consent of or prior notice to Governmental Lender, enter into or permit any amendment of the Borrower Loan Agreement, the Borrower Note or the Mortgage acceptable to the Funding Lender and the Borrower provided, however,

that any change which, in the reasonable judgment of the Funding Lender, materially modifies the Reserved Rights of the Governmental Lender shall require the written consent of the Governmental Lender.

(c) The Funding Lender and the Borrower shall file copies of any such amendments to the Borrower Loan Agreement, the Borrower Note or the Mortgage with the Governmental Lender and the Controlling Person promptly following execution.

(d) An amendment or other document described under this Article that materially affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such amendment or other document (provided that no such consent shall be required if the Borrower is in default under any Funding Loan Document).

## **ARTICLE VII THE FISCAL AGENT**

**Section 7.1 Appointment of Fiscal Agent.** The Fiscal Agent is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Fiscal Agent under this Funding Loan Agreement, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Funding Loan Agreement against the Fiscal Agent):

(a) The Fiscal Agent may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees, and shall not be responsible for the misconduct or negligence of any such attorneys, agents, receivers or employees appointed with due care. The Fiscal Agent shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay, and be reimbursed by the Borrower for, reasonable compensation to all such attorneys, agents, receivers and employees. The Fiscal Agent may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Governmental Lender, approved by the Fiscal Agent in the exercise of reasonable care. The Fiscal Agent shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice and shall not be liable for an error of judgment made in good faith. The Fiscal Agent shall not be liable for any act or omission, in the absence of negligence or bad faith, if the Fiscal Agent reasonably believes the act or failure to act is authorized and within its powers to perform under this Funding Loan Agreement.

(b) Except as otherwise provided herein, the Fiscal Agent shall not be responsible for any recital herein or in the Funding Loan Documents, or for the recording, re-recording, filing or re-filing of this Funding Loan Agreement, of any Financing Statements or continuation statements, or for insuring or monitoring insurance requirements for the Security or the Project Facilities or collecting any insurance moneys or receiving or reviewing insurance requirements, or for the validity of this Funding Loan Agreement or of any supplements hereto or instruments of further assurance, or for the value, condition or sufficiency of the security for the Funding Loan issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security, or as to the right, title or interest of the Governmental Lender therein, or for the technical or financial feasibility of the Project. The Fiscal Agent shall not be liable to the Borrower, any Noteowner, any beneficial owner or any other Person for any loss, including depreciation of value, suffered in connection with any investment of funds made by it in accordance with Section 4.12 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Funding Loan Agreement, and with the prior written consent of the Controlling Person, as applicable. The Fiscal Agent shall have no discretion for investing funds or advising any parties regarding the investment of funds, may charge its standard investment handling fees, and may invest funds in its own proprietary money market funds or deposit products. The Fiscal Agent shall not be liable for any consequential damages. The Fiscal Agent shall have no duty or responsibility to analyze,

examine or review and shall have no duty or responsibility to express any opinion concerning and shall have no liability for the contents of any financial report or any documents submitted to or delivered to any Noteowner in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Fiscal Agent shall not be accountable for the use of any Governmental Note authenticated or delivered hereunder after such Funding Loan shall have been delivered in accordance with instructions of the Governmental Lender, for the use or application by the Borrower of the proceeds of the Funding Loan advanced to the Borrower as provided in the Borrower Loan Agreement, for the sufficiency of said proceeds or cash flow to accomplish the intended object of the financing or as to the tax-exempt status of the Governmental Note. The Fiscal Agent may become the owner of any Governmental Note secured hereby with the same rights as any other Noteowner.

(d) Before the Fiscal Agent acts or refrains from acting it may require, at the expense of the Borrower, may conclusively rely upon and shall be protected in acting upon opinions or advice of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons, and the Fiscal Agent may rely thereon as to due execution, validity and effectiveness and is under no duty to perform an independent investigation as to any statement or fact contained in any certificate, opinion or advice it obtains regarding the accuracy or truth of any statement or correctness of any opinion. Notwithstanding the foregoing, the Fiscal Agent shall act as directed in writing by the Controlling Person or Noteowners in accordance with this Funding Loan Agreement. Any notices, directions, consents, approvals or requests provided to the Fiscal Agent pursuant to the terms of this Funding Loan Agreement or any of the Funding Loan Documents shall not be effective until provided in writing. Any action taken by the Fiscal Agent pursuant to this Funding Loan Agreement upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Noteowner of the Governmental Note shall be conclusive and binding upon all future Noteowners of the same Governmental Note and upon Governmental Note issued in exchange therefor or in place thereof.

(e) The permissive right of the Fiscal Agent to do things enumerated in this Funding Loan Agreement or the Borrower Loan Agreement shall not be construed as obligations or duties. The Fiscal Agent shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its negligence, fraud or willful misconduct in the performance of those express duties, as determined in a final judgment by a court of competent jurisdiction.

(f) The Fiscal Agent shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Fiscal Agent shall not be required to give any bond or surety in respect of the execution of said trust and powers or otherwise in respect of this Funding Loan Agreement.

