

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer

and

LDG WALNUT SPRINGS, LP,  
a Texas limited partnership,  
as Borrower

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LOAN AGREEMENT

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Dated as of December 1, 2024

Relating to:

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

    \$[15,736,600]  
Multifamily Housing Revenue Bonds  
(Walnut Springs Apartments)  
Series 2024A-1

    \$[11,213,400]  
Multifamily Housing Revenue Bonds  
(Walnut Springs Apartments)  
Series 2024A-2

The amounts payable to the Texas Department of Housing and Community Affairs (the “**Issuer**”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to BOKF, NA, a national banking association, as trustee (the “**Trustee**”) under the Indenture of Trust between the Issuer and the Trustee dated as of December 1, 2024.

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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**”) made as of December 1, 2024, by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (together with its successors and assigns, the “**Issuer**”) and LDG WALNUT SPRINGS, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “**Borrower**”),

### WITNESSETH:

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

WHEREAS, LDG Walnut Springs, LP, a Texas limited partnership (together with permitted successors and assigns the “**Borrower**”), has applied to the Issuer for financial assistance for the purpose of providing all or part of the funds required to finance an approximately 177-unit multifamily residential rental housing project located or to be located at or near 2545 N. Guadalupe Street, Seguin, Guadalupe County, Texas 78155, and subordinate and related facilities thereto, to be known as Walnut Spring Apartments (the “**Project Facilities**” or “**Project**”); and

WHEREAS, the Issuer has, pursuant to the Act and this Indenture, determined to issue and sell its \$[15,736,600] Multifamily Housing Revenue Bonds (Walnut Springs Apartments) Series 2024A-1 (the “**2024A-1 Bonds**”), and its \$[11,213,400] Multifamily Housing Revenue Bonds (Walnut Springs Apartments) Series 2024A-2 (the “**2024A-2 Bonds**” and together with the 2024A-1 Bonds, the “**Bonds**”), for the purpose of providing financing for the acquisition, construction and equipping of the Project, all pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “**Indenture**”), dated of even date herewith between the Issuer and BOKF, NA, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “**Trustee**”), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.02. Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof,” “herein,” “hereto,” “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants,” (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## ARTICLE II

### LOAN AND PROVISIONS FOR REPAYMENT

Section 2.01. Basic Loan and Repayment Terms.

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. To provide funds to make the Loan for purposes of assisting in paying a portion of the Project Costs, the Issuer will issue, sell and deliver the Bonds to the Holders from time to time in accordance with Section 3.2 of the Indenture and the Bond Placement Agreement. The Bonds will be issued pursuant to the Indenture, from time to time, in the aggregate principal amount, will bear interest and will mature as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered. The Borrower’s obligation to repay the Loan shall be evidenced by the Series A-1 Promissory Note and the Series A-2 Promissory Note, the forms of which is attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

(b) The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Series A-1 Bond Fund Account of the Bond Fund with respect to the 2024A-1 Bonds and the Series A-2 Bond Fund Account of the Bond Fund with respect to the 2024A-2 Bonds or the Redemption Fund, as applicable, two Business Days before the dates that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of

(whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds as provided in the Indenture.

(c) It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.01 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.01 hereof, all loan repayments payable to the Issuer pursuant to the Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.03(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

#### Section 2.02. Fees.

(a) Subsequent to the Stabilization Date, the Borrower shall pay all of the Servicer's expenses.

(b) The Borrower shall pay (as directed by the Controlling Person) an amount equal to [\_\_\_\_\_] in the aggregate each month for the costs of the Engineering Consultant and the Servicer incurred by the Controlling Person. Such amount shall be due through the Stabilization Date and shall be paid: (i) with each monthly Requisition submitted, commencing with the first Requisition submitted following the Closing Date, and continuing through Final Completion of the Work in respect of the Project Facilities; provided, that in the event a Requisition is not submitted in any month during the period referenced above, the amount submitted with the next Requisition shall be in an aggregate amount sufficient to pay the monthly amount for the prior month or months in which no Requisition was submitted and (ii) subsequent to Final Completion and prior to the Stabilization Date, two Business Days before each Interest Payment Date.

(c) The Borrower shall pay or cause to be paid the Issuer's Fees and expenses of the Issuer, including any agent and counsel fees, incurred under the Bond Documents.

(d) The Borrower shall pay the Trustee Fees and/or the reasonable fees and expenses of a Qualified Custodian.

#### Section 2.03. Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's and the Majority Owner's and each Holder's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release of the Bonds, the Indenture and/or this Agreement, and the resignation or removal of the Trustee.



(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed, with the consent of the Investor, (A), in whole, pursuant to Section 3.4(a)(i) of the Indenture, on any date on or after the First Optional Redemption Date, at the redemption prices set forth therein and (B) in whole or in part, pursuant to Section 3.4(a)(ii) of the Indenture on any date, in each case, upon the payment of the required principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Redemption Date shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount calculated in accordance with the provisions of Exhibit D attached to this Agreement.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.04. Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.05. Indemnification.

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, THE “**ISSUER INDEMNIFIED PARTIES**”) HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS’ FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE

FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS LOAN AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS LOAN AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM AN ISSUER INDEMNIFIED PARTY, THE BORROWER SHALL DEFEND THE ISSUER INDEMNIFIED PARTIES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

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

ISSUER INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

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

(b) THE BORROWER COVENANTS TO DEFEND, INDEMNIFY AND HOLD HARMLESS, WITHOUT LIMITING ANY INDEMNITY PROVIDED IN THE REGULATORY AGREEMENT, TRUSTEE, THE CONTROLLING PERSON, THE SERVICER, THE MAJORITY OWNER, THE PLACEMENT AGENT AND EACH OF THEIR RESPECTIVE AFFILIATES AND EACH OF THEIR AND THEIR AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "**OTHER INDEMNIFIED PARTIES**" AND TOGETHER WITH THE ISSUER INDEMNIFIED PARTIES, EACH AN "**INDEMNIFIED PARTY**"), EXCEPT AS LIMITED BELOW, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES FOR COUNSEL OF EACH OF THE OTHER INDEMNIFIED PARTIES' CHOICE) WHATSOEVER WHICH THE OTHER INDEMNIFIED PARTIES MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST ANY OF THE OTHER INDEMNIFIED PARTIES BY ANY PERSON OR ENTITY WHATSOEVER) BY REASON OF OR IN CONNECTION WITH:

(i) THIS AGREEMENT, THE BONDS, THE INDENTURE, THE GROUND LEASE, THE REGULATORY AGREEMENT, TAX EXEMPTION AGREEMENT, OR THE OTHER BOND DOCUMENTS, OR THE EXECUTION OR AMENDMENT HEREOF OR THEREOF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING THE ISSUANCE, SALE OR RESALE, DEFEASANCE OR REDEMPTION OF THE BONDS;

(ii) ANY BREACH BY THE BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, TERM OR CONDITION IN, OR THE OCCURRENCE OF ANY DEFAULT UNDER, THIS AGREEMENT OR THE OTHER BOND DOCUMENTS, INCLUDING ALL REASONABLE FEES OR EXPENSES RESULTING FROM THE SETTLEMENT OR DEFENSE OF ANY CLAIMS OR LIABILITIES ARISING AS A RESULT OF ANY SUCH BREACH OR DEFAULT OR ANY DETERMINATION OF TAXABILITY;

(iii) THE INVOLVEMENT OF ANY OF THE OTHER INDEMNIFIED PARTIES IN ANY LEGAL SUIT, INVESTIGATION, PROCEEDING, INQUIRY OR ACTION AS A CONSEQUENCE, DIRECT OR INDIRECT, OF THE CONTROLLING PERSON OR THE MAJORITY OWNER'S ACTIONS TAKEN PURSUANT TO THIS AGREEMENT OR ANY OF THE OTHER BOND DOCUMENTS OR ANY OTHER EVENT OR TRANSACTION CONTEMPLATED BY ANY OF THE FOREGOING;

(iv) RESERVED;

