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TRUST INDENTURE

Between

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
as Trustee

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Dated as of July 1, 2024

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

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**ARTICLE I**  
**DEFINITIONS AND CONSTRUCTION**

Section 1.01.	Definitions.....	3
Section 1.02.	Rules of Construction.....	18

**ARTICLE II**  
**CREATION OF BONDS; DETAILS OF THE BONDS**

Section 2.01.	Authorization and Terms of Bonds .....	18
Section 2.02.	Source of Payment of Bonds.....	20
Section 2.03.	Execution of Bonds .....	20
Section 2.04.	Certificate of Authentication.....	21
Section 2.05.	Authentication and Delivery of Bonds.....	21
Section 2.06.	Temporary Bonds.....	22
Section 2.07.	Mutilated, Lost, Stolen or Destroyed Bonds.....	23
Section 2.08.	Registration, Negotiability, Transfer and Exchange of Bonds .....	23
Section 2.09.	Limited Obligation.....	24
Section 2.10.	Cancellation and Destruction of Bonds .....	25
Section 2.11.	Book Entry System .....	25
Section 2.12.	Non-Presentation of Bonds .....	26

**ARTICLE III**  
**REDEMPTION OF BONDS**

Section 3.01.	Redemption of Bonds.....	27
Section 3.02.	Purchase in Lieu of Redemption.....	27
Section 3.03.	Notices of Redemption.....	28
Section 3.04.	Mandatory Tender.....	29
Section 3.05.	Duties of Remarketing Agent.....	30
Section 3.06.	Conditions Precedent to Remarketing of Bonds and Notice.....	30
Section 3.07.	Remarketing of Bonds.....	31
Section 3.08.	Concerning the Remarketing Agent.....	32
Section 3.09.	Qualification of Remarketing Agent.....	32

**ARTICLE IV**  
**REVENUES AND FUNDS**

Section 4.01.	Creation of Funds.....	33
Section 4.02.	Deposits into the Bond Fund.....	34
Section 4.03.	Use of Moneys in Collateral Fund .....	34
Section 4.04.	Use of Moneys in the Cost of Issuance Fund.....	34
Section 4.05.	Use of Moneys on Deposit in the Bond Fund; Application of Loan Payments .....	35
Section 4.06.	Payment to Borrower of Excess Moneys .....	35
Section 4.07.	Expense Fund .....	36

Section 4.08.	Allocation and Reallocation of Permitted Investments Deposited to the Collateral Fund and the Project Fund.....	36
---------------	---	----

## **ARTICLE V REBATE FUND**

Section 5.01.	Rebate Fund .....	37
---------------	-------------------	----

## **ARTICLE VI CUSTODY AND APPLICATION OF BOND PROCEEDS**

Section 6.01.	Custody and Application of Project Fund .....	37
Section 6.02.	Procedure for Making Disbursements from Project Fund .....	37
Section 6.03.	Trustee May Rely on Requisitions and Certifications .....	38
Section 6.04.	Completion of Project .....	38

## **ARTICLE VII INVESTMENT OF FUNDS AND ACCOUNTS**

Section 7.01.	Investment .....	39
Section 7.02.	Investment of Rebate Fund .....	40
Section 7.03.	Accounting for Termination of Investments .....	40
Section 7.04.	Trustee's Own Bond or Investment Department .....	40
Section 7.05.	Moneys to be Held in Trust.....	40

## **ARTICLE VIII GENERAL COVENANTS**

Section 8.01.	Payment of Bonds .....	40
Section 8.02.	Performance of Covenants .....	41
Section 8.03.	Maintenance of Existence; Compliance with Laws .....	41
Section 8.04.	Enforcement of Borrower's Obligations .....	41
Section 8.05.	Further Assurances, Instruments and Actions.....	41
Section 8.06.	Priority of Pledge .....	42
Section 8.07.	Books and Documents Open to Inspection .....	42
Section 8.08.	Borrower to Indemnify and Hold the Issuer and Trustee Harmless from Liability .....	42
Section 8.09.	Issuer Tax Covenants .....	42

## **ARTICLE IX DISCHARGE**

Section 9.01.	Discharge of Lien .....	42
---------------	-------------------------	----

**ARTICLE X**  
**DEFAULTS AND REMEDIES**

Section 10.01.	Events of Default and Acceleration .....	44
Section 10.02.	Trustee to Enforce Rights of the Issuer.....	45
Section 10.03.	Remedies .....	45
Section 10.04.	Termination of Proceedings .....	46
Section 10.05.	Right of Bondholders to Direct Proceedings .....	46
Section 10.06.	Remedies Vested in Trustee.....	47
Section 10.07.	Remedies Non-Exclusive and Cumulative.....	47
Section 10.08.	Delays or Omissions by Trustee .....	47
Section 10.09.	Application of Moneys.....	47
Section 10.10.	Severability of Remedies .....	48
Section 10.11.	No Interference or Impairment of Lender Loan.....	48

**ARTICLE XI**  
**CONCERNING THE TRUSTEE**

Section 11.01.	Acceptance of Trusts.....	49
Section 11.02.	Trustee Not Responsible for Recitals, Statements and Representations.....	49
Section 11.03.	Action by Trustee Through and in Reliance Upon Others.....	49
Section 11.04.	Fees and Expenses of Trustee .....	50
Section 11.05.	Trustee's Obligations to Take or Have Notice of Default .....	50
Section 11.06.	Duties of Trustee .....	50
Section 11.07.	Trustee May Rely Upon Instruments .....	53
Section 11.08.	Trustee May Own and Deal in Bonds and Deal With the Issuer and Borrower .....	53
Section 11.09.	Financial Liability of the Trustee.....	54
Section 11.10.	Trustee May Construe Ambiguous or Inconsistent Provisions.....	54
Section 11.11.	Resignation of Trustee .....	54
Section 11.12.	Removal of Trustee.....	54
Section 11.13.	Appointment of Successor Trustee .....	55
Section 11.14.	Appointment of Successor Trustee by Court .....	55
Section 11.15.	Acceptance of Trust by Successor Trustee .....	55
Section 11.16.	Merger or Consolidation of Trustee With Another Person.....	56
Section 11.17.	Action of Trustee During Existence of an Event of Default.....	56
Section 11.18.	Notice of an Event of Default .....	56
Section 11.19.	Trustee May Intervene .....	56
Section 11.20.	Unclaimed Moneys .....	56
Section 11.21.	Appointment of Co-Trustee .....	56
Section 11.22.	Financing Statements .....	57
Section 11.23.	State Law Verifications.....	57

**ARTICLE XII**  
**MODIFICATION OF INDENTURE AND OTHER DOCUMENTS**

Section 12.01.	Limitation on Amendments to this Indenture .....	59
Section 12.02.	Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders .....	59
Section 12.03.	Amendments to Indenture Requiring Consent of Bondholders .....	60
Section 12.04.	Supplemental Indentures Part of Indenture .....	61
Section 12.05.	Required Consent .....	61
Section 12.06.	Amendments to Documents Requiring Consent of Bondholders .....	61

**ARTICLE XIII**  
**MISCELLANEOUS**

Section 13.01.	The Issuer's Successors .....	62
Section 13.02.	Indenture for Benefit of the Issuer, Trustee and Bondholders .....	62
Section 13.03.	Severability .....	62
Section 13.04.	Limitation of Liability of the Issuer and Its Officers, Employees and Agents .....	62
Section 13.05.	Governing Law .....	63
Section 13.06.	Notices; Publication of Notice .....	64
Section 13.07.	Trustee as Paying Agent and Bond Registrar .....	64
Section 13.08.	Execution of Instruments by Bondholders and Proof of Ownership of Bonds .....	65
Section 13.09.	Counterparts .....	65
Section 13.10.	FHA Federal Laws and Requirements Control .....	65

Exhibit A	– Form of Bond
Exhibit B	– Form of Project Fund Requisition
Exhibit C	– Form of Costs of Issuance Requisition

## TRUST INDENTURE

THIS TRUST INDENTURE (as amended, modified or supplemented from time to time, this “*Indenture*”) is entered into as of July 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 U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association authorized to exercise corporate trust powers in the State of Texas, and authorized to accept and execute trusts of the character herein set out, as Trustee (together with its successors and assigns, the “*Trustee*”).

### RECITALS

*Certain of the terms and words used in these Recitals, and in the following Granting Clauses and Agreements, are defined in Section 1.01 of this Indenture.*

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

WHEREAS, the Issuer has, pursuant to the Act, Chapter 1371, Texas Government Code, as amended and this Indenture, determined to issue and sell its Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 in the original aggregate principal amount of \$[27,500,000] (the “*Bonds*”), for the purpose of financing the cost of the acquisition, rehabilitation, and equipping of a multifamily rental housing development, consisting of approximately 151 units and related personal property and equipment, and located in Nueces County, Texas (the “*Project*”), all pursuant to this Indenture and the Loan Agreement dated as of July 1, 2024, (as amended, modified or supplemented from time to time, the “*Bond Loan Agreement*”), between the Issuer and Gulfway Housing Partners, LP, a limited partnership duly organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the “*Borrower*”); and

WHEREAS, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done to finance the Costs of the Project by the issuance of the Bonds, all as hereinafter provided; and

WHEREAS, all acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

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

WHEREAS, the Trustee has accepted the trusts created by this Indenture and has accepted its obligations hereunder, and in evidence thereof, this Indenture has been executed and delivered thereby.

Accordingly, the Issuer and the Trustee agree as follows for the benefit of each other and for the benefit of the Holders of the Bonds:

#### **GRANTING CLAUSES AND AGREEMENTS**

NOW, THEREFORE, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of any or all of the Bonds issued and sold by the Issuer from time to time under this Indenture by those who shall hold the same from time to time, and of the sum of one dollar, lawful money of the United States of America, duly paid to the Issuer by the Trustee at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds and the payment and performance of all other of the obligations of the Issuer, the Issuer does hereby grant, bargain, sell, convey, pledge and assign, without recourse, unto the Trustee and unto its successors in trust forever, and grants to the Trustee and to its successors in trust, a security interest in, the following (such property being herein referred to as the "*Trust Estate*"):

(a) All right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of this Indenture and the Bond Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate;

(b) All right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof;

(c) Any fund or account created under this Indenture except for the Cost of Issuance Fund, the Expense Fund and the Rebate Fund;

(d) All right, title and interest of the Issuer in and to, and remedies under, the Bond Loan Agreement and the Bond Mortgage (other than the Reserved Rights of the Issuer); and

(e) All funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

PROVIDED, HOWEVER, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the

Issuer in connection therewith, all amounts on deposit in the Cost of Issuance Fund and the Expense Fund and all amounts on deposit in the Rebate Fund, which amounts on deposit in the Rebate Fund shall be held for the sole benefit of the United States of America;

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in trust forever.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth, for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds.

PROVIDED, HOWEVER, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Collateral Fund as required under Article IV hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the obligations of the Issuer to be kept, performed and observed by it, the Rebate Requirement shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payment, as further provided in Section 9.01 hereof, and the termination of the Bond Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

AND IT IS EXPRESSLY DECLARED that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all such property, moneys, revenues and receipts hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted and does hereby agree and covenant with the Trustee and with the respective Holders from time to time of the Bonds, or any part thereof, as follows:

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

Section 1.01. **Definitions.** Certain terms used in this Indenture are defined in the Bond Loan Agreement and when and if used herein, such terms shall have the meanings given to them by the Bond Loan Agreement unless the context clearly indicates otherwise. In addition, when used in this Indenture, the following terms shall have the meanings given to them in this Section 1.01 unless the context clearly indicates otherwise:

“*Account*” means an account within any Fund created pursuant to Article IV hereof.

“*Act*” has the meaning assigned in the Recitals hereto.

“*Affiliate*” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For

purposes of this definition, “control” when used with respect to any specified Person means the power to direct the policies of such Person, directly or indirectly, whether through the power to appoint and remove its directors, the ownership of voting securities, by contract, or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“*Assumption Agreement*” has the meaning set forth in Section 6.01(k)(iii) of the Bond Loan Agreement.

“*Authorized Officer*” means the Chair or Vice Chair of the Board, the Executive Director of the Issuer, the Director of Financial Administration of the Issuer, the Director of Bond Finance of the Issuer, the Director of Multifamily Bonds of the Issuer, and the Secretary or the Assistant Secretary to the Board.

“*Board*” means the Governing Board of the Issuer.

“*Bond*” or “*Bonds*” means the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

“*Bond Counsel*” means nationally recognized bond counsel selected by the Issuer and initially means Bracewell LLP.

“*Bond Documents*” means, with respect to the Bonds, the Bonds, this Indenture, the Bond Loan Agreement, the Bond Mortgage, the Note, the Bond Purchase Agreement, the Regulatory Agreement, the Continuing Disclosure Agreement, the Tax Exemption Agreement, the Funding Agreement and any and all documents executed in connection with the Bonds.

“*Bond Fund*” means the Bond Fund created in Section 4.01 of this Indenture.

“*Bond Loan*” means the mortgage loan in the principal amount of \$[27,500,000] made by the Issuer to the Borrower evidenced by the Note, described in the Bond Loan Agreement and made in connection with the issuance of the Bonds.

“*Bond Loan Agreement*” or “*Agreement*” means the Loan Agreement, dated of even date with this Indenture, between the Issuer and the Borrower, and any and all amendments or supplements thereto, pursuant to which the Bond Loan is being made to the Borrower.

“*Bond Mortgage*” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing, dated of even date with this Indenture, from the Borrower to [ ] for the benefit of the Trustee and the Issuer, and as the same may be amended, supplemented or restated.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, dated [PRICING DATE], among the Issuer, the Borrower and the Underwriter.

“*Bond Registrar*” has the meaning assigned to it in Section 2.01(f) hereof.