(h) Before taking any action requested hereunder by the Noteowners which may require it to expend or risk its own funds, the Fiscal Agent may require satisfactory security or indemnification for the reimbursement of all costs, liabilities and expenses to which it may be put by reason of any action so taken. Notwithstanding the foregoing, the Fiscal Agent shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Funding Lender or the Controlling Person which do not require the Fiscal Agent to expend its own funds or for which funds have been advanced by the Funding Lender or the Controlling Person to the Fiscal Agent in advance of its taking such action.

(i) All moneys received by the Fiscal Agent, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Funding Loan Agreement and for the benefit and security of the Noteowners of the Funding Loan as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Fiscal Agent shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Fiscal Agent shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Governmental Lender under the Borrower Loan Agreement or this Funding Loan Agreement, and shall not be deemed to have, or be required to take, notice of default under this Funding Loan Agreement (other than under Section 5.1(a) or (b), or Section 5.1(c) hereof if written notice thereof has been received by the Fiscal Agent) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any payment when due, (ii) in the event of an insufficient amount in the Governmental Note Payment Fund (or any account therein) to make a principal or interest payment on the Governmental Note, (iii) in the event of written notification of a Determination of Taxability by an owner of the Governmental Note, (iv) in the event of written notification of such Default by the Controlling Person, the Funding Lender or two or more Noteowners with combined holdings of not less than twenty-five percent (25%) of the principal amount of outstanding Funding Loan, or (v) in the event of receipt of an Opinion of Governmental Lender Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Fiscal Agent may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Fiscal Agent may nevertheless require the Governmental Lender and the Borrower to furnish information regarding performance of their obligations under the Borrower Loan Agreement and this Funding Loan Agreement, but is not obligated to do so.

(k) The Fiscal Agent shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Fiscal Agent as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be implied against the Fiscal Agent. The Fiscal Agent shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Fiscal Agent's other duties hereunder, the Fiscal Agent shall authenticate and cancel the Governmental Note as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Governmental Lender and the Borrower at all reasonable times. The Governmental Note shall be made available for authentication, exchange and registration of transfer at the principal office of the Fiscal Agent.

(m) The Fiscal Agent shall have the right but no duty to inspect or oversee the construction or completion of the Improvements, including all books and records, or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Fiscal Agent expressly set forth herein, the Fiscal Agent shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Funding Loan or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Funding Loan under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.



(o) No provision of this Funding Loan Agreement, the Borrower Loan Agreement or the Funding Loan shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. The Fiscal Agent shall not be required to make any disbursement of funds until having collected such funds.

(p) Whenever in the administration of this Funding Loan Agreement the Fiscal Agent deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Controlling Person or the Funding Lender.

(q) Subject to Section 7.1(h) hereof, the Fiscal Agent shall have the right but not the obligation to act as directed by a majority in principal amount of the Noteowners or the Controlling Person and shall not be liable in taking any action so directed if the Fiscal Agent acts in the absence of bad faith. In the absence of a direction from the Controlling Person, if the Fiscal Agent receives inconsistent or conflicting requests and indemnity from two or more groups of Noteowners of the Funding Loan, each representing less than a majority in aggregate principal amount of the Funding Loan outstanding, pursuant to the provisions of this Funding Loan Agreement, the directions given by the group of Noteowners that holds the largest percentage of the principal amount of the Funding Loan shall be controlling and the Fiscal Agent shall follow such directions.

(r) The Fiscal Agent's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Funding Loan Agreement shall likewise extend to the Fiscal Agent's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Fiscal Agent's rights to compensation, shall survive the Fiscal Agent's resignation or removal, the discharge of this Funding Loan Agreement and the final payment of the Funding Loan.

(s) The Fiscal Agent, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Funding Loan and may join in any action that any Noteowner may be entitled to take with like effect as if it were not the Fiscal Agent. The Fiscal Agent, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, Fiscal Agent or agent for any committee of Noteowners secured hereby or other obligations of the Borrower, as freely as if it were not the Fiscal Agent hereunder. The provisions of this paragraph shall extend to the affiliates of the Fiscal Agent.

(t) Whether or not expressly so provided, each and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent is subject to the provisions of this Section.

**Section 7.2      Compensation and Indemnification of Fiscal Agent; Fiscal Agent's Prior Claim.**

(a) The Borrower Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Fiscal Agent under this Funding Loan Agreement and all other amounts which may be payable to the Fiscal Agent under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Fiscal Agent for its own account. The Fiscal Agent shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

(b) The Borrower shall (i) pay the Fiscal Agent from time to time, and the Fiscal Agent shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard

to the compensation of a trustee of an express trust and which may be increased from time to time as the cost of business dictates and as negotiated with the Borrower), (ii) pay or reimburse the Fiscal Agent upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Funding Loan Agreement and the Borrower Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own negligence, willful misconduct or fraud, and (iii) indemnify the Fiscal Agent for, and hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Funding Loan Agreement or the trusts hereunder or the performance of its duties hereunder or under the Borrower Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own negligence, willful misconduct or fraud. "Fiscal Agent," for purposes of this Section shall include any predecessor Fiscal Agent, but the negligence, willful misconduct or fraud of any Fiscal Agent, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the Fiscal Agent's removal or resignation, termination of this Funding Loan Agreement and the final payment of the Governmental Note.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Governmental Lender is a party, the Fiscal Agent may intervene on behalf of Noteowners, and, subject to Section 7.1(h) hereof, shall intervene if requested in writing by the Controlling Person, the Funding Lender or the Noteowners of at least twenty-five percent (25%) in aggregate principal amount of the Funding Loan then outstanding.