(v) THE ACCEPTANCE OR ADMINISTRATION OF THE BOND DOCUMENTS OR THE SECURITY INTERESTS THEREUNDER OR THE PERFORMANCE OF DUTIES UNDER THE BOND DOCUMENTS OR ANY LOSS OR DAMAGE TO PROPERTY OR ANY INJURY TO OR DEATH OF ANY PERSON THAT MAY BE OCCASIONED BY ANY CAUSE WHATSOEVER PERTAINING TO THE PROJECT FACILITIES OR THE USE THEREOF, INCLUDING WITHOUT LIMITATION ANY LEASE THEREOF OR ASSIGNMENT OF ITS INTEREST IN THIS AGREEMENT;

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

(vii) ANY LIEN (OTHER THAN A PERMITTED ENCUMBRANCE) OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE TRUSTEE HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IMPOSED ON THE TRUSTEE IN RESPECT OF ANY PORTION OF THE PROJECT FACILITIES;

(viii) ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW OR REGULATION INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW OR ANY INSPECTION, REVIEW OR TESTING WITH RESPECT TO, OR THE RELEASE OF ANY TOXIC SUBSTANCE FROM, THE PROJECT FACILITIES OR ANY PART THEREOF;

(ix) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY ANY INDEMNIFIED PARTY, RELATED TO REMEDIES UNDER, THIS AGREEMENT, THE INDENTURE AND THE OTHER BOND DOCUMENTS;

(x) ANY ACTION, SUIT, CLAIM, PROCEEDING, AUDIT, INQUIRY, EXAMINATION, OR INVESTIGATION OF A JUDICIAL, LEGISLATIVE, ADMINISTRATIVE OR REGULATORY NATURE CONCERNING OR RELATED TO INTEREST PAYABLE ON THE BONDS NOT BEING EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION OR EXEMPT FROM STATE INCOME TAXATION;

(xi) ANY ACTION, SUIT, CLAIM OR DEMAND CONTESTING OR AFFECTING THE TITLE OF THE PROJECT FACILITIES;

(xii) THE INVESTIGATION OF, PREPARATION FOR OR DEFENSE OF ANY LITIGATION, PROCEEDING OR INVESTIGATION IN CONNECTION WITH THE PROJECT FACILITIES OR THE TRANSACTIONS TO BE CONSUMMATED IN CONNECTION THEREWITH OF ANY NATURE WHATSOEVER, COMMENCED OR THREATENED AGAINST THE BORROWER, THE PROJECT FACILITIES OR ANY INDEMNIFIED PARTY; AND

(xiii) ANY BROKERAGE COMMISSIONS OR FINDERS' FEES CLAIMED BY ANY BROKER OR OTHER PARTY IN CONNECTION WITH THE BONDS OR THE PROJECT.

THE INDEMNIFICATION SHALL INCLUDE THE REASONABLE COSTS AND EXPENSES OF DEFENDING ITSELF OR INVESTIGATING ANY CLAIM OF LIABILITY AND OTHER REASONABLE EXPENSES AND ATTORNEYS' FEES INCURRED BY THE OTHER INDEMNIFIED PARTIES, PROVIDED THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY ANY OF THE OTHER INDEMNIFIED PARTIES FOR ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION, TO HAVE BEEN DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNIFIED PARTY. THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE INDENTURE AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE INDENTURE TO THE CONTRARY, THE BORROWER AGREES (I) NOT TO ASSERT ANY CLAIM OR INSTITUTE ANY ACTION OR SUIT AGAINST THE TRUSTEE OR ITS EMPLOYEES ARISING FROM OR IN CONNECTION WITH ANY INVESTMENT OF FUNDS MADE BY THE TRUSTEE IN GOOD FAITH IN COMPLIANCE WITH THE INDENTURE AS DIRECTED BY THE BORROWER, THE CONTROLLING PERSON OR THE MAJORITY OWNER, AND (II) TO INDEMNIFY AND HOLD THE TRUSTEE AND ITS EMPLOYEES HARMLESS AGAINST ANY LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE ARISING FROM OR IN CONNECTION WITH ANY SUCH INVESTMENT. WHEN THE TRUSTEE INCURS EXPENSES OR RENDERS SERVICE IN CONNECTION WITH ANY BANKRUPTCY OR INSOLVENCY PROCEEDING, SUCH EXPENSES (INCLUDING THE FEES AND EXPENSES OF ITS COUNSEL) AND THE COMPENSATION FOR SUCH SERVICES ARE INTENDED TO CONSTITUTE EXPENSES OF ADMINISTRATION UNDER ANY BANKRUPTCY LAW OR LAW RELATING TO CREDITORS RIGHTS GENERALLY. THE OBLIGATIONS OF THE BORROWER TO THE OTHER INDEMNIFIED PARTIES UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE RECOURSE LIMITATIONS OF SECTION 10.13 HEREOF; PROVIDED, HOWEVER, THAT THE BORROWER SHALL NOT BE LIABLE TO THE OTHER INDEMNIFIED PARTIES UNDER THIS SECTION TO THE EXTENT OF ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES INCURRED BY THE OTHER INDEMNIFIED PARTIES AS A RESULT FROM THE OTHER INDEMNIFIED PARTIES' WILLFUL MISCONDUCT OR, EXCEPT THE OTHER INDEMNIFIED PARTIES' BREACH OF ITS OBLIGATIONS UNDER THE BOND DOCUMENTS.

NOTHING IN THIS SECTION 2.05 SHALL IN ANY WAY LIMIT THE BORROWER'S INDEMNIFICATION AND OTHER PAYMENT OBLIGATIONS SET FORTH IN THE REGULATORY AGREEMENT.

Section 2.06. Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE III**

#### **SECURITY**

Section 3.01. Mortgage and Other Bond Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered, to the Trustee (and where required, duly record) the Mortgage and each of the other Bond Documents.

Section 3.02. Financing Statements. The Borrower shall file or cause to be filed on the Closing Date, the financing statements necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower hereby authorizes the Trustee and the Controlling Person, at the direction of the Borrower, to file continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file continuation statements with respect to financing statements in which the Trustee is named as the secured party for the purpose of continuing without lapse the effectiveness of those financing statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the Uniform Commercial Code of the State, copies of which have been provided to the Trustee. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

### **ARTICLE IV**

#### **REPRESENTATIONS OF ISSUER**

Section 4.01. Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is public and official agency of the State, and is authorized by the Act and the Resolution to execute and to enter into this Agreement and to undertake the transactions

contemplated herein and in the other Bond Documents to which it is a party and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds thereof to the Borrower for the acquisition and construction of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition to the performance by the Issuer of its obligations under the Bond Documents to which it is a party.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, legal, valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(e) There is no default of the Issuer in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Bond Documents or the ability of the Issuer to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) There are no obligations of the Issuer other than the Bonds that have been, are being or will be (i) sold at substantially the same time, (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from substantially the same source of funds.

(g) 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 knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the Federal Tax Status of the Bonds.

(h) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under the Indenture. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the

revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

(j) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement or the Indenture.

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

(l) No member of the Issuer, nor any other official or employee of the Issuer, has any interest (financial, employment or other) in the Borrower, in the Project Facilities or in the transactions contemplated hereby, by the other Bond Documents or by the Indenture.

(m) The Issuer used no broker in connection with the execution hereof and the transactions contemplated hereby.

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

Section 4.02. No Liability of Issuer; No Charge Against Issuer's Credit. Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person and the Holders from time to time of the Bonds as follows:



Section 5.01. Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of, and duly qualified to do business in, the State. The Borrower is an eligible sponsor, as defined in the Act. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Partnership Agreement and articles of organization. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, constructing, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is AAHFC Walnut Springs GP, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of, and duly qualified to do business in, the State. The General Partner has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its articles of incorporation and Company Agreement. The General Partner has and will have no other assets other than its interests in the Borrower.

Section 5.02. Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement or articles of organization of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.03. Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications (except those ordinarily obtained during the construction, or upon completion, of the Project Facilities) and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities (except those ordinarily obtained during the construction, or upon completion, of the Project Facilities) and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale,

transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.04. Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.05. No Litigation. Except as disclosed to the Controlling Person, the Purchaser, and the Investor, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds, or the Bond Documents or the construction, operation or ownership of the Project Facilities, or the Federal Tax Status of the Bonds.

Section 5.06. No Violations. The Borrower and the General Partner are in compliance in all material respects with, and not in material breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.07. Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Exemption Agreement, and the Regulatory Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained, or will obtain prior to the necessary timeframe, all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities.