“*Bondholder*” or “*Holder of the Bonds*” or “*Holder*” or “*Owner of the Bonds*” or “*Owner*” when used with respect to any Bond, means the Person or Persons in whose name such Bond is registered as the owner thereof on the books of the Issuer maintained at the Trust Office of the Trustee for that purpose.

“*Book Entry Form*” or “*Book Entry System*” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“*Borrower*” means Gulfway Housing Partners, LP, a limited partnership duly organized and existing in the State of Texas, and its successors and assigns.

“*Borrower Documents*” means the Bond Loan Agreement, the Bond Mortgage, the Note, the Tax Exemption Agreement, the Regulatory Agreement, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and any and all documents, agreements or instruments executed by the Borrower in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“*Borrower Obligations*” means the obligations of the Borrower under the Bond Loan Agreement, the Note and the other Borrower Documents to (a) pay the principal of, and interest on the Note, when and as the same shall become due and payable (whether at the stated maturity thereof, on any payment date or by acceleration of maturity or otherwise), (b) pay all other amounts required by the Bond Loan Agreement, the Note, and the other Borrower Documents to be paid by the Borrower to the Issuer and the Trustee, as and when the same shall become due and payable, and (c) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Borrower is required by the Bond Loan Agreement, the Note, the Regulatory Agreement, and any of the other Borrower Documents, to perform or observe.

“*Borrower Representative*” means a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by one of its officers, which certificate may designate an alternate or alternates. The initial Borrower Representative is [\_\_\_\_].

“*Bridge Lender*” means Bridgewater Bank, and its successors and assigns.

“*Bridge Loan*” means the equity bridge loan to the Borrower relating to the Project from Bridge Lender in the maximum principal amount of \$[10,000,000].

“*Business Day*” or “*business day*” means a day, other than a Saturday or Sunday, on which (a) banks located in New York, New York or in the city in which the Trust Office of the Trustee is located, are not required or authorized by law or executive order to close for business and (b) the New York Stock Exchange is not closed.

“*Capitalized Interest Account*” means the Account by that name created in the Bond Fund pursuant to Section 4.01(a).

“*Capitalized Interest Deposit*” means the deposit of \$[ ] from Preference Proof Moneys to the Capitalized Interest Account of the Bond Fund on the Closing Date, as provided in Section 4.02 hereof.

“*Cash Flow Projection*” means a cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Preference Proof Moneys delivered to the Trustee by or on behalf of the Borrower to pay principal of and interest on the Bonds when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed optional redemption of the Bonds, as provided in Section 3.01(c) hereof, (iii) the release of Preference Proof Moneys from the Capitalized Interest Account of the Bond Fund, as provided in Section 4.05 hereof; and (iv) the purchase, sale or exchange of Permitted Investments as provided in Section 7.01 hereof.

“*Closing Date*” means the date of delivery of the Bonds in exchange for the purchase price thereof.

“*Closing Memorandum*” means the closing memorandum prepared by the Underwriter and executed by the Borrower and/or the Issuer in connection with the issuance of the Bonds.

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

“*Collateral Fund*” means the Collateral Fund created pursuant to Section 4.01(e) of this Indenture.

“*Completion Certificate*” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.05 of the Bond Loan Agreement.

“*Completion Date*” means the date upon which the Completion Certificate is delivered by the Borrower to the Issuer and the Trustee, which shall be no later than the Mandatory Tender Date.

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

“*Construction Contract*” means that certain construction contract executed between the Contractor and the Borrower relating to the construction of the Project, as that contract may be amended from time to time.

“*Construction Draw Date*” means the date on which a disbursement from the Project Fund shall be made solely to pay Costs of the Project.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement, dated of even date with this Indenture, between the Borrower and the Dissemination Agent.

“*Contractor*” means the entity identified as the general contractor under the Construction Contract.

“*Controlling HUD and GNMA Requirements*” means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions, including “Program Obligations” as defined in the HUD Regulatory Agreement.

“*Costs of Issuance*” means all fees, costs and expenses incurred in connection with the issuance of the Bonds and the extension of the Bond Loan that are payable from amounts deposited in the Cost of Issuance Fund.

“*Cost of Issuance Deposit*” means the deposit to the Cost of Issuance Fund on the Closing Date in the amount designated in the Closing Memorandum, as provided in Section 4.04(a) hereof

“*Cost of Issuance Fund*” means the Cost of Issuance Fund created pursuant to Section 4.01(f) hereof.

“*Costs of the Project*” with respect to the Project shall be deemed to include all items permitted to be financed under the provisions of the Code and the Act.

“*Dissemination Agent*” means U.S. Bank Trust Company, National Association, a national banking association and its permitted successors and assigns as Dissemination Agent under the Continuing Disclosure Agreement.

“*Dissemination Agent Fee*” means the fee payable to U.S. Bank Trust Company, National Association, in its capacity as Dissemination Agent pursuant to the Continuing Disclosure Agreement.

“*Documents*” means and shall include (without limitation), with respect to the Bonds, this Indenture, the Bond Documents, the Borrower Documents, and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Bonds and the Borrower Obligations, or any part thereof, or in connection therewith, and any and all supplements thereto.

“*Equity Investor*” means Raymond James Tax Credit Fund XX L.L.C., a Florida limited liability company, and its permitted successors and assigns in its capacity as the Equity Investor of the Borrower.

“*Event of Default*” or “*Default*” means, when used in this Indenture, those events of default or defaults specified in Section 10.01 hereof and, when used in the Bond Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

“*Expense Fund*” means the fund by that name created and established pursuant to Section 4.01(d) of this Indenture.

“*Favorable Opinion of Bond Counsel*” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“*Federal Tax Status*” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” of the Project or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“*FHA*” means the Federal Housing Administration of HUD or any successor entity and any authorized representatives or agents thereof, including the Secretary of HUD, the Federal Housing Commissioner and their representatives or agents.

“*Fund*” means any fund created pursuant to Article IV hereof.

“*Funding Agreement*” means the [Disbursement Agreement] dated as of July 1, 2024, by and between the Lender and the Borrower, and acknowledged by the Issuer and the Trustee, as amended, supplemented or restated from time to time.

“*General Partner*” means Gulfway Housing Management, LLC, a Texas limited liability company, as the Borrower’s general partner.

“*GNMA*” means the Government National Mortgage Association.

“*Government Obligations*” means non-callable, non-redeemable direct obligations issued by the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America, including, when available, SLGS.

“*Governmental Authority*” means any federal, State or local governmental or quasi-governmental entity, including, without limitation, any agency, department, commission, board, bureau, administration, service, or other instrumentality of any governmental entity.

“*Governmental Requirements*” means all laws, ordinances, orders, rules or regulations of all Governmental Authorities applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws.

*“Hazardous Materials”* means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBS”) and compounds containing them; lead and lead based paint; asbestos or asbestos containing materials in any form that is or could become friable; underground or above ground storage tanks, whether empty or containing any substance; any substance the presence of which at the Project is prohibited by any federal, state or local authority; any substance that requires special handling under any Hazardous Materials Law; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law, but does not include any such substance that is a customary and ordinary household, cleaning, office, swimming pool or landscape maintenance product used on the Project by the Borrower or any tenant or agent of the Borrower, or customary construction materials used during the course of construction and equipping of the Project by the Borrower or the Contractor, provided such use is in accordance with applicable hazardous material laws.

*“Hazardous Materials Law”* means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Project. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, and their state analogs, including laws of the State.

*“Highest Rating Category”* means, with respect to a Permitted Investment, that the Permitted Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below Aaa or Aaa/VMIG-1 if rated by Moody’s or A-1+ or AA+ if rated by S&P.

*“HUD”* means the U.S. Department of Housing and Urban Development.

*“HUD Regulatory Agreement”* means the Regulatory Agreement for Multifamily Projects between the Borrower and HUD, as amended or supplemented from time to time.

*“Indenture”* means this Trust Indenture dated as of July 1, 2024, between the Issuer and the Trustee, and any and all Supplements hereto, authorizing the issuance of the Bonds.

*“Independent”* means a Person that has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

“*Initial Bond*” means the initial Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to this Indenture.

“*Interest Payment Date*” means each February 1 and August 1, beginning February 1, 2025.

“*Issuer*” means the Texas Department of Housing and Community Affairs, a public and official agency of the State, and its successors and assigns.

“*Issuer Documents*” means the Bond Loan Agreement, this Indenture, the Regulatory Agreement, the Bond Purchase Agreement, the Tax Exemption Agreement and any and all documents, agreements or instruments executed by the Issuer in connection with the Bond Loan evidenced by the Bond Loan Agreement.

“*Issuer Indemnified Party*” or “*Issuer Indemnified Parties*” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“*Issuer Administration Fee*” means the fee payable annually in advance to the Issuer on each July 1, in the amount of 0.10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administration Fee for the period from the Closing Date to [June 30, 2026]. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after [July 1, 2026].

“*Issuer Compliance Fee*” means the fee payable annually in advance to the Issuer on each July 1, in the amount of \$25 per Unit (as defined in the Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [July 1], 2027. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“*Issuer’s Fees*” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee.

“*Lender*” means Merchants Capital Corp., an Indiana banking corporation, and its successors and assigns.

“*Lender Borrower Note*” means the Note (Multistate) dated as of July 1, 2024, from the Borrower to the Lender to evidence its indebtedness under the Lender Loan and endorsed by HUD.

“*Lender Collateral Deposit*” shall have the meaning given to such term in Section 4.03 hereof.

“*Lender Loan*” means the loan made by the Lender to the Borrower in the original principal amount not to exceed \$[24,710,000], as evidenced by the Lender Borrower Note and secured by the Lender Mortgage.

“*Lender Loan Documents*” means the documents related to the Lender Loan, including the Lender Borrower Note, the Lender Mortgage, the HUD Regulatory Agreement and any and all other documents, agreements, or instruments which evidence or secure the indebtedness evidenced by the Lender Loan.

“*Lender Mortgage*” means the first-lien priority Multifamily Deed of Trust, Assignment of Leases and Rents and Security Agreement (Texas) dated July 1, 2024, from Borrower for the benefit of the Lender to secure the repayment of the Lender Borrower Note.

“*Mandatory Tender Date*” means (i) August 1, 2026, and (ii) if the Bonds are remarketed pursuant to Article III for a period that does not extend to the Maturity Date, the day immediately following such period.

“*Maturity Date*” means August, 1, 2028.

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

“*Moody’s*” means Moody’s Ratings, a Delaware corporation, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “*Moody’s*” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“*Note*” means the Promissory Note, dated the Closing Date, from the Borrower to the Issuer in substantially the form attached as Exhibit B to the Bond Loan Agreement, and any amendments, supplements or modifications thereto, which Note has been assigned by the Issuer to the Trustee.

“*Notice Address*” means, unless otherwise designated pursuant to Section 13.06 hereof:

(a) As to the Issuer:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
E-mail: [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us)

(b) As to the Borrower:

Gulfway Housing Partners, LP  
2607 2<sup>nd</sup> Avenue N.  
Seattle, WA 98101  
Attention: Samantha Cullen  
Telephone: (206) 832-1326  
E-mail: [Samantha.cullen@vitus.com](mailto:Samantha.cullen@vitus.com)

With a copy to:

Winthrop & Weinstine, P.A.  
225 South Sixth Street, Suite 3500  
Minneapolis, MN 55402-4629  
Attention: Joshua Noah  
Telephone: (612) 604-6599  
E-mail: jnoah@winthrop.com

(c) As to the Rating Agency:

Moody's Ratings  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Attention: Public Finance Group – Housing Team  
E-mail: Housing@moodys.com

(d) As to the Trustee:

U.S. Bank Trust Company, National Association  
111 E Fillmore Avenue  
St. Paul, MN 55107-2292  
Attention: Corporate Trust  
E-mail: martha.earley@usbank.com

(e) As to the Equity Investor:

Raymond James Tax Credit Fund XX L.L.C.  
c/o Raymond James Affordable Housing Investments, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Steven J. Kropf, President  
Email: steve.kropf@raymondjames.com

With a copy to:

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Nathan A. Bernard  
Email: nbernard@nixonpeabody.com

(f) As to the Lender:

Merchants Capital Corp.

410 Monon Boulevard, 5<sup>th</sup> Floor  
Carmel, IN 46032  
Attn: Matt Kaercher  
Phone: (317) 342-4723  
Email: mkaercher@merchantscapital.com

(g) As to Remarketing Agent:

Colliers Securities LLC  
90 South Seventh Street, Suite 4300  
Minneapolis, Minnesota 55402-4108  
Attn: Public Finance  
Telephone: (612) 376-4000  
Facsimile: (612) 673-0584  
Email: Frank.Hogan@colliers.com

“*Official Statement*” means the Official Statement dated [PRICING DATE], relating to the Bonds.

“*Opinion of Counsel*” means an opinion from an attorney or firm of attorneys, acceptable to the Issuer with experience in the matters to be covered in the opinion.

“*Optional Redemption Date*” means any date the Bonds are redeemed pursuant to Section 3.01(a) hereof.

“*Organizational Documents*” means the Amended and Restated Limited Partnership Agreement dated as of July 1, as the foregoing may be amended, modified, supplemented or restated from time to time.

“*Outstanding*,” “*outstanding*” or “*Bonds Outstanding*” when used with respect to the Bonds means any Bonds theretofore authenticated and delivered under this Indenture, except:

(a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;

(b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee or other escrow agent in accordance with Article IX; or

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

“*Paying Agent*” means the Trustee in its capacity as paying agent for the Bonds.

“*Permitted Investments*” means (i) Government Obligations, and (ii) shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that Rating Category), including mutual funds of the Trustee or its Affiliates or for which the Trustee or an Affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that

are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consist primarily of Government Obligations. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories, and the Trustee shall have no responsibility to monitor the ratings of Permitted Investments upon or after the initial purchase of such Permitted Investments.