**Section 7.4 Resignation; Successor Fiscal Agents.**

(a) The Fiscal Agent and any successor Fiscal Agent may resign only upon giving thirty (30) days prior written notice to the Governmental Lender, the Borrower, the Controlling Person and each Noteowner of Funding Loan then outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Fiscal Agent by the Borrower with the consent of the Controlling Person and the Governmental Lender and the acceptance of such appointment by the successor Fiscal Agent. If no successor is appointed within thirty (30) days after the notice of resignation, the Controlling Person may appoint a Fiscal Agent or the resigning Fiscal Agent may appoint a successor or petition any court of competent jurisdiction to appoint a successor at the Borrower's sole expense. Upon appointment of a successor Fiscal Agent, the resigning Fiscal Agent shall assign all of its right, title and interest in this Funding Loan Agreement and the Security to the successor Fiscal Agent. The successor Fiscal Agent shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Fiscal Agent shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Governmental Lender, the Controlling Person and the Borrower.

(b) Any corporation into which the Fiscal Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Fiscal Agent shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Fiscal Agent that includes this Funding Loan Agreement, shall be the successor of the Fiscal Agent hereunder without the execution or filing of any paper or any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Fiscal Agent shall be eligible to serve as Fiscal Agent under the provisions of this Funding Loan Agreement. If the Fiscal Agent is not the successor corporation in any such merger or consolidation, the Fiscal Agent shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Funding Loan Agreement to such successor corporation.

**Section 7.5     Removal of Fiscal Agent.** The Fiscal Agent may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Fiscal Agent, the Governmental Lender, the Controlling Person and the Borrower and signed by the Funding Lender. During such time that no Event of Default has occurred and is continuing under this Funding Loan Agreement, the Fiscal Agent may also be removed by an instrument or concurrent instruments in writing delivered to the Fiscal Agent and the Governmental Lender and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Fiscal Agent by the Borrower with the consent of the Controlling Person and the Governmental Lender and the acceptance of such appointment by the successor Fiscal Agent. Upon such removal, the Fiscal Agent shall assign to the successor Fiscal Agent all of its right, title and interest in this Funding Loan Agreement and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6     Electronic Notice to Fiscal Agent.** The Fiscal Agent agrees to accept and act upon instructions or directions pursuant to this Funding Loan Agreement sent in writing or by electronic notice; provided, however, that such instructions or directions shall be signed by an authorized representative. If the Governmental Lender or Borrower, as applicable, elects to give instructions by electronic notice, the Fiscal Agent may deem such instructions controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Any party providing such instructions or directions to the Fiscal Agent by electronic notice agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

## **ARTICLE VIII CONTROLLING PERSON; SERVICING**

**Section 8.1     Funding Lender to Appoint Controlling Person.** The Funding Lender may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Funding Lender's sole cost and expense, to act on behalf of the Funding Lender under the Funding Loan Documents as the "Controlling Person." The Funding Lender may at any time and from time to time terminate or remove and replace any such Controlling Person. The Funding Lender shall give written notice to the Governmental Lender and the Borrower of its appointment, termination, removal or replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Subject to any written agreement between the Controlling Person and Funding Lender, the Controlling Person may resign at any time by written notice to the Funding Lender, Fiscal Agent, the Governmental Lender and the Borrower. Initially, the Funding Lender has engaged R4 Servicer LLC to act as the "Controlling Person" hereunder and R4 Servicer LLC has accepted such engagement. The Funding Lender is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Funding Lender, all references to the "Controlling Person" herein and in the other Funding Loan Documents shall refer to the Funding Lender. Any opinion or certificate provided for herein, in the Borrower Loan Agreement or in any other Funding Loan Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Funding Lender. The Funding Lender will have no liability to the Governmental Lender, the Borrower, the Fiscal Agent or any other Person for any act or omission of the Controlling Person unless the Controlling Person is the Funding Lender or such act or omission was expressly approved by the Funding Lender in each particular case.

## **Section 8.2     Servicing.**

(a)     The Funding Lender has appointed the Controlling Person to be the servicer of the Funding Loan and the Borrower Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Fiscal Agent and the Funding Lender have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Funding Loan Agreement or the Funding Loan Documents; provided, however that, to the extent permitted under the Funding Loan Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Funding Lender.

(b)     The Controlling Person shall be responsible for the performance of the following servicing duties:

(i)     The Controlling Person shall perform the duties expressly given to the Controlling Person under the Funding Loan Documents and this Funding Loan Agreement, including approval of Requisitions and Advances.