Section 5.08. Title to Properties; Liens and Encumbrances. The Borrower has a leasehold interest in the Project Site and a fee simple interest in the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances, including but not limited to the Ground Lease. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.09. Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10. Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantors, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantors or the General Partner has any material liability or contingent liability not disclosed to the Controlling Person or the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantors, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantors, or the General Partner.

Section 5.11. ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBG”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the General Partner’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401(a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject

of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after [September 25, 1980], (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "ERISA Affiliate" means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12. Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

Section 5.13. Outstanding Obligations and Material Contracts. Except as disclosed in writing to the Controlling Person and the Purchaser, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of the Material Contracts in all material

respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14. Solvency. Each of the Borrower, the Guarantors and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantors and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due); provided, the foregoing shall not be deemed a guaranty.

Section 5.15. Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person by or on behalf of the Borrower, the Guarantors, or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantors or the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantors or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantors or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16. Bond Documents. Each of the Borrower, the Guarantors and the General Partner has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing (including, without limitation, the Subordinate Debt) relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17. Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18. Reserved.

Section 5.19. No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20. Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21. Development Budget. The Development Budget provided to the Controlling Person accurately reflects, to the best of the Borrower's knowledge: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22. Plans and Specifications. The Borrower has furnished the Controlling Person with true and complete sets of the Plans and Specifications. To the best of the Borrower's knowledge, the Plans and Specifications so furnished comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor and such Governmental Authority as is required for construction of the Project Facilities.

Section 5.23. Survey. The survey for the Project Facilities delivered to the Controlling Person does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.24. Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25. Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the disbursement under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such disbursement.

Section 5.26. State Law Verifications. The Borrower makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended. As used herein, "affiliate" means an entity that controls, is controlled by, or is under common control with the Borrower within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute

of limitations and shall not be liquidated or otherwise limited, notwithstanding anything herein or therein to the contrary.

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

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

## **ARTICLE VI**

### **GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.01. Conduct of Business; Maintenance of Existence; Mergers. Each of the Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership under the Legal Requirements of the State, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) except for Permitted Transfers, not amend any provision of its certificate of organization or the Partnership Agreement relating to its purpose, management or operation without the prior written consent of the Controlling Person, which shall not be unreasonably withheld, conditioned or delayed, and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause Investor to make its capital contributions as and when required under the Partnership Agreement.

Section 6.02. Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due (to the extent such payments are not made by the Trustee from the reserve) and will make the applicable deposits required by Section 8.02 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to the Controlling Person.

Section 6.03. Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Closing Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.04. Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto.

(b) All insurance required by this Section 6.04 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.04(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.04(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The Trustee shall not be required to take any action upon receipt of such a notice, unless it receives written directions from the Majority Owner. The policy evidencing liability insurance required by Section 6.04(a) hereof shall name the Issuer and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.04(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee (acting at the written direction of the Majority Owner), the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.04(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.04(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.04(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person on or before the Closing Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the



immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.04. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require. The Trustee shall not be required to examine such insurance policies or certificates to determine compliance with this Section 6.04.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.04(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.04(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.05. Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all material respects with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all materials respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.06. Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.07. Inspection Rights.

(a) The Borrower will, at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections.

(b) If the Controlling Person has retained an Engineering consultant pursuant to Section 9.10 hereof, then after the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.06 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.06 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.06 hereof.

Section 6.08. Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.09. Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) Beginning after the Completion Date, as soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(i) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(ii) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Bonds for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

(b) Beginning after the Completion Date, as soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(i) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year; and

(ii) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate;

(iii) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(iv) notwithstanding the foregoing, if the Completion Date occurred on or after [December 31, 2026], the Borrower may elect, by written notice to the Controlling Person, to include the period from the Completion Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Closing Date occurred.

(c) Beginning during lease up of the Project, as soon as possible and in any event within thirty (30) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of

expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Weekly during any period after the Stabilization Date with occupancy of less than 90% and within twenty-five (25) days of the end of each fiscal quarter for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within fifteen (15) days after receipt of written notice thereof, notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantors or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantors or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the exclusion from gross income of interest on the Bonds for purposes of federal income taxation;

(g) As soon as possible, notice of any material adverse change in the operations, financial condition or prospects of the Borrower, the General Partner, the Guarantors or the Project Facilities;

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer;

(i) Not later than the Completion Date, the Final Completion Certificate set forth as Schedule 2 hereof (with a copy to the Issuer and the Trustee) and not later than the Stabilization Date, the Use of Proceeds Compliance Certificate set forth as Schedule 3 hereof (with a copy to the Issuer and the Trustee);

(j) As and when required under the Regulatory Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Regulatory Agreement;

(k) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(l) Not later than the Stabilization Date, a Stabilization Certificate in the form set forth on Schedule 4 hereto (with a copy to the Issuer and the Trustee) and if construction work resulted in new structures or expansion of foot prints of the existing structures, the Trustee shall have received an as-built ALTA/ACSM Survey certified to the Trustee, the Issuer and the Controlling Person;

(m) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents; and

(o) Copies of IRS Forms 8609 as issued and received by the Borrower; and

(p) *Reserved*;

(q) Upon receipt thereof, copies of all real estate tax bills and insurance bills;

(r) Promptly following filing thereof, all tax returns of the Borrower and the General Partner; and

(s) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request.

Section 6.10. Tax-Exempt Status.

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

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

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

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

(c) *Continuing Compliance.* The requirements stated in this Section 6.10 will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the Federal Tax Status of the Bonds.

Section 6.11. Single Purpose Entities.

(a) The Borrower and the General Partner shall (i) not engage in any business or activity, other than the construction, ownership, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) Each of the Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement, the other Bond Documents, and the Subordinate Debt Documents, or unsecured loans or guaranty payments made by the members of the Borrower pursuant to the Partnership Agreement or by a Guarantor, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Bond Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its articles of organization or Partnership Agreement without obtaining the prior written consent of the Controlling Person, not to be unreasonably withheld, conditioned or delayed (and which the Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); provided that no consent shall be required for changes or amendments to the Partnership Agreement to the extent such changes or amendments are solely required to effect a Permitted Transfer or do not materially and adversely affect the rights of the Holder, in which case the Majority Owner shall be given written notice of any such amendments, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted Transfer, materially and adversely affect the rights and interests of the Holders or materially and adversely affect the Project also require Majority Owner consent, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) conduct and operate its business as presently conducted and operated or contemplated to be conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and

(xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Bond Documents.

Section 6.12. Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person’s sole and absolute discretion; and (ii) complying with the applicable requirements of the Regulatory Agreement.

Section 6.13. Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower’s Indebtedness under the Bond Documents, the Subordinate Debt Documents, and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its members unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; (ii) Indebtedness in respect of the Subordinate Debt; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from members or their Affiliates or the Guarantors pursuant to the Partnership Agreement and the deferred Developer Fee.

Section 6.14. Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination in violation of Environmental Laws.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "**Moisture Management Program**") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "**Mold**"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("**EPA**") guide entitled "Mold Remediation in Schools and Commercial Buildings," EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in



connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower's expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15. Controlling Person. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture and the Controlling Person has appointed the Servicer to service the Loan; (ii) the Majority Owner has appointed NewPoint Real Estate Investment Management LLC to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove

or replace the Controlling Person, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Controlling Person and the Servicer made on behalf of the Majority Owner under the Bond Documents to which it is a party.

Section 6.16. Tax Returns. The Borrower shall cause the General Partner to timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17. Leases. The Borrower hereby represents that there are no leases or agreements to sublease all or any part of the Project Facilities now in effect, except for the lease of the real property on which the Project Facilities are to be located pursuant to the Ground Lease. Except for leases to residential tenants in compliance with the Regulatory Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Regulatory Agreement.

Section 6.18. Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19. Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time, the “**Management Agreement**”). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts. The Borrower shall not replace the Managing Agent for the Project Facilities without the Controlling Person’s prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person’s prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall

not be required to) engage a new Managing Agent on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20. Determination of Taxability. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner. Upon such notification, the Controlling Person or the Majority Owner, at either such party's sole discretion and at its expense, may contest such conclusion

Section 6.21. List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person's request shall be paid by the Controlling Person.