“*Person*” shall include an individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

“*Plans and Specifications*” means the plans and specifications and/or the scope of work for the Project, together with such amendments thereto as are made from time to time in accordance with Section 5.07 of the Bond Loan Agreement.

“*Preference Proof Moneys*” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds plus any additional amount paid by the Underwriter to the Trustee in excess of the offering price (or in the case of a remarketing, by the Remarketing Agent in excess of the reoffering price) of the Bonds, (iii) proceeds of a Lender Collateral Deposit, (iv) proceeds of the Bridge Loan deposited with the Trustee on behalf of the Borrower, or (v) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code. “*Preference Proof Moneys*” shall also include investment earnings derived from any of the foregoing.

“*Project*” means the multifamily rental housing development known as Gulfway Manor Apartments, which will consist of approximately 151 apartment units and related facilities located in Nueces County, Texas.

“*Project Fund*” means the Project Fund created in Section 4.01(b) hereof.

“*Purchase in Lieu of Redemption Date*” means the date set forth in Section 3.02 of this Indenture.

“*Qualified Project Costs*” has the meaning assigned to such term in the Tax Exemption Agreement.

“*Qualified Project Period*” has the meaning assigned to such term in the Regulatory Agreement.

“*Rating Agency*” means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

“*Rating Category*” means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Permitted Investment.

“*Rating Confirmation*” means a letter of confirmation from the Rating Agency to the effect that the proposed action would not result in a withdrawal, suspension or downgrade of the rating then in effect on the Bonds.

“*Rebate Analyst*” has the meaning assigned to such term in the Tax Exemption Agreement.

“*Rebate Analyst Fee*” means the fee payable by the Borrower to the Rebate Analyst upon delivery of its report in accordance with the Tax Exemption Agreement.

“*Rebate Fund*” means the Rebate Fund created in Section 4.01(c) hereof.

“*Rebate Requirement*” means the amount, if any, which is to be paid to the United States of America pursuant to Section 148(f) of the Code and Section 5.01 hereof or to reduce the yield on investments to the yield on the Bonds pursuant to Section 148 of the Code.

“*Record Date*” means the 15th day of the month preceding the date on which interest is due and payable.

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

“*Regulatory Agreement*” means the Regulatory and Land Use Restriction Agreement dated or even date with this Indenture, among the Issuer, the Trustee and the Borrower, and any and all amendments or supplements thereto.

“*Remarketing Agent*” means initially Colliers Securities LLC, and any successor Remarketing Agent that may be appointed by the Borrower.

“*Remarketing Agreement*” means the Remarketing Agreement, dated as of even date with this Indenture, between the Borrower and the Remarketing Agent.

“*Remarketing Notice Parties*” means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Equity Investor and the Rating Agency.

“*Remarketing Rate*” means the interest rate or rates established pursuant to Section 3.05(b) hereof and borne by the Bonds then Outstanding from and including a Mandatory Tender Date to but not including the next Mandatory Tender Date or the Maturity Date, as applicable.

“*Representation Letter*” means the Blanket Letter of Representations from the Issuer to DTC, or any similar Letter of Representations at the time in use by DTC.

“*Requisition*” means (a) the request signed by the Borrower Representative to make a disbursement from the Project Fund on a Construction Draw Date in the manner provided pursuant to Section 6.02 hereof or (b) the request signed by the Borrower Representative to make a disbursement from the Cost of Issuance Fund in the manner provided pursuant to Section 4.04(b) hereof.

*“Reserved Rights of the Issuer”* and *“Reserved Rights”* means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 4.03 of the Bond Loan Agreement, including the Issuer’s Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder and under the Bond Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Bond Loan Agreement, the Tax Exemption Agreement and the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, or the Bond Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Bond Mortgage or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, Bond Mortgage and the Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Bond Loan Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Bond Loan Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

*“Resolution”* means the resolution adopted by the Issuer on [June 13], 2024, duly authorizing and directing the issuance, sale and delivery of the Bonds.

*“Responsible Officer”* means, when used with respect to the Trustee, any vice president, assistant vice president, senior associate, associate or other officer of the Trustee within the Trust Office (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Indenture.

*“Revenues”* means, all payments paid or payable to the Trustee in accordance with the Bond Loan Agreement, the Bond Loan and the Note and all investment earnings derived or to be derived on any moneys or investments held by the Trustee hereunder, but excluding (a) amounts paid as fees, reimbursement for expenses or for indemnification of any Issuer Indemnified Party and the Trustee, (b) amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer and (c) any Rebate Requirement.

*“S&P”* means S&P Global Ratings, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating

agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Issuer with the approval of the Borrower.

“*Securities Depository*” means The Depository Trust Company, its successors and assigns, or any other securities depository for the Bonds designated by the Issuer or the Borrower to the Trustee in writing.

“*SLGS*” means Time Deposit Treasury Securities –State and Local Government Series.

“*Special Funds*” means, collectively, the Bond Fund, the Project Fund and the Collateral Fund, and any accounts therein, all as created in Section 4.01 of this Indenture.

“*State*” means the State of Texas.

“*Supplement*” or “*Supplements*” means any and all extensions, renewals, modifications, amendments, supplements and substitutions to this Indenture.

“*Tax Exemption Agreement*” means the Tax Exemption Certificate and Agreement dated or even date with this Indenture, among the Issuer, the Borrower and the Trustee, and any and all amendments or supplements thereto.

“*Trust Estate*” has the meaning given such term in the Granting Clauses of this Indenture.

“*Trust Office*” means the corporate trust office of the Trustee located at the address set forth in Article I hereof or such other office designated by the Trustee from time to time, or such other offices as may be specified in writing to the Issuer by the Trustee.

“*Trustee*” means U.S. Bank Trust Company, National Association, a national banking association, duly organized and existing under the laws of the United States of America, and authorized to exercise corporate trust powers in the State, having a corporate trust office in St. Paul, Minnesota, and its successor or successors in the trust created by this Indenture.

“*Trustee’s Fee*” means the ongoing compensation and expenses payable to the Trustee as follows: (a) the acceptance fee of the Trustee of \$[\_\_\_\_\_] payable on the Closing Date; (b) the annual administration fees and expenses of the Trustee, as Trustee, Registrar, Dissemination Agent and Paying Agent of \$[\_\_\_\_\_] for the ordinary services of the Trustee rendered under this Indenture during each twelve-month period, payable annually in advance beginning on the Closing Date and thereafter on each anniversary of the Closing Date; (c) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under this Indenture as and when the same become due, including reasonable counsel fees (including in-house counsel fees and fees prior to litigation, at trial, in insolvency proceedings or for appellate proceedings); *provided, further*, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Trustee shall have been made; (d) for purposes of the Bond Loan Agreement, indemnification of the Trustee by the Borrower; and (e) the annual Dissemination Agent Fee under the Continuing Disclosure Agreement of \$[\_\_\_\_\_] payable annually in advance on the Closing Date and thereafter on each anniversary of the Closing Date.

“*Trustee Indemnified Party*” or “*Trustee Indemnified Parties*” has the meaning set forth in Section 6.02 of the Bond Loan Agreement.

“*Underwriter*” means Colliers Securities LLC.

Section 1.02. **Rules of Construction.** The words “*hereof*,” “*herein*,” “*hereunder*,” “*hereto*,” and other words of similar import refer to this Indenture in its entirety.

The terms “*agree*” and “*agreements*” contained herein are intended to include and mean “*covenant*” and “*covenants*.”

References to Articles, Sections, and other subdivisions of this Indenture are to the designated Articles, Sections, and other subdivisions of this Indenture.

The headings of this Indenture are for convenience only and shall not define or limit the provisions hereof.

All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well.

Any reference to particular sections or subsections of the Code and applicable income tax regulations shall include any successor provisions of law or regulations, to the extent the same shall apply to the Bonds.

Any reference to a Bond or to the Bonds shall include each portion in the minimum authorized denomination of any registered bond having a denomination greater than the minimum authorized denomination.

## ARTICLE II

### CREATION OF BONDS; DETAILS OF THE BONDS

#### Section 2.01. **Authorization and Terms of Bonds.**

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[27,500,000] which shall be designated the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024” to be issued as hereinafter provided.

(b) *Registered Form; Numbering.* The Bonds shall be issuable only as fully registered Bonds in authorized denominations, substantially in the form, appropriately completed, attached hereto as *Exhibit A* and made a part hereof. The Bonds shall be lettered “R” and shall be numbered separately from “1” consecutively upward, except for the Initial Bond, which shall be numbered I-1.

(c) *Date, Denominations, Interest Rate and Maturity.* The Bonds shall be dated July 1, 2024, shall be issued in denominations of \$5,000 each or integral multiples of \$1,000 thereafter,

shall bear interest from the Closing Date to the initial Mandatory Tender Date at the rate of [INTEREST RATE]% per annum and thereafter at the Remarketing Rate or Rates determined as provided in Section 3.05(b) hereof, payable semiannually on each Interest Payment Date, and shall mature on the Maturity Date.

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

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

(d) *Book Entry Form.* Initially, the Bonds shall be in Book Entry Form by issuing a single bond in the amount of \$[27,500,000], registered in the name of Cede & Co., as nominee for DTC. In the event DTC discontinues its service with respect to the Bonds and the Book Entry System is terminated, replacement Bonds shall be issued in authorized denominations.

(e) *Dates from Which Interest Payable.* The Bonds shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated, unless authenticated on an Interest Payment Date, in which case it shall bear interest from such Interest Payment Date, or, unless authenticated prior to the first Interest Payment Date, in which case it shall bear interest from the Closing Date; *provided, however*, if at the time of authentication of any Bond, the Issuer is in default with respect to the payment of interest thereon, such Bond shall bear interest from the date to which interest shall have been paid. Interest payable on the Bonds shall be calculated on the basis of a 360-day year of twelve 30-day months.

(f) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any

other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at Trust Office of the Trustee upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to the registered Owners of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar (the “*Bond Registrar*”), or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the domestic bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date. Notwithstanding anything herein to the contrary, for so long as the Bonds are held under the Book Entry System as described in Section 2.11 hereof, the Bonds issued under this Indenture are subject to the procedures of the Securities Depository.

(g) *Form of Bonds.* The definitive Bonds, which may be printed, typewritten, photocopied, or otherwise reproduced, including the Trustee’s certificate of authentication to be endorsed thereon, shall be substantially in the form as set forth in *Exhibit A* attached hereto with such appropriate variations, omissions and insertions as permitted or required by this Indenture.

The Initial Bond, which shall be numbered I-1 and registered by the Comptroller, shall be identical to the form of Bond attached as *Exhibit A* attached hereto, except that (a) the first paragraph immediately following the bond caption shall be omitted, (b) the Initial Bond shall be payable to the Underwriter, and (c) the CUSIP number may be omitted.

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

(h) *Payments or Actions to be taken on Saturdays, Sundays and Holidays.* In any case where the date of any action required hereunder to be taken or the date of maturity of interest on or principal of the Bonds, shall not be a Business Day, then payment of interest or principal or the taking of such action need not be made or taken on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date such action was to be taken.

Section 2.02. **Source of Payment of Bonds.** The Issuer covenants that it will promptly pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in any Fund or Account created under this Indenture, other than amounts held in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.03. **Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chair or Vice Chair of the Issuer, and the seal of the Issuer or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by

the manual or facsimile signature of an authorized officer of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be an authorized officer of the Issuer before the delivery of such Bonds, such signature or such facsimile signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Any Bond may be signed on behalf of the Issuer by such authorized officers as are at the time of execution of such Bond proper officers of the Issuer, even though at the date of such Bond, such authorized officer was not such officer. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bonds that may be issued hereunder at any one time or from time to time.

Section 2.04. **Certificate of Authentication.** Except for the Initial Bond, only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in the form of the Bond herein provided and duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. Except for the Initial Bond, no Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder. At the time of authentication of any Bond, the Trustee shall insert therein the date from which interest on such Bond shall be payable as provided in Section 2.01(e) hereof.

Section 2.05. **Authentication and Delivery of Bonds.** Upon the execution and delivery hereof, the Issuer shall execute the Initial Bond and register the same with the Comptroller. Upon payment on the Closing Date of the purchase price of the Bonds and satisfaction of the conditions in this Section 2.05, the Trustee shall cancel the Initial Bond and authenticate the definitive Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer as provided in this Section 2.05. Prior to the authentication by the Trustee of the Bonds, there shall have been filed with the Trustee (all of which may be provided in an electronic format):

(a) A copy, certified by an authorized officer of the Issuer, of the Resolution adopted by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Bond Loan Agreement;

(b) The Initial Bond registered by the Comptroller;

(c) A fully executed counterpart of this Indenture;

(d) A fully executed counterpart of the Bond Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Continuing Disclosure Agreement and the original, fully executed Note;

(e) A copy of the completed Internal Revenue Service Form 8038 to be filed by or on behalf of the Issuer with the Internal Revenue Service pursuant to Section 149(e) of the Code;

*provided*, that the Trustee is not responsible for filing the Form 8038 with the Internal Revenue Service;

(f) An opinion of Bond Counsel to the effect that, under existing law, the interest on the Bonds is excludable from gross income for federal income tax purposes under section 103 of the Code (except with respect to the interest on any Bond for any period during which such Bond is held by a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of section 147(a) of the Code);

(g) An opinion or opinions of counsel to the Issuer addressed to the Issuer and the Trustee to the effect that the Bonds and the documents specifically identified in the definition of Issuer Documents have been duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors’ rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(h) An Opinion of Counsel for the Borrower to the effect that the documents specifically identified in the definition of Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower, enforceable in accordance with their respective terms subject to customary qualifications and exceptions;

(i) An opinion of the Attorney General of the State of Texas approving the Bonds;

(j) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization;

(k) Written evidence from the Rating Agency confirming that the Bonds have been assigned a rating of “Aaa/VMIG-1”;

(l) The Capitalized Interest Deposit, if applicable, and Cost of Issuance Deposit, for deposit to the Capitalized Interest Account of the Bond Fund and the Cost of Issuance Fund, respectively; and

(m) Copies of all initial financing statements to be filed by the Borrower upon issuance of the Bonds, provided, that the Trustee is not responsible for filing the initial financing statements.