(ii)    The Controlling Person shall prepare monthly bills to the Borrower (with a copy to the Fiscal Agent) in accordance with the Funding Loan Documents for payments to the Funding Lender of principal and interest under the Borrower Loan and the Taxable Construction Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund (but not the Ordinary Fiscal Agent's Fees and Expenses or the Governmental Lender Fees). The Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Fiscal Agent. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Funding Loan Agreement and the Funding Loan Documents:

- (1)     The principal and interest due and payable on the Borrower Note;
- (2)     Amounts due and payable under the Taxable Construction Loan;
- (3)     The Governmental Lender Fees and Ordinary Fiscal Agent's Fees and Expenses, as applicable;
- (4)     Any monthly Replacement Reserve Fund deposit;
- (5)     Any Monthly Tax and Insurance Amounts;
- (6)     Any other escrow or reserve deposits required by the Funding Loan Documents;
- (7)     Any assumption or transfer fee required by this Funding Loan Agreement or Funding Loan Documents; and
- (8)     Any acceleration premium.

(c) All payments received under this Funding Loan Agreement or Funding Loan Documents shall be applied in the following order unless otherwise instructed by the Funding Lender or expressly set forth in this Funding Loan Agreement or the Funding Loan Documents:

- (i) To the Governmental Lender Fees and the Ordinary Fiscal Agent's Fees and Expenses, as applicable;
- (ii) To the principal and interest due and payable on the Borrower Note;
- (iii) To Amounts due under the Taxable Construction Loan;
- (iv) To the acceleration premium, if applicable;
- (v) To required deposits to the Replacement Reserve Fund;
- (vi) To required deposits in the Tax and Insurance Escrow Fund;
- (vii) To other escrow or reserve deposits required by this Funding Loan Agreement or the other Funding Loan Documents;
- (viii) To Default Interest and any late fees; and
- (ix) To other amounts due under the Funding Loan Documents.

(d) Any payment received by the Controlling Person from or on behalf of the Borrower under this Funding Loan Agreement or the Funding Loan Documents shall be remitted by the Controlling Person to the Fiscal Agent no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Funding Loan Agreement or Funding Loan Documents. The Controlling Person shall make any remittance to the Fiscal Agent by wire transfer in accordance with the instructions received from the Fiscal Agent or to any other party entitled to such remittances pursuant this Funding Loan Agreement or the Funding Loan Documents in accordance with the instructions received from the Funding Lender.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow invoices and payment in accordance with terms of Funding Loan Documents; provided, however, that the Fiscal Agent shall have a priority right and first lien for reimbursement of any and all fees, costs, expenses (including legal fees) from any recovery of funds resulting from a bankruptcy or workout prior to any distribution to the Noteowners or any other third parties.

(f) Upon request of the Funding Lender, the Controlling Person shall furnish to the Funding Lender monthly account statements received from the Fiscal Agent with respect to the any accounts established pursuant to this Funding Loan Agreement, including disbursements from such accounts, loan history schedules, outstanding loan balances and escrow balances.

(g) The Controlling Person shall provide immediate written notice to the Funding Lender of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Fiscal Agent all Borrower requests for a quote of a payoff amount for the Borrower Loan, shall request a copy of any such quote from the Fiscal Agent, and shall notify the Funding Lender of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Funding Loan Documents or this Funding Loan Agreement or otherwise as directed by the Funding Lender.

(i) The Controlling Person shall obtain, and shall provide to the Funding Lender a copy of the Borrower's certificates of compliance with the Regulatory Agreement or other evidence of such compliance submitted by the Borrower to the Governmental Lender or the Governmental Lender's designee within thirty (30) days after the later of (i) the date it is required to be submitted to the Governmental Lender or the Governmental Lender's designee, or (ii) the date it is actually so submitted.

(j) The Controlling Person may perform additional duties with respect to the Funding Loan and Borrower Loan during construction of the Project Facilities or during the period following an Event of Default at the request of the Funding Lender.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.1** **Discharge of Lien** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

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

(b) by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, prepayment premium and interest to the Maturity Date; or

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

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

The Funding Loan and the Governmental Note shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.1 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.1(b) if, under circumstances

which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Controlling Person) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Controlling Person as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Controlling Person shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, the General Partner, any guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Controlling Person shall have received a Favorable Opinion of Governmental Lender Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender under the Funding Loan Documents have been fully paid.

**Section 9.2 Discharge of Liability on Funding Loan.** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.1 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.3 hereof.

**Section 9.3 Payment of Funding Loan After Discharge of Funding Loan Agreement.** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for two years after the maturity or earlier payment date shall be reported and disposed of by the Fiscal Agent in accordance with the applicable unclaimed property laws of the State, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.3 shall be held uninvested and without liability for interest thereon.