Section 6.22. Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23. Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by the Office of Foreign Assets Control (“OFAC”) or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List

Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “**Anti-Terrorism Regulations**”), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person’s taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24. Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the “**Proposed Budget**”). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower’s control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25. Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on, the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26. Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.02(a) hereof, and the fees of the Engineering Consultant, if any, set forth in Section 2.02(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article VIII hereof.

Section 6.27. Additional Conditions Precedent. The rights of the Borrower to the disbursement of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 1 hereof.

Section 6.28. Reserved.

Section 6.29. Construction of Improvements. The Borrower shall construct the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance in all material respects with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Closing Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance in all material respects with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date.

Section 6.30. Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with

copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31. Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32. Loan Rebalancing. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, (ii) the capital contributions from the Borrower's members; (iii) any other source of funds shown in the Development Budget attached hereto; and (iv) any other sums deposited by the Borrower with the Trustee are insufficient to pay through completion of the Project Facilities, all of the following sums: (x) all remaining costs of construction, marketing, ownership, maintenance and leasing of the Project Facilities; and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Bond Documents, then the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) Business Days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made. Notwithstanding the foregoing, if, at any time, the Controlling Person determines, in Controlling Person's reasonable discretion, that it is unlikely that the Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Loan proceeds), the Controlling Person may exclude such amount from its determination of whether the Loan is "in balance" as provided above.

Section 6.33. Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee with respect to the Bonds and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34. Reserved.

Section 6.35. Developer Fee. The Borrower will not pay any Developer Fee prior to the Stabilization Date except as provided in the Partnership Agreement.

Section 6.36. Reserved.

Section 6.37. Extension of the Stabilization Date. (a) Notwithstanding any provisions in this Agreement to the contrary, the Borrower may, upon 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(i) there is no uncured Default or Event of Default exists and the Borrower is then in compliance with its obligations under the Bond Documents;

(ii) the extended deadline for the achievement of Stabilization is no later than six months after the initial Stabilization Date;

(iii) unless waived by the Majority Owner, an extension fee equal to [0.50]% times the principal amount of Bonds Outstanding at the date of extension is paid to the Controlling Person with respect to such extension; and

(iv) the Borrower certifies in writing to the Controlling Person that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension.

(b) Notwithstanding any provisions in this Agreement to the contrary, the Borrower may request, upon 30 days prior written notice to the Controlling Person, an extension of the deadline for the Project Facilities to achieve Stabilization for a second time, which the Controlling Person, acting in its sole and absolute discretion, may allow, provided that:

(i) there is no uncured Default or Event of Default exists and the Borrower is then in compliance with its obligations under the Bond Documents;

(ii) the extended deadline for the achievement of Stabilization is no later than six months after the initial Stabilization Date;

(iii) unless waived by the Majority Owner, an extension fee equal to [0.50]% times the principal amount of Bonds Outstanding at the date of extension is paid to the Controlling Person with respect to such extension; and

(iv) the Borrower certifies in writing to the Controlling Person that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension.

Section 6.38. Stabilization; Pre-Stabilization Loan Equalization Payment. The Project Facilities shall achieve Stabilization on or prior to the Stabilization Date. In order to achieve Stabilization, the Borrower shall make or cause to be made a Pre-Stabilization Loan Equalization Payment and cause a redemption of the Bonds, as set forth in Section 3.4(a)(ii) of the Indenture. In the event the Pre-Stabilization Loan Equalization Payment results in the principal amount of Series 2024A-1 Bonds outstanding on the Stabilization Date, following the partial redemption made with such payment, to be less than \$[12,569,400], the Borrower shall pay a premium on the Stabilization Date, calculated in accordance with the provisions of Exhibit D attached to this

Agreement, on the difference between \$[12,569,400] and the principal amount of Series 2024A-1 Bonds outstanding on the Stabilization Date, following the above-referenced partial redemption.

## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.01. Defaults. Each of the following shall constitute an event of default hereunder (“**Event of Default**”):

(a) Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.01, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than (i) pursuant to the Continuing Disclosure Agreement or (ii) as described in paragraphs (a) and (b) above, and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower (with a copy to the Investor), or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner, or the Investor shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner or any Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party, in any such case, contrary to the term thereof;

(f) The occurrence of an Event of Default as defined in the Indenture, the other Bond Documents, or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents;



(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities fail to achieve (i) Final Completion on or before the Completion Date; or (ii) Stabilization on or before the Stabilization Date;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given

or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or any Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such obligation or obligations or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(n) Construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except such reason as the Controlling Person shall deem reasonable;

(o) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon five (5) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled;

(p) A Transfer other than a Permitted Transfer occurs; and

(q) An event of default shall have occurred under the Subordinate Debt Documents.

Section 7.02. Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the written direction of the Controlling Person, shall:

(a) Declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.01(g) hereof; and

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Note, the Regulatory Agreement or any other Bond Document in the event of default thereunder (including without limitation, appointment of a receiver or foreclosure of the Mortgage); and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an

additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are finally adjudicated by a court of competent jurisdiction to have been grossly negligent or directly due to its willful misconduct) under Section 2.05 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Before taking any action required hereunder which may require the Trustee to incur costs, expend its own funds or expose it to risk, the Trustee may require security or indemnification satisfactory to it for the reimbursement of all costs, expenses or liabilities it may incur in connection with such action.

Section 7.03. No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.04. No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.05. Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.06. Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person and the Investor and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.07. Cure by Investor. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Investor shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Investor shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.08. Default Rate; Acceleration Premium; Penalty Rate.

(a) In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Redemption

Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.03(c) hereof.

(b) In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.09. Reserved Rights; Regulatory Agreement Defaults.

(a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) If there shall have occurred and be then continuing an event of default under the Regulatory Agreement which would, in the reasonable judgment of the Issuer, the Controlling Person or the Majority Owner, jeopardize the Federal Tax Status of the Bonds (a “**Regulatory Agreement Default**”) and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Trustee, the Controlling Person and the Majority Owner receive written notice from the Issuer, the Controlling Person or the Majority Owner, as applicable stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the consent of the Controlling Person or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with a Favorable Opinion of Bond Counsel with respect to such failure to cure such default (which opinion may be requested and obtained by the Controlling Person or the Majority Owner);

(ii) The Controlling Person, the Majority Owner or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee’s first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the

opinion of Bond Counsel provided to the Trustee, such extension will not adversely affect the Federal Tax Status of the Bonds; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the Federal Tax Status of the Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Majority Owner, nothing in this Section 7.09 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Regulatory Agreement or at law or in equity in order to enforce the terms of the Regulatory Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the Outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby, or (v) impair the ability of the Borrower to pay its obligations under the Bond Documents.

## ARTICLE VIII

### DEPOSITS TO FUNDS

Section 8.01. Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.02. Deposits to Tax and Insurance Escrow Fund.

(a) On the Closing Date, the Borrower shall pay, or cause to be paid, to the Trustee to be deposited in the Tax and Insurance Escrow Fund, the amount specified in Section 4.1 of the Indenture, if any.

(b) Thereafter, unless otherwise directed by the Controlling Person, two Business Days before each Interest Payment Date, commencing the first Interest Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.03. Reserved.

Section 8.04. Deposits to Redemption Fund. The Borrower shall pay to the Trustee for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture on the dates set forth in Section 2.01(b), the amounts set forth therein. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund any other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.05. Reserved.

Section 8.06. Investment. Funds in the Accounts shall be invested in Permitted Investments upon the written direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the applicable Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.07. Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.08. Reports. At the sole expense of the Borrower, the Trustee shall make available to the Borrower and the Issuer detailed monthly reports on or before the fifteenth (15<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, and at the sole expense of the Borrower, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds. Such reports and accountings may be provided by access to the Trustee's online portfolio system.

Section 8.09. No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## ARTICLE IX

### CONSTRUCTION AND FUNDING OF ADVANCES

Section 9.01. Construction of Project Facilities; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days following the Closing Date, and shall achieve Final Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date; 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 and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion.

Section 9.02. Making The Advances.