The proceeds from the sale of the Bonds shall be paid over directly to the Trustee and deposited to the credit of the Project Fund, as provided in Article VI hereof.

Section 2.06. **Temporary Bonds.** Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or

Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond in a definitive authorized form in authorized denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

Section 2.07. **Mutilated, Lost, Stolen or Destroyed Bonds**. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond of like date, maturity, interest rate and denomination as that of the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond there shall be first furnished to the Issuer and the Trustee evidence of such loss, theft or destruction satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. The Trustee may, with the consent of the Holder, provide to the Holder a typewritten (or similarly reproduced) Bond certificate in lieu of a printed Bond certificate. In the event any such Bond shall have matured, instead of issuing a duplicate Bond the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond their expenses and reasonable fees, if any, in connection with the preparation, execution and authentication of a replacement Bond.

Section 2.08. **Registration, Negotiability, Transfer and Exchange of Bonds**. All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain Outstanding, the Issuer shall maintain and keep at the Trust Office of the Trustee, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer. Transfers are subject to the requirements of the Securities Depository for so long as the Bonds are held under the Book-Entry Form System as described in Section 2.11 hereof. Neither the Trustee nor any agent will have any responsibility or liability for any actions taken or not taken by the Securities Depository.

Each Bond shall be transferable only upon the books of the Issuer maintained for such purpose by the Trustee, at the written request of the registered Owner thereof or his attorney duly authorized in writing, upon presentation and surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or his attorney duly authorized in writing. Upon the surrender for transfer of any Bond, the Issuer shall issue, and the Trustee shall authenticate, in the name of the transferee, in authorized denominations, a new Bond or Bonds without coupons of the same aggregate principal amount, series, maturity and interest rate as the surrendered Bond.

The Issuer and the Trustee shall deem and treat the Person in whose name any Outstanding registered Bond shall be registered upon the books of the Issuer as the absolute Owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the Person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower as required by the Bond Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an Interest Payment Date.

Section 2.09. **Limited Obligation.** THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES. The foregoing statement of limitation shall appear on the face of each Bond.

Section 2.10. **Cancellation and Destruction of Bonds.** All Bonds that have been surrendered for payment, cancellation or for registration of transfer or exchange pursuant to Section 2.08 hereof shall be cancelled and destroyed by the Trustee and shall not be reissued, and a counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer and, upon written request therefor, to the Borrower. Any Bonds so cancelled may be retained by the Trustee for such period of time as the Trustee may determine and shall be destroyed by the Trustee at the end of such period. Any Bond so cancelled shall thereafter no longer be considered Outstanding for any purpose of this Indenture or the Bond Loan Agreement.

Section 2.11. **Book Entry System.**

(a) (i) Except as provided in subparagraph (iii) of this Section 2.11(a), the registered owner of all of the Bonds shall be, and the Bonds shall be registered in the name of, Cede & Co. (“Cede”), as nominee of The Depository Trust Company (“DTC”). Payment of semi-annual interest for any Bonds shall be made by transfer of same day funds to the account of Cede on the Interest Payment Date at the address indicated for Cede in the registration books of the Issuer kept by the Trustee.

(ii) The Bonds shall be initially issued in the form of a separate single fully registered bond in the amount of each separately stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the registry books of the Issuer kept by the Trustee in the name of Cede, as nominee of DTC. With respect to Bonds registered in the registry books kept by the Trustee in the name of Cede, as nominee of DTC, the Issuer and the Trustee shall have no responsibility or obligation to any participant of DTC (a “Participant”) or to any Person for whom a Participant acquires an interest in the Bonds (a “Beneficial Owner”). Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede or any Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Participant, any Beneficial Owner or any other person, other than DTC, of any notice with respect to the Bonds, (iii) the payment to any Participant, any Beneficial Owner or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds, or (iv) any actions taken or not taken by DTC. The Issuer and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and interest on such Bond, and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bond, and for all other purposes whatsoever. The Trustee shall pay all principal of and interest on the Bonds only to or upon the order of DTC, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. Payments of principal may be made without requiring the surrender of the Bonds, and the Issuer and Trustee shall not be liable for the failure of DTC or any successor thereto to properly indicate on the Bonds the payment of such principal. No Person other than DTC shall receive a Bond evidencing the obligation of the Issuer to make payments of principal of and interest on the Bonds pursuant to this Indenture. Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede, and subject to the transfer provisions hereof, the word “Cede” in this Indenture shall refer to such new nominee of DTC.

(iii) (A) DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is not a successor securities depository), Bond certificates will be delivered as described in this Indenture.

(B) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (i) DTC is unable to discharge its responsibilities with respect to the Bonds or (ii) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute securities depository is found by the Issuer, or restricted registration is no longer in effect, Bond certificates will be delivered as described in this Indenture.

(C) Upon the termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(B) of this Section 2.11, or upon the discontinuance or termination of the services of DTC with respect to the Bonds pursuant to subparagraph (a)(iii)(A) or subparagraph (a)(iii)(B) of this Section 2.11 after which no substitute securities depository willing to undertake the functions of DTC hereunder can be found which, in the opinion of the Issuer, is willing and able to undertake such functions upon reasonable and customary terms, the Bonds shall no longer be restricted to being registered in the registration books kept by the Trustee in the name of Cede as nominee of DTC, but may be registered in whatever name or names Bondholders transferring or exchanging Bonds shall designate, in accordance with the provisions of this Indenture.

(b) Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of Cede, as nominee of DTC, all payments with respect to the principal of and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the applicable Representation Letter of the Issuer addressed to DTC.

(c) In connection with any notice or other communication to be provided to Bondholders pursuant to this Indenture by the Issuer or the Trustee with respect to any consent or other action to be taken by the Bondholders, the Issuer or the Trustee, as the case may be, shall establish a special record date for such consent or other action and give DTC notice of such special record date not less than fifteen (15) calendar days in advance of such special record date to the extent possible.

Section 2.12. **Non-Presentation of Bonds.** Subject to the provisions of Section 11.20 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds,

without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

##### **Section 3.01. Redemption of Bonds.**

(a) The Bonds are not subject to optional redemption prior to the initial Mandatory Tender Date. From and after the initial Mandatory Tender Date, the Bonds are subject to optional redemption prior to maturity from Preference Proof Moneys, at the direction of a Borrower Representative (with delivery of a Cash Flow Projection, if required pursuant to Section 3.01(c) below), in whole or in part, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the date fixed for redemption, on any Business Day that is on or after the date that is halfway between the most recent Mandatory Tender Date and the next Mandatory Tender Date or the Maturity Date, as applicable (provided the Bonds may not be redeemed prior to the date the Borrower has provided notice to the Trustee that the Project has been placed in service).

(b) Other than as set forth in Section 3.01(a) above, the Bonds are not subject to redemption prior to the Maturity Date.

(c) If, to pay the redemption price, the Trustee is required to sell or otherwise dispose of Permitted Investments shown in the most recent Cash Flow Projection delivered to the Rating Agency before the maturity or mandatory tender date of such Permitted Investments, then a new Cash Flow Projection shall be provided to the Trustee (with a copy to the Rating Agency) with the direction described in Section 3.01(a) above, and the Trustee shall utilize the amounts and take the actions set forth in such Cash Flow Projection to pay the redemption price of the Bonds called for redemption.

(d) In the event of a redemption in part, the particular Bonds to be redeemed shall be selected by the Trustee by lot in such manner as the Trustee shall deem fair and appropriate, provided that if a Book Entry System is then in effect, the Securities Depository shall select the interests of the beneficial owners of the Bonds to be redeemed.

##### **Section 3.02. Purchase in Lieu of Redemption.**

(a) Any Bonds called for optional redemption under Section 3.01(a) of this Indenture may be purchased by the Borrower or by any other party designated in writing by the Borrower, on the date upon which such Bonds were to have been redeemed (the "Purchase in Lieu of Redemption Date"), at a purchase price equal to the redemption price thereof. The Borrower shall give 5 days advance written notice before the designated Purchase in Lieu of Redemption Date to the Trustee for which an election to purchase pursuant to this Section 3.02 is being made. Bonds

to be purchased pursuant to this Section 3.02 which are not delivered to the Trustee on the Purchase in Lieu of Redemption Date shall be deemed to have been so purchased, and the purchaser of such Bonds shall be the Owner of such Bonds for all purposes under this Indenture, and interest accruing on such Bonds on and after the Purchase in Lieu of Redemption Date shall be payable solely to the purchaser of the Bonds or any assignee(s) of its interest in such Bonds.

(b) The purchase of Bonds in accordance with this Section 3.02 is not intended, and shall not be deemed to constitute, a redemption of such Bonds nor an extinguishment of the debt evidenced thereby.

(c) The notice provided for in Section 3.03 hereof shall be given by the Trustee regardless of whether the Borrower intends to purchase the Bonds in lieu of redemption; however, the notice may include a statement(s) that the Bonds may be purchased in lieu of redemption, and related information as may be required or necessary to comply with the requirements and policies of DTC.

### Section 3.03. **Notices of Redemption.**

(a) All or a portion of the Bonds shall be called for optional redemption pursuant to Section 3.01 hereof by the Trustee as herein provided upon receipt by the Trustee and the Issuer, at least 30 days prior to the redemption date (unless a shorter notice shall be satisfactory to the Trustee), of written notice of a Borrower Representative specifying the principal amount of the Bonds to be called for redemption and the redemption date. In the case of every redemption, the Trustee shall cause notice of such redemption to be given by mailing by first class mail postage prepaid a copy of the redemption notice to the Bondholders designated for redemption in whole or in part, at their addresses as the same shall last appear upon the registration records, in each case not more than 30 nor less than 20 days prior to the redemption date, provided, however, that failure to receive such notice, or any defect therein, shall not affect the validity of any proceedings for the redemption of such Bonds. Notwithstanding anything contained herein to the contrary, so long as the Bonds are in Book Entry Form, notice of redemption will be given by the Trustee only to DTC or its successor. Redemption is conditioned upon the Trustee having sufficient moneys on deposit in the Special Funds, on or prior to the redemption date, to redeem all of the Bonds called for redemption, and if the Trustee does not have sufficient funds for this purpose, no Bonds shall be redeemed. The Trustee shall furnish the Borrower, the Equity Investor, the Issuer, the Remarketing Agent and the Rating Agency with a copy of each notice of redemption given with respect to any optional redemption under Section 3.01 hereof, as soon as practicable after the delivery of notice to the Bondholders. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to provide any such notice to the Borrower, the Equity Investor, the Issuer, the Remarketing Agent and the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

(b) Each notice of redemption shall specify the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of the Bonds to be redeemed, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon will cease to accrue. Each notice of redemption may also state that the redemption is conditioned on receipt of sufficient Preference Proof Moneys for such redemption by the Trustee on or prior to the

redemption date; if sufficient moneys are not so received, the redemption of the Bonds for which notice was given shall not be made, and the Trustee promptly shall give notice of cancellation of such redemption in substantially the same manner as the original notice of redemption. If less than all the Outstanding Bonds are to be redeemed, the notice of redemption shall specify the numbers of the Bonds or portions thereof to be redeemed.

Section 3.04. **Mandatory Tender.**

(a) The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date and shall be purchased at a price equal to 100% of the principal amount of such Bonds, plus accrued interest, if any, to such Mandatory Tender Date, and without premium. No later than 10:00 a.m., New York City time, on a Mandatory Tender Date, the Holders shall deliver the Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 1:30 p.m. New York City time on such Mandatory Tender Date, in the following priority: (i) amounts representing proceeds of remarketed Bonds received pursuant to Section 3.07(c) hereof, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund and the Project Fund, to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Bond Fund (including the Capitalized Interest Account therein) to pay the accrued interest, if any, on Bonds tendered for purchase, and (iv) any other Preference Proof Moneys available or made available for such purpose at the direction of the Borrower.

(b) If the conditions set forth in Section 3.06 hereof are not satisfied and/or the Trustee shall not have received remarketing proceeds on a Mandatory Tender Date equal to the principal amount of the Bonds Outstanding on such date, the Bonds shall be purchased in whole on such Mandatory Tender Date using amounts on deposit in the Collateral Fund, the Project Fund and the Bond Fund, and, immediately following such purchase, the Bonds shall be deemed redeemed on such Mandatory Tender Date and cancelled by the Trustee.

(c) Not less than 30 days before a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender and remarketing to the Holders by first class mail, postage prepaid, at their respective addresses as they appear on registration books kept by the Trustee as Bond Registrar. Trustee shall also provide such notice to the Borrower and Equity Investor at the notice addresses herein. The notice shall state the Mandatory Tender Date and that:

(1) all Outstanding Bonds are subject to mandatory tender for purchase on such Mandatory Tender Date and must be tendered for purchase on such Mandatory Tender Date;

(2) all Outstanding Bonds will be purchased on such Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to such Mandatory Tender Date;

(3) Holders will not have the right to elect to retain their Bonds and any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after such Mandatory Tender Date; and

(4) the address of the office of the Trustee at which Holders should deliver their

Bonds for purchase on such Mandatory Tender Date.

If notice is given as stated in this section, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Bonds.