## **ARTICLE X MISCELLANEOUS**

**Section 10.1 Right of Funding Lender to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of the Project Facilities is not paid as required,

the Funding Lender may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Funding Lender hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Governmental Note or the per annum rate of interest announced from time to time by the bank serving as Funding Lender as its "prime rate" shall become so much additional indebtedness secured by this Funding Loan Agreement, shall be given a preference in payment over the Governmental Note, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the parties hereto, the Noteowners, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions herein contained; this Funding Loan Agreement and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Noteowners, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Funding Loan Agreement is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Funding Loan Agreement, shall not affect the remaining portions of this Funding Loan Agreement or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or electronic mail (with confirmed receipt) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Governmental Lender, the Borrower, the Fiscal Agent, the Funding Lender, the Controlling Person and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

**To the Governmental Lender:**

Texas Department of Housing and Community  
Affairs  
221 E. 11th Street  
Austin, Texas 78701  
Attention: Teresa Morales  
Email: [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)  
Telephone: (512) 475-3344

**To the Fiscal Agent:**

BOKF, NA  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attention: Biddel Tekeste  
E-mail: [btekeste@bokf.com](mailto:btekeste@bokf.com)



<b>To the Borrower:</b>	LDG The Legacy on Kiest, LP c/o City of Dallas Housing Finance Corporation 1500 Marilla Street, Room 6CN Dallas, Texas 75201 Attention: General Manager E-mail: aaron.eaquinto@dallascityhall.com
<b>With a copy to:</b>	LDG The Legacy on Kiest, LP c/o LDG Development, LLC 545 South Third Street Louisville, Kentucky 40202 Attention: William J. Hartz Email: jhartz@ldgdevelopment.com
<b>With a copy to:</b>	Adams Law Group 6004 Brownsboro Park Blvd., Suite A Louisville, Kentucky 40207
<b>To the Funding Lender:</b>	Community Housing Investment Partners II, LP c/o R4 Capital Funding LLC 780 Third Avenue, 16th Floor New York, New York 10017 Attention: Tara Nussbaum E-mail: TNussbaum@r4cap.com
<b>To the Controlling Person</b>	R4 Servicer LLC 155 Federal Street, Suite 1400 Boston, Massachusetts 02110 Attention: Greg Doble and Shannon Chase E-mail: r4servicing@r4cap.com
<b>With a copy to</b>	Kutak Rock LLP Two Logan Square 100 North 18 <sup>th</sup> Street, Suite 1920 Philadelphia, Pennsylvania 19103 Attention: Andrew P. Schmutz, Esquire Email: Andrew.schmutz@kutakrock.com
<b>If to the Investor Limited Partner:</b>	R4 LKTX Acquisition LLC c/o R4 Capital LLC 780 Third Avenue, 16th Floor New York, New York 10017 Attention: Marc Schnitzer E-Mail Address: mschnitzer@R4cap.com

**With a copy to (which copy shall not constitute notice):**

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: John M. Marti  
E-Mail Address: jmarti@nixonpeabody.com

**Section 10.5 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Governmental Lender and the Funding Lender and their respective successors and assigns, subject, however, to the limitations contained in this Funding Loan Agreement.

**Section 10.6 Captions.** The captions or headings in this Funding Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Funding Loan Agreement.

**Section 10.7 Governing Law.** This Funding Loan Agreement shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 10.8 Limited Liability of Governmental Lender.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Governmental Lender may incur under the Governmental Note, this Funding Loan Agreement, the Borrower Loan Agreement or any other Funding Loan Document shall not constitute a general obligation of the Governmental Lender but shall constitute limited obligations of the Governmental Lender payable solely from and enforced only against the Security. Neither the members of the governing body of the Governmental Lender nor any officer, agent, representative or employee of the Governmental Lender nor any person executing the Governmental Note shall be subject to any personal liability or accountability by reason of the issuance thereof, 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 expressly waived as a condition of and in consideration for the execution of this Funding Loan Agreement and the issuance of the Governmental Note.

**Section 10.9 Incorporation by Reference.** The representations, covenants and agreements of the Governmental Lender set forth in the Funding Loan Documents are incorporated by reference herein for the benefit of the Funding Lender.

**Section 10.10 Execution in Counterparts; Electronic Signatures.** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Except for the Governmental Note and instruments of transfer of the Governmental Note, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Funding Loan Agreement to the fullest extent permitted by applicable law.

**Section 10.11 State Law Verifications.** The Fiscal Agent and Funding Lender make the following representation and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code (the "Government Code"), as heretofore amended, in entering into this Funding Loan Agreement. As used herein, "affiliate" means an entity that controls, is controlled by, or is under common control with the Fiscal Agent or Funding Lender 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 Funding Loan Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Funding Loan Agreement, notwithstanding anything therein to the contrary.

(a) Each of the Fiscal Agent and Funding Lender 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, Government Code, or Section 2270.0201, Government Code. The foregoing representation excludes the Fiscal Agent, Funding Lender, and each of the Fiscal Agent's and Funding Lender's respective 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.

(b) Each of the Fiscal Agent and Funding Lender hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of the applicable agreement(s). As used in the foregoing verification, "boycott Israel" has the meaning provided in Section 2271.001, Government Code.

(c) Each of the Fiscal Agent and Funding Lender hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of the applicable agreement(s). As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning provided in Section 2274.001(3), Government Code.

(d) Each of the Fiscal Agent and Funding Lender hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of the applicable agreement(s). As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 2276.001(1), Government Code.