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person, the Servicer and the Trustee. Each Requisition shall be submitted to the Controlling Person, the Servicer and the Trustee at least fifteen (15) Business Days prior to the date of the requested disbursement, and no more frequently than once each month (excluding the month in which the initial disbursement is requested). The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have, and if the Controlling Person has not objected to any Requisition it has properly received on or before the date of the requested disbursement, the Requisition shall be deemed approved by the Controlling Person, and the Trustee shall be authorized to deposit the proceeds for the Purchaser's purchase of the Bonds related to the subject advance in the amount of the requested disbursement as set forth in (b) below; provided that, (i) in no event, shall a Requisition be approved or deemed approved on or after the 26<sup>th</sup> day of a month through the last day of each month and (ii) Requisitions shall be funded on the first Business Day on the month immediately succeeding the month in which the subject Requisition was approved.

(b) The Borrower and the Controlling Person hereby direct the Trustee to disburse the proceeds of each Requisition from the Project Fund to the Title Company for further disbursement. The Borrower and the Controlling Person may mutually direct the Trustee in writing to deposit the proceeds of any such Requisition to an account set forth in such direction.

Section 9.03. Payments to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Controlling Person may direct the Trustee in writing to make any or all disbursements from the Project Fund: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.04. Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each



disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements of proceeds of the Bonds, will result in (i) not less than ninety-five percent (95%) of all disbursements of proceeds of the Bonds having been used to pay or reimburse the Borrower for Qualified Project Costs, (ii) not more than two percent (2%) of the proceeds of the Bonds having been applied to payments of Costs of Issuance, and (c) less than twenty-five percent (25%) of the proceeds of the Bonds having been applied to payments for land.

Section 9.05. Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be disbursed by the Trustee from the Project Fund are to be used. Subject to Sections 9.07 and 9.09(a) hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Sections 9.07 and 9.09(a) hereof, in no event shall the Controlling Person approve any Requisition in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any disbursements previously made by the Trustee from the Project Fund for such costs.

Section 9.06. Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No disbursement of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such disbursement is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant, if one has been retained.

Section 9.07. Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person (provided, however, that amounts applied to changes as described in Section 9.09(a) shall be permitted without prior approval of the Controlling Person). The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.08. Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person’s receiving a stored materials log, a copy of the relevant bill of sale, detailed receipt and/or invoice describing such materials and photos thereof and evidence of adequate, secure and insured transportation, and satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of ninety (90) days, or such longer period as is approved by the Controlling Person; and

(b) such materials are stored at the Project Facilities, or in a bonded warehouse or at such other site as the Controlling Person shall approve, are insured and protected against theft and damage and independent verification that the materials are for use in connection with the Project and the Trustee's security interest in the Mortgaged Property includes such materials.

Section 9.09. Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work, the Borrower shall submit to the Controlling Person a completed Form AIA-G701 with respect to such change. In addition, if any change in the costs of the Work increases the projection of the costs reflected on the Development Budget by \$125,000 or more per individual change or \$250,000 in the aggregate changes (it being acknowledged that notwithstanding anything contained herein to the contrary that changes below the foregoing amounts shall not require the consent of the Controlling Person or the Trustee and unused contingency may be used by the Borrower with respect to said changes), the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget, together with the aforementioned completed Form AIA-G701 (receipt and approval by the Controlling Party of a Requisition form providing for a change order shall be deemed approval of such change order). If the Controlling Person otherwise becomes aware of any such increase in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless and until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the construction of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other Projected costs in connection with the Work.

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant, if any, with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, to other line items.

(d) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Note.

Section 9.10. Right to Retain the Engineering Consultant.

(a) The Controlling Person shall have the right to retain the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts. In the event that the Controlling Person has not retained an Engineering Consultant, the construction monitor retained by the [Borrower][Investor], which is initially [ ] (the “**Construction Monitor**”), may, but shall not be required to, perform all actions permitted to be performed by the Engineering Consultant hereunder, and, if such actions are performed by the Construction Monitor, it shall be entitled to payment for such services as described herein.

(b) The Borrower shall pay no additional fees of the Engineering Consultant in excess of those stipulated in Section 2.02(b) hereof. Furthermore, and notwithstanding anything to the contrary, the Issuer shall have no obligation whatsoever with respect to the payment of any fees of the Engineering Consultant.

(c) Neither the Controlling Person, Majority Owner nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

(d) The Borrower agrees to provide the Controlling Person with monthly construction reports prepared by the Construction Monitor within three (3) Business Days of the Borrower’s receipt thereof.

Section 9.11. Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the construction of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower’s Architect or engineer.

Section 9.12. Initial Disbursement. The right of the Borrower to the initial disbursement from the Project Fund on the Closing Date shall be subject to the satisfaction of the following conditions precedent:

(a) The Borrower shall have delivered the items listed on Schedule 1 attached hereto;

(b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the construction of the

Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that such permits or licenses are not required;

(c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project Facilities;

(d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;

(e) True and correct copies of all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the construction and/or rehabilitation of the Improvements and the operation of, and access to, the Project;

(f) *Reserved;*

(g) The Borrower shall have delivered to the Controlling Person evidence as to:

(i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(iii) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the construction of the Improvements and the access thereto;

(h) The first installment of the Borrower's Required Equity Funds shall have been delivered to the Trustee and the other deposits required under Section 4.1(c) of the Indenture shall have been made; and

(i) The Controlling Person and the Borrower shall have executed a closing statement for the Bonds in form and substance satisfactory to the Controlling Person and, if any portion of the disbursement shall be for hard costs of construction, a completed Requisition as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof, if applicable.

Section 9.13. Subsequent Disbursements. The right of the Borrower to receive any subsequent disbursements from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 1 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage;

(c) There shall not be a continuing Event of Default or a Default;

(d) The Controlling Person and the Trustee shall have received:

(i) a completed Requisition in the form set forth on Exhibit B hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(ii) an endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person;

(iii) if an Engineering Consultant has been retained by the Controlling Person, approval of the portion of the Requisition applicable to the Work for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the disbursement is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Indenture is adequate to complete construction of the Improvements in accordance with the Plans and Specifications; and

(iv) if no Engineering Consultant has been retained by the Controlling Person, the Controlling Person has received a monthly construction report from the Borrower or the Construction Monitor for the most recent 30-day period.

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior disbursement funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

(f) The Controlling Person may withhold or refuse to approve any Requisition hereunder if any mechanic's lien is filed or notice of intention to record or file a mechanic's lien has been filed or given.

(g) In addition to the conditions set forth in this Section 9.13, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

(h) If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after the completion of construction of the foundations of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications together with, if requested by Controlling Person, a foundation endorsement to the Title Policy in for and substance acceptable to the Controlling Person.

(i) All installments of Required Equity Funds then due and payable shall have been deposited with the Trustee;

(j) No Material Change Order shall have been made without the written approval of the Controlling Person.

(k) Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant) may condemn as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

Section 9.14. Construction Information and Verification. From time to time, within ten (10) days after the written request of the Controlling Person, the Borrower shall deliver to the Controlling Person any and all of the following information and documents, to the extent applicable to the construction of the Project Facilities, that the Controlling Person may request, all in forms acceptable to the Controlling Person, as applicable:

(a) Current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) A current, complete and correct list showing the name, address, telephone number and license information of each contractor, subcontractor and material supplier engaged in connection with the construction and/or rehabilitation of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person;

(c) True and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) Copies of (i) owner/architect/contractor project meeting minutes; (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and change order logs; (iii) independent test results, (iv) quality inspection reports; and (v) anticipated cost reports, buy-out logs and Major Contracts;

(e) A construction schedule showing the progress of construction or rehabilitation, as the case may be, and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule; and

(f) Any update to any item described above which the Borrower may have previously delivered to the Controlling Person.

(g) The Borrower expressly authorizes the Controlling Person to contact Architect, Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. The Controlling Person shall give notice to the Borrower of any such contacts, provided that neither the Controlling Person nor the Trustee shall incur any liability to the Borrower by reason of the failure to give such notice, and the Borrower's obligations under the Bond Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor to disclose such information to the Trustee and the Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier or surety shall be promptly replaced, and the Borrower shall promptly deliver all required information and documents to the Controlling Person and the Trustee regarding each replacement architect, contractor, subcontractor, material supplier and surety. The Controlling Person may disapprove any architect, contractor, subcontractor, material supplier, surety or other party whom the Controlling Person in its reasonable judgment may deem financially or otherwise unqualified, however, the absence of any such disapproval shall not constitute a representation of qualification.

Section 9.15. Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Notices. All notices and other communications provided for hereunder shall be in writing and sent as provided in Section 10.4 of the Indenture.