**Section 3.05. Duties of Remarketing Agent.**

The Remarketing Agent shall do the following in connection with the remarketing of the Bonds:

(a) If directed in writing by the Borrower, not less than ten (10) days before a Mandatory Tender Date, the Remarketing Agent shall offer for sale and use its best efforts to sell Bonds on such Mandatory Tender Date at a price equal to 100% of the principal amount of such Bonds plus accrued interest, if any.

(b) Establishment of Interest Rate In Connection With Remarketing of Bonds.

(1) *Establishment of Interest Rate.* From and after a Mandatory Tender Date until the next Mandatory Tender Date or the Maturity Date, as applicable, the Bonds shall bear interest at the Remarketing Rate determined pursuant to this subsection. Any Remarketing Rate determined by the Remarketing Agent and taking effect pursuant to this Indenture for a remarketing period established pursuant to Section 3.05(b)(2) below shall be conclusive and binding for the purposes of this Indenture upon the Trustee, the Issuer, the Borrower, and the Holders.

(2) *Determination of Remarketing Rate.* The Remarketing Agent shall determine the Remarketing Rate no later than five (5) Business Days prior to the applicable Mandatory Tender Date. The Remarketing Rate shall be the minimum rate of interest necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Bonds on such Mandatory Tender Date at par for the period which shall begin on the Mandatory Tender Date and end on a subsequent Mandatory Tender Date or the Maturity Date, as applicable, as determined by the Remarketing Agent in consultation with the Borrower, in all cases not to exceed the Maximum Rate.

(3) *Notice.* Immediately upon determining the Remarketing Rate, the Remarketing Agent shall give notice to the other Remarketing Notice Parties. In no event shall the Remarketing Agent give its notice later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate.

**Section 3.06. Conditions Precedent to Remarketing of Bonds and Notice.**

(a) *Conditions Precedent to Remarketing of Bonds.* The remarketing of the Bonds on a Mandatory Tender Date is subject to the satisfaction of each of the following conditions precedent on or before such Mandatory Tender Date:

(1) The Trustee has received written notice from the Remarketing Agent that

all of the Bonds have been remarketed and that the proceeds from the remarketing are expected to be available to the Trustee on such Mandatory Tender Date and deposited into the Bond Fund in an amount equal to the principal amount of the Bonds.

(2) The Trustee has received written notice from the Remarketing Agent that the Remarketing Agent has received a Rating Confirmation to the effect that the then-current rating assigned to the Bonds will continue to be effective on such Mandatory Tender Date.

(3) The Trustee has received a Favorable Opinion of Bond Counsel.

(4) The Trustee has received an amount necessary to cover negative arbitrage, if any, in connection with remarketed Bonds as determined by the Remarketing Agent, through the next Mandatory Tender Date or the Maturity Date, as applicable.

(b) *Notice of Satisfaction of Conditions Precedent.* If the conditions set out in subsection (a) are satisfied, the Trustee shall immediately give notice to the other Remarketing Notice Parties stating that (i) all conditions precedent to the remarketing of the Bonds have been satisfied and (ii) the remarketing and settlement of the Bonds is expected to occur on the applicable Mandatory Tender Date.

#### Section 3.07. **Remarketing of Bonds.**

(a) *Delivery of Bonds by Holder for Purchase.* Each Holder must deliver its Bonds to the Trustee for purchase not later than 10:00 a.m., New York City time, on each Mandatory Tender Date. Bonds received by the Trustee shall be held by the Trustee in trust for the tendering Holders pending receipt of funds for the payment of such Bonds.

(b) *Untendered Bond.* Any Bond that is not tendered on a Mandatory Tender Date (an “Untendered Bond”) will be deemed to have been tendered to the Trustee as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date shall cease to bear interest and no longer will be considered to be outstanding. In the event of a failure by owners to deliver Bonds on a Mandatory Tender Date, such Holders will not be entitled to any payment (including any interest to accrue from and after such Mandatory Tender Date) other than the purchase price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of this Indenture, except for the purpose of payment of the purchase price for such Untendered Bond.

(c) *Delivery of Purchase Price of Remarketed Bonds.* The Remarketing Agent shall give notice to the Remarketing Notice Parties no fewer than five (5) Business Days prior to the applicable Mandatory Tender Date specifying the principal amount and denominations of such Bonds, if any, for which it has found purchasers. The Remarketing Agent shall deliver to the Trustee, no later than 10:00 a.m., New York City time, on the applicable Mandatory Tender Date, in immediately available funds, remarketing proceeds to the extent the Bonds have been successfully remarketed. Upon remarketing, the Bonds shall remain in Book Entry Form. Moneys deposited with the Trustee for the purchase of Bonds shall be held in trust in the Bond Fund and shall be paid to the tendering Holder upon presentation of its Bonds at the designated office of the Trustee.

(d) *Notice of Remarketing to Holders of Untendered Bonds.* The Trustee shall promptly give notice by registered or certified first class mail, postage prepaid, to each Holder of Bonds whose Bonds are deemed to have been purchased stating that interest on such Bonds ceased to accrue on the date of purchase and that moneys representing the purchase price of such Bonds are available against delivery of such Bonds at the designated office of the Trustee.

**Section 3.08. Concerning the Remarketing Agent.**

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall provide to the Trustee its designated office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Borrower and the Equity Investor at all reasonable times; and

(b) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co- Remarketing Agent it appoints.

**Section 3.09. Qualification of Remarketing Agent.**

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' written notice of such resignation to the Issuer, the Borrower, the Equity Investor and the Trustee. The Remarketing Agent may be removed at any time by the Borrower, with prior written notice to the Issuer and the Trustee, with at least 30 days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its

successor. Upon the resignation or removal of the Remarketing Agent, the Borrower, on behalf of the Issuer, shall promptly appoint a successor Remarketing Agent, and shall provide notice to the Trustee and the Issuer of such appointment.

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to mail any such notice to the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

If a successor Remarketing Agent is not appointed by the Borrower and acting as Remarketing Agent at least ten (10) Business Days before a Mandatory Tender Date, the Bonds will not be remarketed and will be paid on such Mandatory Tender Date

## **ARTICLE IV**

### **REVENUES AND FUNDS**

Section 4.01. **Creation of Funds.** The following trust funds are hereby created by the Issuer and ordered established and held separately with the Trustee to be used for the purposes as hereinafter provided in this Indenture:

(a) *Bond Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Bond Fund” (herein referred to as the “*Bond Fund*”), and within the Bond Fund, a “Capitalized Interest Account,” which Fund shall be administered as provided in Sections 4.02 and 4.06 hereof.

(b) *Project Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Project Fund” (herein referred to as the “*Project Fund*”), which Fund shall be administered in accordance with the provisions of Section 6.02 hereof.

(c) *Rebate Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Rebate Fund” (herein referred to as the “*Rebate Fund*”), which Fund shall be administered in accordance with the provisions of Section 5.01 hereof. Moneys held in the Rebate Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(d) *Expense Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Expense Fund” (herein referred to as the “*Expense Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.07 hereof. Moneys held in the Expense Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(e) *Collateral Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Collateral Fund” (herein

referred to as the “*Collateral Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.03 hereof.

(f) *Cost of Issuance Fund.* “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 – Cost of Issuance Fund” (herein referred to as the “*Cost of Issuance Fund*”), which Fund shall be administered in accordance with the provisions of Section 4.04 hereof. Moneys held in the Cost of Issuance Fund (other than amounts derived from the proceeds of the Bonds) are not held for the benefit of the Owners and are not part of the Trust Estate.

Section 4.02. **Deposits into the Bond Fund.** On the Closing Date, upon receipt of the Capitalized Interest Deposit, if any, in accordance with Section 4.02 of the Bond Loan Agreement, the Trustee shall deposit the Capitalized Interest Deposit to the Project Fund, and thereafter transfer or allocate to the Capitalized Interest Account of the Bond Fund the amounts set forth in the Closing Memorandum. All Revenues received by the Trustee, except for funds deposited in the Bond Fund (including the Capitalized Interest Account therein), the Project Fund or the Collateral Fund on the Closing Date and any investment earnings thereon, shall be deposited, first, to the credit of the Expense Fund to the extent any fees, costs, or expenses described in Section 4.07 hereof are due and payable, and then to the Bond Fund. In accordance with the last sentence of Section 11.04, for so long as the Bonds are outstanding hereunder, funds on deposit in the Project Fund, the Collateral Fund or the Bond Fund (including the Capitalized Interest Account therein) shall not be deposited in the Expense Fund or otherwise used to pay fees, costs or expenses described in Section 4.07 hereof.

In connection with the issuance of the Bonds, certain moneys may be deposited with the Trustee before the Closing Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Trustee subject to the terms and conditions of this Indenture in addition to terms provided in such letter(s) of instruction.

Section 4.03. **Use of Moneys in Collateral Fund.** Upon receipt of (a) proceeds of the sale of a GNMA security from the Lender, (b) a draw on the Lender’s warehouse line of credit or (c) funds otherwise provided by the Lender or the Bridge Lender, as applicable (each, a “*Lender Collateral Deposit*”), the Trustee shall, in accordance with the Funding Agreement, deposit such amounts to the Collateral Fund. Together with amounts on deposit in the Project Fund and the Bond Fund (including the Capitalized Interest Account therein), amounts on deposit in the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds to but not including the next Mandatory Tender Date or the Maturity Date, as applicable. On each date on which principal of or interest on the Bonds is due, the Trustee shall transfer a sufficient amount of funds from the Collateral Fund for deposit to the Bond Fund to enable the Trustee to make such payments as and when due.

Section 4.04. **Use of Moneys in the Cost of Issuance Fund.**

(a) *Deposits into the Cost of Issuance Fund.* On or before the Closing Date, the Borrower shall deliver the Cost of Issuance Deposit to the Trustee. On the Closing Date, the Trustee shall deposit or transfer, as applicable, the Cost of Issuance Deposit into the Cost of Issuance Fund as designated in the Closing Memorandum.

(b) *Disbursements from the Cost of Issuance Fund.* Except as otherwise provided in this Section 4.04, the amounts deposited in the Cost of Issuance Fund shall be expended for Costs of Issuance and for no other purpose. The Borrower shall deliver to the Trustee the Requisition in the form attached hereto as *Exhibit C*, executed by the Borrower, specifying in detail the amount that constitutes Costs of Issuance to be paid or reserved to be paid under this Section 4.04, the respective firms or persons to whom such payments are to be made, and their respective payment instructions. The Trustee shall make the payments specified therein concurrently with or as soon as may be practicable after the delivery of the Bonds.

(c) *Disposition of Remaining Amounts.* Any moneys remaining in the Cost of Issuance Fund twelve (12) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower upon the written instruction to the Trustee from the Borrower, in accordance with Section 4.06 hereof. Upon final disbursement, the Trustee shall close the Cost of Issuance Fund.

Section 4.05. **Use of Moneys on Deposit in the Bond Fund; Application of Loan Payments.** The funds on deposit in the Bond Fund shall be used by the Trustee to pay principal of and interest on the Bonds on each date a payment of principal or interest is due to be made, whether by maturity, redemption or scheduled Interest Payment Date.

In the event that amounts on deposit in the Bond Fund on any Interest Payment Date or Mandatory Tender Date or such other Bond payment date are insufficient to make the payment of principal of or interest on the Bonds when due, the Trustee shall transfer funds in the following order to the Bond Fund and use such funds, together with amounts then on deposit in the Bond Fund, to make such payments when due:

- (a) *first*, from amounts on deposit in the Capitalized Interest Account of the Bond Fund;
- (b) *second*, from amounts on deposit in the Collateral Fund; and
- (c) *third*, from amounts on deposit in the Project Fund.

So long as there are any Outstanding Bonds, payments due under the Note and the Bond Loan Agreement shall be deemed made by the Trustee's transfer of funds on each Interest Payment Date from the Capitalized Interest Account of the Bond Fund or from the Collateral Fund to the Bond Fund, in an amount necessary to pay the interest on and principal (if any) of the Bonds.

Promptly following receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to take the actions and release from the Capitalized Interest Account the amount of Preference Proof Moneys set forth in such Cash Flow Projection to or at the written direction of the Borrower.

Section 4.06. **Payment to Borrower of Excess Moneys.** Subject to the provisions of Section 13.10 hereof, any amounts remaining in the Cost of Issuance Fund after the payment in full of all Costs of Issuance shall be paid (upon written direction from the Borrower to the Trustee) to the Borrower in accordance with Section 4.04 hereof, and any amounts remaining in the Collateral Fund or the Bond Fund (except for amounts then held by the Trustee in the Bond Fund

for payment of principal of, or interest on, any of the Bonds) after payment in full of the principal of and interest on the Bonds, payment of any and all fees and expenses due in accordance with this Indenture and the Bond Loan Agreement, and payment of all other costs associated with the discharge of the Bonds and receipt of the final rebate arbitrage report and payment of any rebate amount (if any), shall, upon written instruction to the Trustee from the Borrower (with a copy to the Issuer), be paid to the Borrower upon the expiration or sooner termination of the term of the Bond Loan Agreement.

Section 4.07. **Expense Fund.** The Trustee shall deposit amounts received from the Borrower for the purpose of paying Trustee's Fees, the Issuer's Fees, the Rebate Analyst Fee and any other fees and expenses required under the Bond Loan Agreement into the Expense Fund. The Trustee shall pay such amounts to the proper persons on the dates and in the amounts due. Amounts on deposit in the Expense Fund shall be withdrawn or maintained, as appropriate by the Trustee to pay (i) to the Issuer, the Issuer's Fees, (ii) to the Trustee, the Trustee's Fee, (iii) to the Rebate Analyst, the Rebate Analyst Fee, (iv) upon receipt, to the Trustee, any amounts due to the Trustee which have not been paid, other than amounts paid in accordance with clause (ii) hereof and (v) upon receipt, to the Issuer, the Issuer's Fees due and unpaid, other than amounts paid in accordance with clause (i) above.