(e) Each of the Fiscal Agent and Funding Lender represents and verifies that it is aware of the Texas Attorney General's All Bond Counsel Letter, dated November 1, 2023, that is available on the website of the Texas Attorney General using the following link: (<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABCLetter-11-01-2023.pdf>) and the Texas Attorney General's supplemental All Bond Counsel Letter, dated November 16, 2023, that is available on the website of the Texas Attorney General using the following link: (<https://texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABCLetter-11-06-2023.pdf>). Each of the Fiscal Agent and Funding Lender represents and verifies that it has (i) on file a standing letter ("Standing Letter") acceptable to the Texas Attorney General addressing the representations and verifications in this Section 5.09(a) through (d), and (ii) will, upon request of the Governmental Lender or Bond Counsel on behalf of the Governmental Lender, provide the Governmental Lender and Bond Counsel with a copy of its Standing Letter. Each of the Fiscal Agent and Funding Lender further represents and verifies that its Standing Letter remains in effect as of the date of this Funding Loan Agreement and that the Texas Attorney General has not notified the Fiscal Agent or Funding Lender, as applicable, that a determination has been made that the Fiscal Agent or Funding Lender, as applicable, boycotts energy companies or has a policy that discriminates against firearm entities or firearm trade associations under the laws of the State of Texas. Upon request of the Governmental Lender or Bond Counsel on the Governmental Lender's behalf, the Fiscal Agent or Funding Lender, as applicable, shall provide additional written certifications to the Governmental Lender and Bond Counsel (which may be by email) to the effect that the Texas Attorney General may continue to rely on the Standing Letter and the statutory representations and covenants contained in this Funding Loan Agreement through the Closing Date (the "Bringdown Verification"). The Governmental Lender reserves the right, and the Fiscal Agent and Funding Lender hereby expressly authorizes the Governmental Lender, to provide such Bringdown Verifications to the Texas Attorney General.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Governmental Lender, Fiscal Agent and Funding Lender has caused this Funding Loan Agreement to be executed in its name and on its behalf by its authorized official all as of the day and year first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Governmental Lender

By: \_\_\_\_\_  
James B. “Beau” Eccles  
Secretary to the Board

**BOKF, NA**, as Fiscal Agent

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

Name: Biddel Tekeste

Title: Vice President

Fiscal Agent Signature Page to Funding Loan Agreement

TDHCA (The Legacy on Kiest)

**COMMUNITY HOUSING INVESTMENT  
PARTNERS II, LP,**  
an Delaware limited partnership, as Funding Lender

By: CHIP II Investors, LLC, a Delaware limited liability  
company, its general partner

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

Name: Kenneth Thompson

Title: Managing Director

## **EXHIBIT A**

### **FORM OF GOVERNMENTAL NOTE**

**THE STATE OF TEXAS IS NOT OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THIS MULTIFAMILY HOUSING REVENUE NOTE. THE FAITH, CREDIT OR TAXING POWER OF THE STATE OF TEXAS IS NOT PLEDGED, GIVEN OR LOANED TO PAYMENT OF THIS MULTIFAMILY HOUSING REVENUE NOTE'S PRINCIPAL OR INTEREST.**

**THIS MULTIFAMILY HOUSING REVENUE NOTE MAY BE OWNED ONLY BY AN APPROVED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS MULTIFAMILY HOUSING REVENUE NOTE (A) REPRESENTS THAT IT IS AN APPROVED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS MULTIFAMILY HOUSING REVENUE NOTE OR ANY INTEREST HEREIN TO ANOTHER APPROVED TRANSFEREE UPON DELIVERY TO THE GOVERNMENTAL LENDER OF AN INVESTOR LETTER IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE NOTE  
(THE LEGACY ON KEST)  
SERIES 2025**

\$[30,000,000]

Dated Date: [July 1, 2025]

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

FOR VALUE RECEIVED, the undersigned TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS ("Governmental Lender") promises to pay to the order of \_\_\_\_\_ ("Noteowner") the principal sum of [THIRTY MILLION DOLLARS] (\$[30,000,000]), on [MATURITY DATE] (the "Maturity Date"), or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below. Interest on this Note shall be computed from, and including, the Closing Date on the basis of a 360-day year comprised of twelve 30-day months.

Governmental Lender shall pay to the Noteowner on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of [July 1], 2025 (the "Funding Loan Agreement"), among Governmental Lender, BOKF, NA, a national banking association, as fiscal agent (the "Fiscal Agent"), and COMMUNITY HOUSING INVESTMENT PARTNERS II, LP, a Delaware limited partnership, as funding lender (together with any successors and assigns in such capacity), an amount in immediately available funds sufficient to pay the principal amount of and prepayment premium, if any, on the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

Governmental Lender shall pay to the Noteowner on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate of