Section 10.02. Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not

assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no person other than the parties hereto, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.03. Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.04. Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.05. Costs, Expenses and Taxes. The Borrower agrees to pay on the Closing Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.06. Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to



principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be “interest”) shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.07. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.08. Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the parties with respect to the subject matter hereof.

Section 10.09. Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding, (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.01 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. TO THE EXTENT PERMITTED BY STATE LAW, THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.

Section 10.10. Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12. Reserved.

Section 10.13. Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents, the Issuer agrees that, in connection with the exercise of any rights or remedies available to the Issuer under this Agreement or any of the other Bond Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Issuer shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantors shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Issuer, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by the Borrower from tenants then in residence. However, the Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if the Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, the Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if the Borrower is unable to apply a Condemnation Award or Insurance Proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.08 or 6.09 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers (other than Permitted Transfers):

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and the Borrower has not complied with the provisions of this Agreement.

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents.

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents.

(D) The Borrower executes a tenant lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantors;

(viii) the Borrower's misappropriation of funds or other Collateral;

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, the Guarantors, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, hinders, enjoins or otherwise interferes with or frustrates the efforts of the Trustee to exercise any rights and remedies available to the Trustee provided herein or in the other Bond Documents;

(x) any costs, damages or other amounts, including reasonable attorneys' fees incurred by Lender as a result of any failure of Borrower to comply with the terms of the Ground Lease;

(xi) any failure of Borrower to comply with a covenant in Section 32 of the Mortgage (Regulatory Agreement – Representations, Warranties and Covenants);

(xii) any failure of Borrower to comply with Section 35 of the Mortgage (Tax Abatement – Representations, Warranties and Covenants) that results in a Tax Abatement Loss Event (as defined in the Mortgage); or

(xiii) any costs, including reasonable attorney fees, incurred by Lender to cure a Ground Lessee Default (as defined in the Mortgage).

(c) The Borrower and the Guarantors shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking, or omitting or failing to take, any action which adversely affects the Federal Tax Status of the Bonds;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive

consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.01 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which the Borrower will have personal liability for any loss or damage); provided, however, that the Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Issuer, the Trustee, the Controlling Person or the Bondholders;

(vi) the Borrower or the General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the General Partner (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and, to the extent provided in the applicable Guaranties, the Guarantors shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of the Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.08 of this Agreement;

(iii) any costs and expenses incurred by the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which the Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of the Borrower's books and records to determine the amount for which the Borrower has personal liability; and

(iv) the Borrower's indemnity obligations pursuant to Section 2.05 hereof or as set forth in any other Bond Documents and to pay the Trustee Fees.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, construction and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary, the Issuer, the Trustee, the Controlling Person and the Holders shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Borrower's and the Guarantors' Obligations under the Bond Documents or to require that all collateral shall continue to secure all Obligations under the Bond Documents.

Section 10.14. Publicity. The Borrower hereby authorizes the Controlling Person or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and the Controlling Person.

Section 10.15. Determinations by the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the

Controlling Person any or all of the rights, remedies, duties and obligations of the Trustee under this Agreement and the other Bond Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents.

Section 10.16. Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Bond Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its members set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equity holders and shareholders will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

Section 10.17. Patriot Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws (the "**Patriot Act**"), the Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the Patriot Act.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their authorized representatives as of the date of execution thereof.

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

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

Name: James B. "Beau" Eccles

Title: Secretary to Board

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: AAHFC Walnut Springs GP, LLC, a Texas limited liability company, its general partner

By: Alamo Area Housing Finance Corporation, a Texas housing finance corporation, its sole member

By: \_\_\_\_\_  
Name: Clifford Herberg  
Title: Secretary/Treasurer



## EXHIBIT A-1

### FORM OF SERIES A-1 PROMISSORY NOTE

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

[\$15,736,600]

[CLOSING DATE]

FOR VALUE RECEIVED, LDG Walnut Springs, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “**Borrower**”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “**Issuer**”) the principal sum of [FIFTEEN MILLION SEVEN HUNDRED THIRTY-SIX THOUSAND SIX HUNDRED] DOLLARS (\$[15,736,600]), together with interest on the Outstanding principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the applicable rate of interest borne by the 2024A-1 Bonds (as hereinafter defined), and acceleration premium, if any, on the 2024A-1 Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of BOKF, NA (the “**Trustee**”), or its successor as trustee under the below-defined Indenture.

The principal amount and interest shall be payable on the dates and in the amounts that principal and redemption price of, and interest on the 2024A-1 Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Series A-1 Promissory Note” referred to in the Loan Agreement, dated as of December 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “**Agreement**”) between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement and the Indenture (as hereafter defined).

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of December 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “**Indenture**”), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s \$[15,736,600] Multifamily Housing Revenue Bonds (Walnut Springs Apartments) Series 2024A-1 (the “**2024A- 1 Bonds**”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the 2024A-1 Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest, notice of dishonor, notice of acceleration, notice of intent to demand or accelerate payment or maturity presentment for payment, notice of nonpayment, and grace and diligence in collecting amounts owed hereunder, are hereby expressly waived by the Borrower and all endorsers and Guarantors of this Note.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note, together with interest thereon at the Default Rate if applicable.

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

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: AAHFC Walnut Springs GP, LLC, a Texas limited liability company, its general partner

By: Alamo Area Housing Finance Corporation, a Texas housing finance corporation, its sole member

By: \_\_\_\_\_  
Name: Clifford Herberg  
Title: Secretary/Treasurer

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such 2024A-1 Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

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

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

Name: James B. "Beau" Eccles

Title: Secretary to Board

Dated: \_\_\_\_\_, 20\_\_

## EXHIBIT A-2

### FORM OF SERIES A-2 PROMISSORY NOTE

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

[\$11,213,400]

[CLOSING DATE]

FOR VALUE RECEIVED, LDG Walnut Springs, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “**Borrower**”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “**Issuer**”) the principal sum of [ELEVEN MILLION TWO HUNDRED THIRTEEN THOUSAND FOUR HUNDRED] DOLLARS (\$[11,213,400]), together with interest on the Outstanding principal amount hereof, from the Closing Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the applicable rate of interest borne by the 2024A-2 Bonds (as hereinafter defined), and acceleration premium, if any, on the 2024A-2 Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the designated corporate trust office of BOKF, NA (the “**Trustee**”), or its successor as trustee under the below-defined Indenture.

The principal amount and interest shall be payable on the dates and in the amounts that principal and redemption price of, and interest on the 2024A-2 Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Series A-2 Promissory Note” referred to in the Loan Agreement, dated as of December 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “**Agreement**”) between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement and the Indenture (as hereafter defined).

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to the Trustee under the Indenture of Trust, dated as of December 1, 2024 (as the same may be amended, modified or supplemented from time to time, the “**Indenture**”), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of the Issuer’s \$[11,213,400] Multifamily Housing Revenue Bonds (Walnut Springs Apartments) Series 2024A-2 (the “**2024A- 2 Bonds**”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the 2024A-2 Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest, notice of dishonor, notice of acceleration, notice of intent to demand or accelerate payment or maturity presentment for payment, notice of nonpayment, and grace and diligence in collecting amounts owed hereunder, are hereby expressly waived by the Borrower and all endorsers and Guarantors of this Note.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note, together with interest thereon at the Default Rate if applicable.

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

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: AAHFC Walnut Springs GP, LLC, a Texas limited liability company, its general partner

By: Alamo Area Housing Finance Corporation, a Texas housing finance corporation, its sole member

By: \_\_\_\_\_  
Name: Clifford Herberg  
Title: Secretary/Treasurer

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such 2024A-2 Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

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

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

Dated: \_\_\_\_\_, 20\_\_



**EXHIBIT B**

**FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER: LDG Walnut Springs, LP

PROJECT: Walnut Springs Apartments

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$ \_\_\_\_\_ to be funded with the proceeds of the Bonds and  
\$ \_\_\_\_\_ to be funded with deposits in the Equity Account:

TO: BOKF, NA  
1401 McKinney St., Suite 1000  
Houston, TX 77010  
Attention: Biddel Tekeste

NewPoint Real Estate Investment Management LLC  
1 Battery Park Place, Suite 600  
New York, NY 10004  
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC  
5800 Tennyson Parkway, Suite 200  
Plano, TX 75024  
Attention: Servicing Department

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
\$_[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]
\$_[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]
\$_[_____]	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

## Requisition - Contents and Attachments

- Borrower's Request for Payment
- Borrower's Representations and Warranties
- Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- Pending Change Order and Change Order Log (dated)
- Vendor Payee List or equivalent
- Requisitions and Invoices Supporting Application
- Reserved
- Reserved
- Lien Waivers, Conditional for the current Hard cost pay request
- Lien Waivers, Unconditional for payment thru the prior period pay request
- Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- Current Project Schedule
- Other Documents as Requested by the Trustee or Controlling Person

## Representations and Warranties

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of December 1, 2024 (the “**Agreement**”), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$[ ] in the aggregate, has notified the Engineering Consultant, if any, of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of December 1, 2024, with respect to the Bonds.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved Requisitions have been paid to the Contractor and, to the Borrower’s best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date, except [ ].
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantors under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.