Section 4.08. **Allocation and Reallocation of Permitted Investments Deposited to the Collateral Fund and the Project Fund.** On the Closing Date, the Trustee shall allocate ownership of the Permitted Investments acquired pursuant to Section 7.01 hereof and deposited for the benefit of the Project Fund and the Collateral Fund as follows: the Trustee shall (i) allocate to the Capitalized Interest Account the portion of the Permitted Investments set forth in the Closing Memorandum, (ii) allocate such portion of the remaining Permitted Investments to the Collateral Fund a percentage of such Permitted Investments equal to the amount of Preference Proof Moneys presented to the Trustee for deposit to the Collateral Fund on the Closing Date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "*Initial Collateral Fund Percentage*"), and (iii) allocate the remainder (i.e., 100% minus the Initial Collateral Fund Percentage) of such Permitted Investments to the Project Fund. On each subsequent month when additional Preference Proof Moneys are presented to the Trustee for deposit to the Collateral Fund (each, a "*Subsequent Allocation Date*"), the dollar amount of such Preference Proof Moneys shall be added to all prior Preference Proof Moneys so deposited, and the percentage of such Permitted Investments allocated to the Collateral Fund shall be adjusted to that percentage equal to the aggregate Preference Proof Moneys so deposited through such date divided by the aggregate Outstanding principal amount of the Bonds and multiplied by 100 (the "*Collateral Fund Percentage*") and the remainder (i.e., 100% minus the Collateral Fund Percentage, referred to as the "*Project Fund Percentage*") shall be allocated to the Project Fund. On each Subsequent Allocation Date, the Trustee shall be deemed to have liquidated that portion of the Permitted Investments allocated to the Project Fund and purchased equivalent Permitted Investments to be allocated to the Collateral Fund.

## ARTICLE V

### REBATE FUND

Section 5.01. **Rebate Fund.** The Rebate Fund is created for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Issuer or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under this Indenture. Notwithstanding the foregoing, with respect to the Rebate Fund the Trustee is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

## ARTICLE VI

### CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 6.01. **Custody and Application of Project Fund.** The proceeds received by the Trustee for such purpose upon the issuance and sale of the Bonds shall be deposited in the Project Fund in the amount set forth in the Closing Memorandum.

Section 6.02. **Procedure for Making Disbursements from Project Fund.** Disbursements from the Project Fund shall be made upon the receipt by the Trustee of the following and shall be used solely to pay Costs of the Project incurred in connection with the acquisition and construction of the Project: (1) a request or requests therefor executed by the Borrower, in the form of a Requisition in substantially the form attached as Exhibit B hereto, (2) if applicable, a request by the Lender accompanied by its approved FHA draw and (3) an amount equal to the requested disbursement has been received by the Trustee and deposited to the Collateral Fund in accordance with this Indenture. Together with amounts on deposit in the Project Fund and any other Preference Proof Moneys on deposit in the Capitalized Interest Account of the Bond Fund, amounts on deposit in the Bond Fund and the Collateral Fund, including any investment earnings thereon, shall be sufficient at all times to pay the principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable.

Each Lender Loan Requisition shall be made in accordance with the Lender Loan Documents and FHA/HUD requirements. Upon approval of a Requisition by the Lender or the Bridge Lender, as applicable (each an "*Approved Advance*"), and, if required, HUD, the Lender shall, in accordance with the Funding Agreement, deliver to the Trustee an amount equal to the Approved Advance to be held by the Trustee and to be deposited into the Collateral Fund, together with its request for a disbursement from the Project Fund in an amount equal to the Approved Advance, which disbursement shall be used by the Lender to provide for the payment of Costs of the Project. In the event that for any reason the Trustee is not prepared to promptly disburse funds from the Project Fund, the Trustee shall not deposit the amount of the Approved Advance in the Collateral Fund, shall so inform the Lender or the Bridge Lender, as applicable, and the Borrower

and shall return such deposit to the originating Lender in accordance with the written instructions of such Lender.

Notwithstanding any provision of the Bond Loan Agreement or any other provision of this Indenture to the contrary, the Trustee shall not disburse moneys from the Project Fund, other than to pay principal and/or interest payments on the Bonds in accordance with Section 4.05 hereof, unless and until the Trustee receives satisfactory evidence that a Lender Collateral Deposit or other Preference Proof Moneys in an amount equal to or greater than the requested disbursement amount has been deposited in the Collateral Fund. Prior to making any disbursement, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund, (ii) the Capitalized Interest Account of the Bond Fund, (iii) the Project Fund and (iv) the Bond Fund, will be sufficient to pay principal of and interest on the Bonds as and when they become due to the next Mandatory Tender Date or the Maturity Date, as applicable. Upon satisfaction of the conditions precedent set forth in this Section 6.02, and notwithstanding anything in the Bond Documents to the contrary, once the Lender or the Bridge Lender, as applicable, deposits the Lender Collateral Deposit and upon satisfaction of the conditions set forth in the first paragraph of Section 6.02 hereof, the Trustee is irrevocably and unconditionally obligated to disburse an equal amount of moneys from the Project Fund in accordance with approved Requisitions. Upon such disbursement, the Lender Collateral Deposit is irrevocable and constitutes part of the Trust Estate.

All disbursements from the Project Fund will be made to or at the direction of the Lender, or shall be transferred to the Bond Fund.

The Trustee and the Issuer shall not in any event be responsible or liable to any Person for the disbursement of, or failure to disburse, moneys from the Project Fund, or any part thereof, and no contractor, subcontractor or material or equipment supplier shall have any right or claim against the Trustee or the Issuer under this Indenture.

Section 6.03. **Trustee May Rely on Requisitions and Certifications.** In making any such disbursement from the Project Fund, the Trustee may conclusively rely on any Requisition delivered to it pursuant to Section 6.02 hereof, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with any such Requisition.

Section 6.04. **Completion of Project.** The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee and the Issuer of (a) the Completion Certificate pursuant to Section 3.05 of the Loan Agreement and (b) a certificate signed by the Borrower Representative stating that all obligations and Costs of the Project have been paid and discharged, except for Costs of the Project not then due and payable or then in dispute as provided in the Bond Loan Agreement. The Trustee may conclusively rely on such certificate. On such date, the Project Fund shall be closed and any funds remaining in the Project Fund shall be transferred by the Trustee without further direction to the bond fund to be used to pay principal on the Bonds. Additionally, the Borrower has agreed pursuant to Section 3.06 of the Bond Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

## ARTICLE VII

### INVESTMENT OF FUNDS AND ACCOUNTS

Section 7.01. **Investment.** On the Closing Date, a portion of the moneys on deposit in the Project Fund in the amount, if any, set forth in the Closing Memorandum will be held by the Trustee uninvested until disbursed to the Borrower on the Closing Date in accordance with the Closing Memorandum. The balance of amounts on deposit in the Project Fund after any such disbursement shall be invested as set forth in the following paragraph.

In accordance with the Closing Memorandum, the Trustee is hereby directed to purchase, on the Closing Date, Permitted Investments maturing on or before the initial Mandatory Tender Date, with respect to the investment of certain amounts on deposit in the Special Funds, the principal and interest of which will be sufficient to pay principal and interest on the Bonds when due to the initial Mandatory Tender Date. All interest earned from the foregoing investments shall be deposited in the Bond Fund. Such funds shall remain on deposit, subject to reallocation pursuant to Section 4.08 hereof, until the initial Mandatory Tender Date or earlier Optional Redemption Date, on which date they will be withdrawn to make payment on the Bonds. If any investments in the Special Funds must be liquidated prior to the Maturity Date, such investments shall be liquidated hereunder. Anything to the contrary contained herein notwithstanding, earnings received by the Trustee with respect to Permitted Investments purchased hereunder shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments.

At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Exemption Agreement) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Exemption Agreement. Following the Closing Date, at the written direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Permitted Investments so long as the Trustee has received a Cash Flow Projection.

As long as no Event of Default shall have occurred and be continuing, the Borrower shall have the right to designate the investments to be sold and to otherwise direct the Trustee in writing in the sale or purchase of the investments made with the moneys in the Special Funds, provided that the Trustee shall be entitled to conclusively assume the absence of any such Event of Default unless it has notice thereof; if there has been an Event of Default, the Trustee shall have said right.

Except as otherwise specified herein, amounts on deposit in the Special Funds shall be invested at all times in Permitted Investments. The investments described in each of the above paragraphs shall be made by the Trustee pursuant to the written direction provided hereby and in accordance with the written direction of the Borrower to be provided on the Closing Date, which shall remain in effect until further written direction is provided by the Borrower. In the absence of investment instructions from the Borrower, the Trustee shall invest the moneys held in the Special Funds in the following investment: [\_\_\_\_\_].

Amounts, if any, on deposit in the Cost of Issuance Fund, until disbursed or returned to the Borrower pursuant to Section 4.04(c) hereof, shall be invested at the direction of the Borrower Representative. The Expense Fund shall be invested at the direction of the Borrower

Representative. In the absence of investment instructions from the Borrower, the Trustee shall not be responsible or liable for keeping the moneys held in the Cost of Issuance Fund or the Expense Fund hereunder fully invested in Permitted Investments.

Section 7.02. **Investment of Rebate Fund.** Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee as set forth in the Tax Exemption Agreement.

Section 7.03. **Accounting for Termination of Investments.** Subject to Section 7.01 hereof, in the event the moneys in the Special Funds have been invested in Permitted Investments and such Permitted Investments at any time and for any reason fail to satisfy the requirements of Section 7.01 hereof, the Trustee shall, at the written direction of the Borrower and with the written approval of the Rating Agency, terminate any such investments, and the proceeds of such termination shall be credited to the Collateral Fund, the Bond Fund (including the Capitalized Interest Account therein) or the Project Fund, as applicable.

Section 7.04. **Trustee's Own Bond or Investment Department.** The Trustee may make any and all investments permitted under Section 7.01 hereof through its own bond or investment department or that of any Affiliate and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although the Issuer and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Issuer and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account hereunder if no activity occurred in such fund or account during such month. The Trustee shall provide such information as the Rating Agency may reasonably request to enable the Rating Agency to maintain the then-current rating assigned to the Bonds.

Section 7.05. **Moneys to be Held in Trust.** Subject to Section 4.08 hereof, all moneys required to be deposited with or paid to the Trustee for account of the Collateral Fund, the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture. The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from investments made in accordance with this Section 7.05, or for any loss resulting from the redemption or sale of any such investments as authorized by this Indenture.

## ARTICLE VIII

### GENERAL COVENANTS

Section 8.01. **Payment of Bonds.** Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article VIII, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Rebate Fund, the Cost of

Issuance Fund and the Expense Fund and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

The Issuer covenants that it will cause to be paid, as provided herein, the principal of and interest on the Bonds from the Trust Estate at the place, on the date and in the manner provided herein and in the Bonds.

The Revenues due under the Note are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. The moneys held by the Trustee in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund shall be used to make timely payment of the principal of and interest on the Bonds. Such amounts are to be sufficient in amount at all times to pay the principal of and interest on the Bonds to the Maturity Date. The entire amount of Revenues and the entire amount of moneys held in the Bond Fund (including the Capitalized Interest Account therein) and the Collateral Fund are assigned to secure the payment of the principal of and interest on the Bonds.

Section 8.02. **Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all applicable covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09 hereof. The Issuer covenants that it is duly authorized under the laws of the State to issue the Bonds, to enter into this Indenture and the Bond Loan Agreement and to assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable limited obligations of the Issuer according to the import thereof.

Section 8.03. **Maintenance of Existence; Compliance with Laws.** The Issuer will (i) maintain its corporate existence or assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act and (ii) comply with all valid material acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to this Indenture and the Bond Loan Agreement.

Section 8.04. **Enforcement of Borrower's Obligations.** So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Bond Loan Agreement and the Note. NOTHING CONTAINED IN THIS SECTION 8.04 OR IN ANY OTHER SECTION OF THIS INDENTURE SHALL BE DEEMED TO MODIFY THE PROVISIONS OF THE ACT AND SECTION 2.09 HEREOF OR REQUIRE THAT THE ISSUER EXPEND ANY OF ITS OWN FUNDS OR ASSETS TO ENFORCE THE OBLIGATIONS OF THE BORROWER UNDER THE DOCUMENTS.

Section 8.05. **Further Assurances, Instruments and Actions.** The Issuer will from time to time execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; provided, however, that no such instruments or actions shall pledge the credit or taxing power of

the State, the Issuer, or any other political subdivision of the State, or create or give rise to any monetary obligation or liability of the Issuer. The Issuer has no taxing power.

Section 8.06. **Priority of Pledge.** The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

Section 8.07. **Books and Documents Open to Inspection.** The Trustee hereby covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a written request by the Issuer or the Borrower be open to inspection during the Trustee's regular business hours by such accountants or other agents as the Issuer, the Trustee or the Borrower may from time to time designate.

Section 8.08. **Borrower to Indemnify and Hold the Issuer and Trustee Harmless from Liability.** The Borrower has agreed to indemnify and hold the Issuer Indemnified Parties and the Trustee Indemnified Parties harmless from and against liability arising out of claims as defined and as provided in Section 6.02 of the Bond Loan Agreement.

Section 8.09. **Issuer Tax Covenants.** The Issuer represents, covenants and agree that it will:

(a) comply with all applicable requirements of the Code that are necessary to preserve the Federal Tax Status of the Bonds, as further set forth in the Tax Exemption Agreement; and

(b) 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.

## ARTICLE IX

### DISCHARGE

Section 9.01. **Discharge of Lien.** If and when the Bonds secured hereby shall become due and payable in accordance with their terms as provided in this Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable hereunder by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon request of the Borrower, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing and after receipt of a rebate analyst report and, if necessary, funding for any rebate payment, any surplus in the Collateral Fund and all balances remaining in any other fund created under this Indenture and shall assign and transfer to the Borrower all other property

then held by the Trustee under this Indenture and shall execute such documents as may be reasonably required by the Borrower.