[\_\_\_\_\_] % per annum (or such higher rate of interest borne by the Funding Loan upon any default), as set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Note are pass-through obligations relating to a construction and permanent loan (the "Borrower Loan") made by Governmental Lender from proceeds of the Funding Loan to LDG THE LEGACY ON KIEST, LP, a Texas limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of [July 1], 2025 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Governmental Lender and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under the Governmental Note.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, ANY OBLIGATION THAT THE GOVERNMENTAL LENDER MAY INCUR UNDER THE FUNDING LOAN AGREEMENT OR UNDER ANY INSTRUMENT EXECUTED IN CONNECTION THEREWITH THAT SHALL ENTAIL THE EXPENDITURE OF MONEY SHALL NOT BE A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, BUT SHALL BE A LIMITED OBLIGATION PAYABLE SOLELY FROM THE SECURITY, INCLUDING THE PLEDGED REVENUES. THIS NOTE SHALL CONSTITUTE A VALID CLAIM OF THE HOLDER HEREOF AGAINST THE SECURITY, WHICH IS PLEDGED TO SECURE THE PAYMENT OF PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THE FUNDING LOAN AGREEMENT. THIS NOTE SHALL BE A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER GIVING RISE TO NO CHARGE AGAINST THE GOVERNMENTAL LENDER'S GENERAL CREDIT AND PAYABLE SOLELY FROM, AND CONSTITUTE CLAIMS OF THE HOLDERS THEREOF AGAINST ONLY, THE SECURITY. PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE DEBT OF THE GOVERNMENTAL LENDER (EXCEPT TO THE EXTENT OF THE SECURITY). **THIS NOTE IS NOT AND DOES NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.**

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

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Note is subject to the express condition that at no time shall interest be payable on this Governmental Note or the Funding Loan at a rate in excess of the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Governmental Note under State law pursuant to Chapter 1204 of the Texas Government Code (the "Maximum Lawful Rate"); and Governmental Lender shall not be obligated or required to pay, nor shall the Noteowner be permitted to charge or collect, interest at a rate in excess of such Maximum Lawful Rate. If by the terms of this Governmental Note or of the Funding Loan Agreement, Governmental Lender is required to pay interest at a rate in excess of such Maximum Lawful Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Lawful Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

If there is an Event of Default under the Funding Loan Documents, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Noteowner may declare the entire unpaid principal balance of this Governmental Note and accrued interest, if any, due and payable at once. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Note.

No delay or omission on the part of the Noteowner in exercising any remedy, right or option under this Governmental Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Noteowner under this Governmental Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Noteowner at law or in equity or under any other agreement.

Governmental Lender shall pay all costs of collection on demand by the Noteowner, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Noteowner of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Noteowner of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Governmental Lender to pay the entire sum then due, and Governmental Lender's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Noteowner to any action of Governmental Lender which is subject to consent or approval of the Noteowner hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

THIS NOTE SHALL NOT BE ENTITLED to any benefit under the Funding Loan Agreement or be valid or obligatory for any purpose until the Note shall have been authenticated by the execution by the Fiscal Agent of the Certificate of Authentication or the execution by the Comptroller of Public Accounts of the State of Texas of the Registration Certificate of Comptroller of Public Accounts hereon.

IN WITNESS WHEREOF, the Governmental Lender has caused this Governmental Note to be duly executed in the name of the Governmental Lender under its official seal and by the manual or facsimile signature of its Chair or Vice Chair, and attested by the manual or facsimile signature of its Secretary, as of the date shown above.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

(SEAL)

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

ATTEST:

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

[FORM OF COMPTROLLER'S REGISTRATION  
CERTIFICATE ON INITIAL NOTE]

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

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

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

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

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

(SEAL)

[FORM OF FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION  
ON EACH GOVERNMENTAL NOTE OTHER THAN THE INITIAL NOTE]

**CERTIFICATE OF AUTHENTICATION**

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

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

BOKF, NA, as Fiscal Agent

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

**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701

BOKF, NA  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attention: Corporate Trust Department

Re: Texas Department of Housing and Community Affairs Multifamily Housing Revenue Note  
(The Legacy on Kiest) Series 2025 (the “Governmental Note”)

Ladies and Gentlemen:

The undersigned (the “Funding Lender”) hereby acknowledges receipt of the Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the “Governmental Note”) delivered pursuant to the Funding Loan Agreement dated as of [July 1], 2025 (the “Funding Loan Agreement”), among COMMUNITY HOUSING INVESTMENT PARTNERS II, LP, in its capacity as Funding Lender (the “Funding Lender”), the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Governmental Lender”) and BOKF, NA (the “Fiscal Agent”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the purchase of the Governmental Note and the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

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

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”), excluding Section 230.501(a)(4), (a)(5) and (a)(6), or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer”, is a “Qualified Transferee”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Governmental Note and the Funding Loan.

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

4. The Funding Lender acknowledges its right to sell or transfer the Governmental Note and the Funding Loan is subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent and the Governmental Lender of an investor letter from the transferee to substantially the same effect as this Investor Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

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

6. THE FUNDING LENDER UNDERSTANDS THAT:

- (a) NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERAL, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE GOVERNMENTAL NOTE OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE GOVERNMENTAL NOTE; AND
- (b) THE GOVERNMENTAL LENDER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE IS PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE FISCAL AGENT ON BEHALF OF THE GOVERNMENTAL LENDER UNDER THE BORROWER LOAN AGREEMENT AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE FUNDING LOAN AGREEMENT.