9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Agreement.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, (a) not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs, (b) not more than 2% of amounts paid from proceeds of the Bonds have been applied to payments for Costs of Issuance, and (c) less than 25% of amounts paid from proceeds of the Bonds have been applied to payments for land.
11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Company.
12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Agreement, and the Tax Exemption Agreement.

Executed \_\_\_\_\_, 20\_\_.

*[Signature on following page]*

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

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

Approved:

**NEWPOINT REAL ESTATE INVESTMENT  
MANAGEMENT LLC**

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

*[Signature Page To Form Of Written Requisition  
Of The Borrower]*

**Contractor's Application for Payment**

**Requisitions and Invoices**

**Borrower's Request for Payment**

[attach spreadsheets in form provided by Controlling Person]



**Lien Waivers**

**EXHIBIT C**

**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the “**Addendum**”) dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the “**Lease**”) by and between LDG Walnut Springs, LP (“**Lessor**”) and \_\_\_\_\_ (“**Resident**”) for unit number \_\_\_\_\_ (the “**Unit**”) in Walnut Springs Apartments.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident’s property as well as personal injury to Resident and Occupants resulting from Resident’s failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

\_\_\_\_\_  
Resident’s Signature

\_\_\_\_\_  
Resident’s Name

\_\_\_\_\_  
Resident’s Unit No.

\_\_\_\_\_  
Resident’s Signature

\_\_\_\_\_  
Resident’s Name

\_\_\_\_\_  
Resident’s Unit No.

Lessor:

LDG Walnut Springs, LP

By: \_\_\_\_\_  
Authorized Representative:

## EXHIBIT D

### ACCELERATION PREMIUM

The Acceleration Premium will be computed as follows:

- (i) For any acceleration payment made prior to the First Optional Redemption Date, the “**Acceleration Premium**” will be whichever is the greater of subsections (A) and (B) below:
  - (A) 1.0% of the principal being accelerated; or
  - (B) the product obtained by multiplying:
    - (1) the principal being accelerated,  
*by*
    - (2) the excess (if any) of the monthly weighted average of the Bond Interest Rate on the Bonds then Outstanding over the Assumed Reinvestment Rate,  
*by*
    - (3) the Present Value Factor.

For purposes of determining the Acceleration Premium above, the following definitions will apply:

**Monthly Note Rate:** 1/12 of the weighted average of the Bond Interest Rate on the Bonds then Outstanding, expressed as a decimal calculated to 5 digits.

**Acceleration Payment Date:** the date of the application by Trustee or Controlling Person of collateral or security to a portion of the principal balance of the Note.

**Assumed Reinvestment Rate:** 1/12 of the yield rate expressed as a decimal to 2 digits, as of the close of the trading session that is 5 Business Days before the Acceleration Payment Date, found among the Daily Treasury Yield Curve Rates, commonly known as Constant Maturity Treasury (“CMT”) rates, with a maturity closest to the First Optional Redemption Date, as reported on the U. S. Department of the Treasury website. If no published CMT maturity matches the First Optional Redemption Date, Controlling Person will interpolate as a decimal to 2 digits the yield rate between (a) the CMT with a maturity closest to, but sooner than, the First Optional Redemption Date, and (b) the CMT with a maturity closest to, but after, the First Optional Redemption Date, as follows:

$$\left[ \left( \frac{B-A}{D-C} \right) \times (E-C) \right] + A$$

A = yield rate for the CMT with a maturity sooner than the First Optional Redemption Date

B = yield rate for the CMT with a maturity after than the First Optional Redemption Date

C = number of months to maturity for the CMT maturity sooner than the First Optional Redemption Date

D = number of months to maturity for the CMT maturity after the First Optional Redemption Date

E = number of months remaining to the First Optional Redemption Date

If the U.S. Department of the Treasury ceases publication of the CMT rates, the Assumed Reinvestment Rate will equal the yield rate on the first U.S. Treasury security that is not callable or indexed to inflation and that matures after the First Optional Redemption Date.

The Assumed Reinvestment Rate may be a positive number, a negative number or zero.

If the Assumed Reinvestment Rate is a positive number or a negative number, Controlling Person will calculate the Acceleration Premium using such positive number or negative number, as appropriate, as the Assumed Reinvestment Rate in Section (B)(2) above and in the calculation of the Present Value Factor.

If the Assumed Reinvestment Rate is zero, Controlling Person will calculate the Acceleration Premium twice as set forth in (I) and (II) below and will average the results to determine the actual Acceleration Premium.

(I) Controlling Person will calculate the Acceleration Premium using an Assumed Reinvestment Rate of one basis point (+0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.

(II) Controlling Person will calculate the Acceleration Premium using an Assumed Reinvestment Rate of negative one basis point (-0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.

**Present Value Factor:** the factor that discounts to present value the costs resulting to Controlling Person from the difference in interest rates during the months remaining to the First Optional Redemption Date, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{I - \left( \frac{I}{I + ARR} \right)^n}{ARR}$$

**n** = the number of months remaining to the First Optional Redemption Date; provided, however, if an acceleration payment occurs on an Interest Payment

Date, then the number of months remaining to the First Optional Redemption Date will be calculated beginning with the month in which such acceleration payment occurs and if such acceleration payment occurs on a Business Day other than an Interest Payment Date, then the number of months remaining to the First Optional Redemption Date will be calculated beginning with the month immediately following the date of such acceleration payment.

**ARR** = Assumed Reinvestment Rate

- (ii) For any acceleration payment made after the First Optional Redemption Date, the “**Acceleration Premium**” will be 0.0% of the amount of principal being accelerated.

**EXHIBIT E**  
**DEVELOPMENT BUDGET**

[to come]

## SCHEDULE 1

### CONDITIONS TO DISBURSEMENTS FROM PROJECT FUND

A. **CONDITIONS TO INITIAL DISBURSEMENT.** The right of the Borrower to the initial disbursement shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. **Construction Documents.** Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Contract, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

2. **Validity of Liens.** The Mortgage, the Assignment of Project Documents, and the Developer Fee Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filings, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

3. **Deliveries.** The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

(a) *Plans and Specifications.* Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the construction of the Improvements.

(b) *Title Policy.* The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together accurate copies of all documents listed as exceptions under such policy.

(c) *Other Insurance.* Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

(d) *Evidence of Sufficiency of Funds.* Evidence that the proceeds of the Bonds, together with Required Equity Funds delivered to the Trustee on the Closing Date or to be delivered after the Closing Date, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to complete the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

4. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:

(a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(b) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(d) the obtaining of all Project approvals which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

5. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

6. Soils Report. A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed construction and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

7. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Closing Date.



8. Deposit of Funds. A portion of the initial installment of Required Equity Funds shall have been delivered to the Trustee and deposited in the Equity Account of the Project Fund.

9. Requisition. A Requisition complying with the provisions of this Agreement and the Indenture or a Closing Memorandum or settlement statement signed by the Borrower.

10. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.

11. Engineering Consultant Report. If applicable, the Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the construction of the Improvements, and (iv) in the opinion of the Engineering Consultant, construction of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

12. Searches. The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel deeds of trust, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the Managing Member, the Corporation and the Guarantors (collectively, the "**Obligors**"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

13. Mechanics' Liens. In the event that for any reason the initial disbursement is not funded on the Closing Date, the Controlling Person may withhold or refuse to approve the initial disbursement if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

14. Payment and Performance Bonds. Payment and Performance Bonds shall be required for a Contractor in the full amount of the Construction Contract. The Borrower shall cause to be delivered a dual-obligee payment and performance bonds issued by a surety company or companies authorized to do business in the District and acceptable to the Controlling Person, and in form and content reasonably acceptable to the Controlling Person, in an amount not less than the full contract price of the Construction Contract; together with a dual obligee and modification rider naming the Trustee and in the form and substance acceptable to the Controlling Person which shall be attached thereto.