If and when the Trustee shall hold sufficient moneys hereunder, as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Cost of Issuance Fund, the Rebate Fund or the Expense Fund) payable or which may thereafter become payable hereunder by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 9.01, the Trustee, on demand of the Borrower, shall deposit with or at the written direction of the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Collateral Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable hereunder by the Issuer or the Borrower.

All Outstanding Bonds shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect described above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an Independent public accounting firm of national reputation or other firm similarly experienced in performing such computations) either (i) moneys in an amount which shall be sufficient, or (ii) Government Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Borrower shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with the provisions described in this Section and stating such maturity upon which moneys are to be available for the payment of the principal and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to this Section 9.01 nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal and interest, on such Bonds; *provided* that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, may be reinvested in Government Obligations maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be invested in money market funds described in clause (ii) of the definition of Permitted Investments and be deposited into the Bond Fund.

The release of the obligations of the Issuer under this Section 9.01 shall be without prejudice to the right of the Trustee provided in Section 11.04 hereof to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and

other disbursements, including those of its attorneys, agents and employees, and shall not affect the obligations of the Borrower to make the payments required by the Bond Loan Agreement or the Note.

Notwithstanding the foregoing, any provisions of this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, the rebate of money to the United States in accordance with Section 5.01 hereof and the Tax Exemption Agreement, and the rights and duties of the Trustee in connection with all of the foregoing, or which by their terms survive payment and discharge of the Bonds, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture.

Notwithstanding anything herein to the contrary, the purchase of Permitted Investments in accordance with Section 7.01 hereof, together with the Capitalized Interest Deposit, shall not cause a discharge of the Indenture under this Section 9.01.

## ARTICLE X

### DEFAULTS AND REMEDIES

Section 10.01. **Events of Default and Acceleration.** If any of the following events occur, it is hereby defined as and declared to be and constitute an “*Event of Default*”:

(a) any interest on any Bond is not paid on the date on which the same becomes due;  
or

(b) the principal of any Bond is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise; or

(c) a Default occurs under the Bond Loan Agreement; or

(d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 10.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer and the Borrower by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; *provided, however*, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer or the Borrower is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Bond Loan or the Bonds.

If any Bond Loan payment required under the Bond Loan Agreement to avoid a default under (a) or (b) of this Section 10.01 shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under

such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Equity Investor, which telephonic notice shall be confirmed by electronic, telegraphic or written notice to the Borrower and the Equity Investor. If any other default shall occur under the provisions of this Section 10.01, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Equity Investor, the Holders of the Bonds and the Rating Agency. A default or an Event of Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this Section 10.01 shall occur and be continuing, the Trustee, may, and upon written request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall, declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided in such notice, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 10.01 shall occur and be continuing, the Trustee, upon written request of the Holders of 100% in aggregate principal amount of the Bonds then Outstanding, shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Borrower and the Rating Agency, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

Anything herein to the contrary notwithstanding, the Equity Investor shall have the right, but not the obligation, to cure any default hereunder on the same terms provided to the Borrower.

Section 10.02. **Trustee to Enforce Rights of the Issuer.** Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

Section 10.03. **Remedies.** Upon the happening of any Event of Default and in addition to and not in limitation of any rights and remedies under Section 10.01 hereof, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of a majority in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity, shall:

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents including, but not limited to, foreclosing upon the security interest in or otherwise using funds on deposit in the Collateral Fund;

(b) bring suit upon the Bonds; or

(c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

Notwithstanding anything contained herein to the contrary, upon the occurrence and continuance of an Event of Default, before taking any action which may subject the Trustee to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Trustee may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such action.

Section 10.04. **Termination of Proceedings.** In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 10.05. **Right of Bondholders to Direct Proceedings.** No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of a majority in aggregate principal amount of the Bonds then Outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of written notice and compliance with the foregoing terms and conditions, whereupon, the Holders of a majority in aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in this Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

Section 10.06. **Remedies Vested in Trustee.** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

Section 10.07. **Remedies Non-Exclusive and Cumulative.** No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 10.08. **Delays or Omissions by Trustee.** No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article X to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

Section 10.09. **Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article X shall, after payment of all costs and expenses of the Trustee and the Issuer, be deposited in the Collateral Fund and all moneys so deposited in the Collateral Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

*First* – To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the direct order of the maturity of the installments of such interest and, if the amounts available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

*Second* – To the payment to the Persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Collateral Fund or otherwise held by the Trustee), with interest on such principal from the respective dates upon which the same became due and, if the amount available shall not be sufficient to pay in full the amount of principal, and the interest due on any particular date, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege; and

*Third* – To be held for the payment to the Persons entitled thereto as the same shall become due of the principal of and interest on the Bonds which may thereafter become due either at maturity and, if the amount available shall not be sufficient to pay in full Bonds

due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal due on such date to the persons entitled thereto without any discrimination or privilege; and

*Fourth* – The remainder, if any, shall be deposited in the Collateral Fund.

Whenever moneys are to be applied pursuant to the provisions of this Section 10.09, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts or principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 10.10. **Severability of Remedies.** It is the purpose and intention of this Article X to provide rights and remedies to the Trustee and the Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

Section 10.11. **No Interference or Impairment of Lender Loan.** Notwithstanding anything herein to the contrary, none of the Issuer, the Trustee nor any other Person shall:

(a) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due and payable under, the Lender Loan; or

(b) interfere with or attempt to interfere with or influence the exercise by the Lender of any of its rights under the Lender Loan, including, without limitation, the Lender remedial rights under the Lender Loan upon the occurrence of an event of default by the Borrower under the Lender Loan.

The foregoing prohibitions and limitations shall not be construed to affect the Reserved Rights of the Issuer or to limit the rights of the Issuer to enforce its rights against the Borrower under the indemnification provisions of this Indenture so long as it does not violate the Program Obligations (as defined in the HUD Regulatory Agreement).

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

No subsequent owner of the Project shall be liable or obligated for the breach or default of any obligation of any prior Borrower unless specifically assumed in writing by a subsequent

Borrower, including, but not limited to, any payment or indemnification obligation. Such obligations shall be personal to the Person who was the Borrower at the time the default or breach was alleged to have occurred and such Person shall remain liable for any and all damages occasioned by the default or breach even after such Person ceases to be the Borrower with regards to the Project.

Promptly upon determining that an Event of Default under this Indenture has occurred, the Issuer or the Trustee shall, by notice in writing to the Lender, inform the Lender that such Event of Default has occurred, the nature of such Event of Default and that such Event of Default has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such Event of Default, neither the Issuer nor the Trustee shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Lender Loan or to foreclose on the Lender Mortgage.

## ARTICLE XI

### CONCERNING THE TRUSTEE

Section 11.01. **Acceptance of Trusts.** The Trustee hereby accepts the trusts hereby created and agrees to perform and execute such trusts, but only upon the additional terms set forth in this Article XI, to all of which the Issuer agrees and the respective Holders of the Bonds agree upon and by their acceptance of delivery of any of the Bonds.

Section 11.02. **Trustee Not Responsible for Recitals, Statements and Representations.** Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

The Trustee shall have no responsibility for any information in any Official Statement or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The Trustee shall not be responsible or accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any paying agent.

Section 11.03. **Action by Trustee Through and in Reliance Upon Others.** The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to rely on the advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, all of which shall

be paid by the Borrower. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

Except for fraud and willful misconduct, no personal recourse may be taken, directly or indirectly, against any officer, director, employee or agent of the Trustee with respect to the obligations of the Trustee under this Indenture or any certificate or other writing delivered in connection therewith. The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Trustee's officers, directors, agents and employees.

The Trustee's immunities and protections from liability and its right to payment of compensation and indemnification in connection with performance of its duties and functions under this Indenture shall survive the Trustee's resignation or removal and the final payment of the Bonds.

Section 11.04. **Fees and Expenses of Trustee.** The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee and the Borrower shall agree upon, and to payment and/or reimbursement of reasonable fees, for its services rendered hereunder and as Dissemination Agent, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. For so long as the Bonds are outstanding hereunder, in no event will monies on deposit in the Project Fund, the Collateral Fund, and the Bond Fund (including the Capitalized Interest Account therein) be used for the payment and/or reimbursement of such Trustee fees.

Section 11.05. **Trustee's Obligations to Take or Have Notice of Default.** The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than an Event of Default under Section 10.01(a) or Section 10.01(b) hereof, unless a Responsible Officer of the Trustee is specifically notified in writing of such default by the Issuer or by the Holders of at least 25% in aggregate principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

Section 11.06. **Duties of Trustee.** (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(a) Except during the continuance of an Event of Default,

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations will be read into this Indenture against the Trustee, and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as

to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

(b) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(1) This paragraph does not limit the effect of Section 11.03 hereof,

(2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts,

(3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it in accordance with this Indenture and

(4) No provision of this Indenture or the Tax Exemption Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(c) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds specifically required pursuant to the terms of this Indenture.

(d) The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Indenture shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the defeasance or discharge of this Indenture and final payment of the Bonds.

(e) Except as otherwise provided in this Article XI, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith, unless requested in writing so to do by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such written notice or request from the Bondholders, or without such security or indemnity.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or

willful misconduct as described in Section 11.06(c) above. The Trustee shall have no duty to review or analyze any financial statements or other financial information delivered to the Trustee under this Indenture and the other Bond Documents and shall hold such financial statements and other financial information solely as a repository for the benefit of the Holders. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner. The Trustee shall not be responsible or liable for the environmental condition or any contamination of any property which secures the Bonds or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. The Trustee shall not be liable for any claims by or on behalf of the Holders or any other person or entity arising from contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant, and shall have no duty or obligation to assess the environmental condition of any such property or with respect to compliance of any such property under state or federal laws pertaining to the transport, storage, treatment or disposal of, hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits or licenses issued under such laws. The Trustee in performing its duties and exercising its rights under any of the other Bond Documents shall be entitled to all rights, protections and limitations of liability set forth in this Indenture, and the provisions of this Indenture relating to the rights, protections and limitations of liability of the Trustee shall be deemed to be set forth and included in the Bond Documents, *mutatis mutandis*, as if references to “*hereof*,” “*herein*,” “*this Indenture*” and the like set forth in this Indenture referred to the applicable Document.

(g) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(h) The Trustee may conclusively rely upon and shall be fully protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram, requisition, direction, opinion or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Owner of the Bonds shall be conclusive and binding upon all future owners of the same Bonds and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions (“*Instructions*”) given pursuant to this Indenture and delivered using Electronic Means (as defined below); *provided, however*, that Borrower, the Issuer or such other party giving such instruction (the “*Sender*”) shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions (“*Authorized Officers*”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Sender whenever a person is to be added or deleted from the listing. If the Sender elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee’s understanding of such Instructions shall be deemed controlling. The Borrower, the Issuer and any other Sender understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such

Authorized Officer. Each Sender shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Sender and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Sender. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means by the Borrower to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower for use by the Borrower, the Issuer and the other parties who may give instructions to the Trustee under this Indenture; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. "*Electronic Means*" shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

(i) The Trustee shall not be liable or responsible for the failure of the Borrower to maintain insurance on the Project, nor shall it be responsible for any loss due to the insufficiency of such insurance or by reason of the failure of any insurer to pay the full amount of any loss against which it may have insured to the Issuer, the Borrower, the Trustee or any other Person.

(j) The Trustee may seek the approval of the Bondholders by any means it deems appropriate and not inconsistent with the terms of this Indenture in connection with the giving of any consent or taking of any action.

Section 11.07. **Trustee May Rely Upon Instruments.** The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any indenture, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or the Documents, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements, and shall be protected and shall incur no liability in acting or proceeding in good faith in reliance thereon. The Trustee shall not be bound to recognize any Person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with the Trustee or satisfactory evidence of the ownership of such Bond shall be furnished to the Trustee.

Section 11.08. **Trustee May Own and Deal in Bonds and Deal With the Issuer and Borrower.** The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee,

either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

Section 11.09. **Financial Liability of the Trustee.** No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except as may otherwise be provided in this Indenture, the Trustee will have the right to demand, in respect to the authentication of any Bonds or the release of any property, any showings, certificates, opinions (including Opinions of Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof or of the Bond Loan Agreement required as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the Issuer or the Borrower to the authentication of any Bonds, or the release of any property.

In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 11.10. **Trustee May Construe Ambiguous or Inconsistent Provisions.** The Trustee may construe any of the provisions of this Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

Section 11.11. **Resignation of Trustee.** The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than sixty (60) days written notice to the Issuer specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, provided that such resignation shall not take effect unless and until a successor shall have been appointed unless the Trustee has not been paid its fees and expenses (in which case the resignation shall become effective on the date specified by the Trustee above).

Section 11.12. **Removal of Trustee.** The Trustee shall be removed by the Issuer or by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized (with the consent of the Issuer), excluding any Bonds held by or for the account of the Issuer, if so requested by an instrument or concurrent instruments in writing giving not less than sixty (60) days' written notice, filed with the Trustee and the Issuer. The Issuer may also remove the Trustee at any time by giving thirty (30) days' notice, except during the existence of any Event of Default as defined in Section 10.01 hereof, for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any

provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed his name and address with the Issuer. Such removal of the Trustee in accordance with this Section 11.12 shall not be effective until a successor trustee shall have been appointed.