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

8. The Funding Lender has made its own inquiry and analysis with respect to the Governmental Note and the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Governmental Note and the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Governmental Note and the Funding Loan. The Funding Lender is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction. The Funding Lender has such knowledge and experience in business and financial matters and with respect to the purchase and ownership the Governmental Note, so as to enable it to understand and evaluate the risk of such investments and form an investment decision with respect thereto, and the Funding Lender is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

9. THE FUNDING LENDER INDEMNIFIES THE GOVERNMENTAL LENDER AND THE FISCAL AGENT AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS' FEES) THAT RESULT IF THE REPRESENTATIONS CONTAINED IN THE FUNDING LENDER'S INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT.



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

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

FUNDING LENDER:

\_\_\_\_\_

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

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

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

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

## EXHIBIT C

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

BOKF, NA, as Fiscal Agent

Re: The Legacy on Kiest

Fiscal Agent:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.9 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the “**Funding Loan Agreement**”), dated as of [July 1], 2025 (the “**Funding Loan Agreement**”), among COMMUNITY HOUSING INVESTMENT PARTNERS II, LP, in its capacity as Funding Lender (the “**Funding Lender**”), the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “**Governmental Lender**”) and BOKF, NA (the “**Fiscal Agent**”), securing the Governmental Lender’s Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025, dated [July 1], 2025 (the “**Governmental Note**”).

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of LDG THE LEGACY ON Kiest, LP, a limited partnership duly organized and existing under the laws of the State of Texas (the “**Borrower**”), certifies that:

- (a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and
- (b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance; and
- (c) including amounts paid pursuant to this Requisition, not more than 2% of the sales proceeds of the Governmental Note will have been used for Costs of Issuance.

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

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

LDG THE LEGACY ON Kiest, LP, a Texas limited partnership

By: DHFC The Legacy on Kiest GP, LLC, a Texas limited liability company, its general partner

By: City of Dallas Housing Finance Corporation, a Texas housing finance corporation, its sole member

By: \_\_\_\_\_  
Name: Aaron Eaquinto  
Title: General Manager

**Schedule A**

Schedule of Financial Terms

Project: The Legacy on Kiest

Closing Date: [CLOSING DATE]

Basic Loan Terms			
Authorized Amount:	\$[30,000,000]		
Loan Funding Dates:	\$[30,000,000] on the Closing Date		
Interest Rate:	A fixed rate of [ ]% ([ ] and [ ]/100 percent)		
Maturity Date:	[ ]		
Amortization Term (in months)	480 months		
First Loan Payment Date:	[ ]		
First Monthly Tax and Insurance Escrow Payment Date	[ ] 1, 20 ], provided that such date may be extended in the Controlling Person's discretion		
First Principal Payment Date:	[ ]		
First Optional Call Date:	[ ]		
First Par Call Date:	[ ]		
Prepayment Premium:	From and Including	To but excluding	Prepayment Premium
	First Optional Call Date		103%
			102%
			101%
	First Par Call Date	Maturity	100%
First Put Date:	[ ]		
Underwritten Permanent Loan Amount:	\$[ ]		

Minimum Permanent Loan Amount:	An amount equal to 90% of the Underwritten Permanent Loan Amount
Maximum Permanent Loan Amount:	An amount equal to 110% of the Underwritten Permanent Loan Amount
<b>Other Terms:</b>	
Minimum Coverage:	1.15 to 1.0
Minimum Physical Occupancy:	90% of the total units at the Project Facilities
Testing Period:	Three (3) months
Operating Reserve Amount:	<p>To be deposited in accordance with Section 8.4 of the Borrower Loan Agreement upon receipt of the [_____] Installment] (as defined in the Partnership Agreement) contemporaneously with the achievement of Stabilization</p> <p>Estimated to be \$[_____] , which amount will be based on four (4) months of Expenses and four (4) months of debt service, both calculated on the same basis that Stabilization is determined on the Stabilization Date</p>
Completion Date:	[_____]
Outside Stabilization Date:	[_____]
Underwritten Expenses:	\$[_____] per annum (increased on an annual basis commencing January 1, 2026 by 3%) adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions constituting real property taxes, if any, the cost shall be based on the full assessed value of the Project Facilities after taking into account completion of construction), plus all required deposits into the Replacement Reserve Fund.
Underwritten Economic Vacancy	[5.00]%
Underwritten Management Fee	[3.00]%
Retainage	[_____]
Guarantor(s):	<p>LDG Athena Capital LLC</p> <p>LDG Multifamily, LLC</p> <p>Xpert Design and Construction, LLC</p>

Guarantor Financial Covenants:	Minimum Liquidity: \$[_____] Minimum Net Worth: \$[_____]
Taxable Construction Loan:	\$[_____]
Taxable Construction Lender:	Funding Lender
Subordinate Debt	(i) \$[1,500,000] DHFC Subordinate Loan (ii) \$[1,500,000] LDG Subordinate Loan
Subordinate Lender:	(i) Dallas Housing Finance Corporation (ii) [Rickhaus Design, LLC]
Origination Fee:	\$[_____]
Construction Monitoring Fee:	\$[_____]
Tax Abatement/Exemption:	The full exemption from ad valorem real estate taxes pursuant to Section 394.905, Texas Local Government Code