15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.

16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.

17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial disbursement, and on the date of the initial disbursement there shall exist no Event of Default.

18. Representations and Warranties. The representations and warranties made by the Obligors in the Bond Documents, the Developer Fee Pledge or the documents executed by the Guarantors or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial disbursement.

19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

**B. CONDITIONS TO SUBSEQUENT DISBURSEMENTS.** The right of the Borrower to draw each disbursement of funds after the initial disbursement on the Closing Date shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent disbursement.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date, there shall exist no Default or Event of Default.

3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).

4. No Unrepaired Damage. If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage.

5. Receipt by Controlling Person. The Controlling Person shall have received:

(a) *Requisition.* A Requisition in meeting the requirements of this Agreement and the Indenture;

(b) *Endorsement to Title Policy.* At the time of each disbursement to update the date of and increase the amount of coverage by the amount of such disbursement, such endorsements (a “**Down Date Endorsement**”) shall be delivered by the Title Company, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;

6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Company or the Controlling Person;

7. Approval by Engineering Consultant. If applicable, approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;

8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person.

9. Mechanics’ Liens. The Controlling Person may withhold or refuse to fund any disbursement hereunder if any mechanic’s lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.

10. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable shall have been delivered to the Trustee and deposited in the Equity Account of the Project Fund.

11. Release of Retainage. If applicable, in addition to the conditions set forth in this Section, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

**[End of Schedule 1]**

**SCHEDULE 2**  
**FORM OF FINAL COMPLETION CERTIFICATE**

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

BOKF, NA  
1401 McKinney St., Suite 1000  
Houston, TX 77010  
Attention: Biddel Tekeste

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Director of Multifamily Bonds

NewPoint Real Estate Investment Management LLC  
1 Battery Park Place, Suite 600  
New York, NY 10004  
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC  
5800 Tennyson Parkway, Suite 200  
Plano, TX 75024  
Attention: Servicing Department

Re: Walnut Springs Apartments (the “**Project Facilities**”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the “**Trustee**”), and NewPoint Real Estate Investment Management LLC, as controlling person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “**Controlling Person**”), that “Final Completion” of the Project Facilities (as defined in the Indenture of Trust dated as of December 1, 2024 (the “**Indenture**”), by and between the Trustee and the Texas Department of Housing and Community Affairs (the “**Issuer**”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of December 1, 2024, between the undersigned and the Issuer (the “**Loan Agreement**”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

Attached hereto is an original, executed Architect’s certificate in the form attached hereto as Exhibit A as required by clause (iv) of the definition of “Final Completion” contained in the Indenture.

Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the “**Permits**”) as referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.

Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. This schedule of Punchlist Items meets the requirements and limitations set forth in the Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.

Attached are lien waivers required by clause (vii) of the definition of “Final Completion” contained in the Indenture.

Attached hereto is an update to the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (viii) of the definition of “Final Completion” contained in the Indenture.

Attached hereto is evidence of completion of the Environmental Completion Conditions.

Attached hereto is evidence of insurance meeting the requirements of **Error! Reference source not found.** of the Loan Agreement.

Attached hereto is evidence of payment of all Impositions which are due and payable.

Attached hereto is an as-built ALTA/NSPS Survey, certified to the Trustee and the Controlling Person.

[Signatures Begin on Following Page]

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: \_\_\_\_\_  
Authorized Representative

[Signature Page to Form of Final Completion Certificate]

**Schedule of Attachments to Completion Certificate**

- Architect's Completion Certificate
- Occupancy Permits
- Schedule of Punchlist Items
- Lien Waivers
- Endorsement to Title Policy
- Insurance Certificates
- Evidence of Payment of Impositions
- Evidence of Satisfaction of Environmental Completion Conditions



**EXHIBIT A**

Form of Architect's Certificate

**ARCHITECT'S COMPLETION CERTIFICATE**

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

The undersigned, an architect duly licensed and registered in the [\_\_\_\_\_] has prepared final working plans and detailed specifications (the "**Plans and Specifications**") for LDG Walnut Springs, LP (the "**Borrower**") in connection with the construction of improvements on certain real property located at or near 2545 N. Guadalupe Street, Seguin, Guadalupe County, Texas 78155, such improvements or project being known as Walnut Springs Apartments (the "**Improvements**").

The undersigned hereby certifies to BOKF, NA, and NewPoint Real Estate Investment Management LLC that, to the best of our knowledge, information and belief: (i) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (ii) a [temporary] certificate of occupancy has been issued for the Project, provided however that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof, and (iii) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

[Signature Begins on Following Page]

**[ARCHITECT'S SIGNATURE BLOCK]**

[Signature Page to Architect's Completion Certificate]

### SCHEDULE 3

#### FORM OF USE OF PROCEEDS COMPLIANCE CERTIFICATE

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

BOKF, NA  
1401 McKinney St., Suite 1000  
Houston, TX 77010  
Attention: Biddel Tekeste

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Director of Multifamily Bonds

NewPoint Real Estate Investment Management LLC  
1 Battery Park Place, Suite 600  
New York, NY 10004  
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC  
5800 Tennyson Parkway, Suite 200  
Plano, TX 75024  
Attention: Servicing Department

Re: Walnut Springs (the “**Project Facilities**”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to BOKF, NA as trustee (the “**Trustee**”), and NewPoint Real Estate Investment Management LLC, as controlling person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the “**Controlling Person**”), that ninety-five percent (95%) or more of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 145 of the Internal Revenue Code.

Attached hereto is a schedule of expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of December 1, 2024, between the Trustee and the Texas Department of Housing and Community Affairs.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: \_\_\_\_\_  
Authorized Representative

**Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds

**SCHEDULE 4**

**FORM OF STABILIZATION CERTIFICATE**

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

BOKF, NA  
1401 McKinney St., Suite 1000  
Houston, TX 77010  
Attention: Biddel Tekeste

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Director of Multifamily Bonds

NewPoint Real Estate Investment Management LLC  
1 Battery Park Place, Suite 600  
New York, NY 10004  
Attention: Robert Wrzosek – NewPoint REIM

NewPoint Real Estate Capital LLC  
5800 Tennyson Parkway, Suite 200  
Plano, TX 75024  
Attention: Servicing Department

Re: Walnut Springs Apartments (the “**Project Facilities**”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the “**Trustee**”) and NewPoint Real Estate Investment Management LLC, as controlling person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “**Controlling Person**”) that the date of Final Completion was \_\_\_\_\_, 202\_\_ and:

The undersigned hereby represents and warrants that:

The Improvements have been \_\_\_% occupied by credit-worthy qualified tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months.

The ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal and interest payable in any month, other than the month in which the Maturity Date occurs, on the Loan amount on the Stabilization Date is 1.15 to 1.0.

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 continuing under the Bond Documents, the Developer Fee Pledge or the Guarantor Documents.

The Borrower has at all times been and is currently in compliance with all requirements set forth in the Tax Exemption Agreement and the Regulatory Agreement.

There have been no disbursements from [insert names of any required reserves] which have not been replenished.

[The Bonds shall have been redeemed in the amount required to achieve Stabilization as required under Section 3.4(a)(ii) of the Indenture].

Stabilization [has/has not] occurred.

Attached hereto is [ ] showing the calculation of Stabilization.

Attached hereto is the Use of Proceeds Compliance Certificate required under Section 6.09 of the Loan Agreement.

Attached hereto is the Favorable Opinion of Bond Counsel required to be delivered in connection with the Bond Amortization Schedule pursuant to Section 3.4(b)(iii) of the Indenture.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of December 1, 2024, between the Trustee and the Texas Department of Housing and Community Affairs.

[Signature Begins on Following Page]

**LDG WALNUT SPRINGS, LP**, a Texas limited partnership

By: \_\_\_\_\_  
Authorized Representative

[Signature Page to Form of Stabilization Certificate]



## **Stabilization Spreadsheet**

(Attached)