Section 11.13. **Appointment of Successor Trustee.** In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer (upon direction of the Borrower) covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section 11.13 within sixty (60) days after the Trustee shall have given to the Issuer written notice as provided in Section 11.11 hereof, within sixty (60) days after the Issuer or the Holders shall have given to the Trustee written notice as provided in Section 11.12 hereof, or at any time after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section 11.13 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

Section 11.14. **Appointment of Successor Trustee by Court.** In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article XI prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within sixty (60) days after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee.

Section 11.15. **Acceptance of Trust by Successor Trustee.** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all

the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

Section 11.16. **Merger or Consolidation of Trustee With Another Person.** Any Person into which any Trustee hereunder may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

Section 11.17. **Action of Trustee During Existence of an Event of Default.** Subject to Section 11.09 hereof, the Trustee shall, during the existence of an Event of Default known to the Trustee, exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances.

Section 11.18. **Notice of an Event of Default.** Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to a Responsible Officer of the Trustee, the Trustee shall within thirty (30) days give written notice thereof to the Issuer, to the Rating Agency, and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to mail any such notice to the Rating Agency, and any such failure shall not affect the validity of actions which are the subject of such notice.

Section 11.19. **Trustee May Intervene.** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of a majority in aggregate principal amount of Bonds then Outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

Section 11.20. **Unclaimed Moneys.** In case any moneys deposited with the Trustee for the payment of the principal of and interest on any Bond remains unclaimed for three (3) years after such principal or interest has been paid or has become due and payable, the Trustee shall disburse the moneys in accordance with Title 6 of the Texas Property Code. Thereupon, the Trustee and the Issuer shall be released from any further liability with respect to payment of such purchase price or principal, premium, or interest and the Holder shall be entitled (subject to any applicable statute of limitations) to look only to the Borrower as an unsecured creditor for the payment thereof. The Trustee shall comply with the reporting requirements of Chapter 74 of the Texas Property Code.

Section 11.21. **Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as a

trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Bond Loan Agreement, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate or co-trustee. The following provisions of this Section 11.21 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Approval in writing from the Issuer shall be required prior to the appointment of the separate or co-trustee by the Trustee. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law and so approved by the Issuer, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 11.22. **Financing Statements.** Pursuant to Section 5.05 of the Bond Loan Agreement, the Borrower shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with the Texas Uniform Commercial Code to the extent any such security interest may be perfected by filing. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code. The Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Trustee. Unless the Trustee shall have been notified in writing by the Issuer or a Bondholder that the initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 11.22 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all continuation statements hereunder.

Section 11.23. **State Law Verifications.** The Trustee makes the following representation and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code (the “Government Code”), as heretofore amended, in entering into this Indenture. As used herein, “affiliate” means an entity that controls, is controlled by, or is under common control with the Trustee 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 Indenture shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Indenture, notwithstanding anything in this Indenture to the contrary.

(a) The Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153, Government Code, or Section 2270.0201, Government Code. The foregoing representation excludes the Trustee 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.

(b) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture. As used in the foregoing verification, “*boycott Israel*” has the meaning provided in Section 2271.001, Government Code.

(c) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Indenture. As used in the foregoing verification, “*discriminate against a firearm entity or firearm trade association*” has the meaning provided in Section 2274.001(3), Government Code.

(d) The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Indenture. As used in the foregoing verification, “*boycott energy companies*” has the meaning provided in Section 2276.001(1), Government Code.

The Trustee represents and verifies that it is aware of the Texas Office of the Attorney General’s (the “*Texas Attorney General*”) All Bond Counsel Letter, dated November 1, 2023, that is available on the website of the Texas Attorney General using the following link: ([https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC Letter-11-01-2023.pdf](https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter-11-01-2023.pdf)) and the Texas Attorney General’s supplemental All Bond Counsel Letter, dated November 16, 2023, that is available on the website of the Texas Attorney General using the following link: ([https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC Letter-11-06-2023.pdf](https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/public-finance/ABC%20Letter-11-06-2023.pdf)). The Trustee represents and verifies that the Trustee has (i) on file a standing letter (“*Standing Letter*”) acceptable to the Texas Attorney General addressing the representations and verifications in this Section 11.23(a) through (d), and (ii) will, upon request of the Issuer or Bond Counsel on behalf of the Issuer, provide the Issuer and Bond Counsel with a copy of its Standing Letter. The Trustee further represents and verifies that its Standing Letter

remains in effect as of the date of this Indenture and that the Texas Attorney General has not notified the Trustee that a determination has been made that the Trustee boycotts energy companies or has a policy that discriminates against firearm entities or firearm trade associations under the laws of the State of Texas. Upon request of the Issuer or Bond Counsel on the Issuer's behalf, the Trustee shall provide additional written certifications to the Issuer and Bond Counsel (which may be by email) to the effect that the Texas Attorney General may continue to rely on the Standing Letter and the statutory representations and covenants contained in this Indenture through the Closing Date (the "*Bringdown Verification*"). The Issuer reserves the right, and the Trustee hereby expressly authorizes the Issuer, to provide such Bringdown Verifications to the Texas Attorney General.

## ARTICLE XII

### MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

Section 12.01. **Limitation on Amendments to this Indenture.** This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article XII and only by a written instrument executed by each of the parties hereto.

Section 12.02. **Amendments to Indenture and Bond Loan Agreement Not Requiring Consent of Bondholders.**

(a) The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into Supplements or other agreements supplemental to this Indenture and the Bond Loan Agreement as follows:

(1) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;

(2) to cure any formal defect, omission or ambiguity in this Indenture or the Bond Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;

(3) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

(4) to add to the covenants and agreements of the Issuer in this Indenture or the Bond Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(5) to add to the limitations and restrictions in this Indenture or the Bond Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Bond Loan Agreement as theretofore in effect;

(6) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or

(7) to modify, amend or supplement this Indenture or the Bond Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

(b) Before the Issuer shall enter into any Supplement to this Indenture pursuant to this Section 12.02, there shall have been filed with the Trustee an opinion of Bond Counsel to the effect that such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption such Supplement will be valid and binding upon the Issuer in accordance with its terms. The opinion of Bond Counsel filed with the Trustee shall also include a Favorable Opinion of Bond Counsel. The Trustee may conclusively rely upon such opinion.

(c) The Trustee shall send written notice to the Rating Agency, the Borrower and the Equity Investor of any amendment to this Indenture or the Bond Loan Agreement. The Trustee shall not, however, be subject to any liability to any bondholder or any party to the transaction by reason of its failure to provide any such notice, and any such failure shall not affect the validity of actions which are the subject of such notice.

**Section 12.03. Amendments to Indenture Requiring Consent of Bondholders.**

(a) Subject to the terms and provisions contained in this Section 12.03 and not otherwise, the Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplement to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; provided, however, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such Supplements. This Section 12.03 shall not limit or otherwise affect the ability of the Issuer to enter into Supplements to this Indenture without the consent of the Bondholders pursuant to Section 12.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any Supplement for any of the purposes of this Section 12.03, the Trustee shall cause written notice of the proposed Supplement to be given to all Holders of the Bonds; *provided, however*, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant

hereto. Such notice shall briefly set forth the nature of the proposed Supplement and shall state that a copy thereof is on file at the Trust Office of the Trustee for inspection by all Bondholders.

(c) No later than 120 days after the date of giving such notice, the Issuer and the Trustee may enter into such Supplement in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of at least 66 2/3% in aggregate principal amount of the Bonds then Outstanding (or 100% if required hereunder) and (ii) an opinion of Bond Counsel to the effect that (1) such Supplement is authorized or permitted by this Indenture and complies with the terms hereof, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms, and (2) the effectiveness of the Supplement will not affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(d) If the Holders of at least the percentage of Bonds required by this Section 12.03 shall have consented to and approved the Supplement as herein provided, no Holder of any Bond shall have any right to object to such Supplement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

(e) Upon the effectiveness of any Supplement entered into pursuant to the provisions of this Section 12.03, this Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

Section 12.04. **Supplemental Indentures Part of Indenture.** Any Supplement entered into in accordance with the provisions of this Article XII shall thereafter form a part of this Indenture and all the terms and conditions contained in any such Supplement as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

Section 12.05. **Required Consent.** Notwithstanding anything herein to the contrary, the Trustee shall not be required to enter into or consent to any Supplement or any amendment of any other Document that would materially adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes.

Section 12.06. **Amendments to Documents Requiring Consent of Bondholders.** Except as provided in Section 12.02 hereof, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in Section 12.03 hereof. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided

by Section 12.03 hereof with respect to Supplements. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office of the Trustee for inspection by all Bondholders.

## ARTICLE XIII

### MISCELLANEOUS

Section 13.01. **The Issuer's Successors.** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

Section 13.02. **Indenture for Benefit of the Issuer, Trustee and Bondholders.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, other than the Issuer, the Trustee, and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Trustee and the Holders of the Bonds; provided that this Indenture shall also be for the benefit of the Borrower, and the Borrower shall be deemed to be a third-party beneficiary of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower.

Section 13.03. **Severability.** In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

Section 13.04. **Limitation of Liability of the Issuer and Its Officers, Employees and Agents.**

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

(b) No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except as may be payable from the payments by the Borrower under the

Bond Loan Agreement or the Note and the proceeds of the Bonds and the other amounts held as part of the Trust Estate under this Indenture. No failure of the Issuer to comply with any term, condition, covenant, or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the payments by the Borrower under the Bond Loan Agreement or proceeds of the Bonds or the other amounts held as part of the Trust Estate under this Indenture. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein, provided that no costs, expenses, or other monetary relief shall be recoverable from the Issuer except as may be payable from the Trust Estate or from the proceeds of the Bonds or from the other amounts held as part of the Trust Estate under this Indenture.

(c) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant, or agreement contained in this Indenture against any past, present or future officer, director, member, employee, or agent of the Issuer, or of any successor agency, as such, either directly or through the Issuer or any successor agency, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees, or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution of this Indenture and the issuance of such Bonds.

(d) Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(e) Neither the members of the governing body of the Issuer nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds are issued pursuant to the Act, and the Bonds shall so state on their face, and shall state that the Bonds shall not be a debt of the Issuer, or the State, or any political subdivision thereof; and none of the Issuer, the State or any political subdivision thereof shall be liable thereon; nor in any event shall such Bonds or obligations be payable out of any funds or properties other than those of the Issuer identified herein.

Section 13.05. **Governing Law.** The laws of the State shall govern the construction of this Indenture and of all Bonds issued hereunder. The parties hereby (i) irrevocably submit to the exclusive jurisdiction of any federal or state court sitting in the State, (ii) waive any objection to laying of venue in any such action or proceeding in such courts, and (iii) waive any objection that such courts are an inconvenient forum or do not have jurisdiction over any party

Section 13.06. **Notices; Publication of Notice.**

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

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

(c) The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which a Responsible Officer of the Trustee has actual notice, (b) any change in the identity of the Trustee, (c) any amendments, modifications, supplements or changes to this Indenture, the Bond Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (d) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (e) any change or notification of proposed change of the Mandatory Tender Date, (f) any partial prepayment of the Bond Loan or the giving of notice of the call for redemption of any Bonds, (g) any defeasance or acceleration of the Bonds hereunder, (h) any change in the Remarketing Agent, or the Lender of which the Trustee has actual knowledge, (i) any sale of Permitted Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date, (j) the occurrence of any monetary or other material default under the Bond Loan of which the Trustee has actual notice or (k) any material change in the investment of funds subject to the lien of this Indenture. The Trustee shall not, however, be subject to any liability to any Holder or any party to the transaction by reason of its failure to provide any such notice, and any such failure shall not affect the validity of actions which are the subject of such notice.

(d)

Section 13.07. **Trustee as Paying Agent and Bond Registrar.** The Trustee is hereby designated and agrees to act as Paying Agent and Bond Registrar for and in respect to the Bonds.

Section 13.08. **Execution of Instruments by Bondholders and Proof of Ownership of Bonds.** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be conclusively proved by the registration books kept under the provisions of Section 2.08 of this Indenture.

Nothing contained in this Section 13.08 shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which to it may seem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the Trustee pursuant to such request or consent.

Section 13.09. **Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

Section 13.10. **FHA Federal Laws and Requirements Control.** Notwithstanding anything in this Indenture or the Bond Loan Agreement to the contrary:

(a) The Borrower, the Trustee and the Issuer acknowledge that this Indenture, and any obligations of the Borrower hereunder, are subject and subordinate to the Lender Loan Documents. Notwithstanding any provision in this Indenture to the contrary, no obligations of the Borrower hereunder shall be payable except from (A) Surplus Cash (as defined in the HUD Regulatory Agreement), (B) funds that are not derived from (i) revenues of the Project (as defined in the Lender Mortgage) or (ii) any reserve or deposit made with the Lender or any other party as required by HUD in connection with the Lender Loan Documents, or (C) the Lender Collateral Deposit which has been deposited into the Collateral Fund by or at the direction of the Lender (collectively, “*Non-Project Sources*”). No claims or actions shall be made (or payable) under this Indenture against the Project, the proceeds of the Lender Borrower Note, or the assets of the Borrower, except from Non-Project Sources. In addition, the rights and obligations of the parties under this Indenture and all other documents evidencing, implementing, or securing this Indenture (collectively, the “*Subordinate Bond Documents*”) are and shall be subordinated in all respects to the rights and obligations of the parties to and under the Lender Loan Documents. In the event of any conflict between the provisions of (i) this Indenture or the Subordinate Bond Documents and (ii) the provisions of the Lender Loan Documents or the Program Obligations (as defined in the

Lender Mortgage), GNMA statutory, regulatory or administrative requirements, the provisions of the Lender Loan Documents, the Program Obligations or the GNMA statutory, regulatory or administrative requirements, as applicable, shall control. The provisions of this Section 13.10 shall control over any inconsistent provisions in this Indenture or the Subordinate Bond Documents.

(b) Any subsequent amendment to this Indenture or the Bond Loan Agreement is subject to prior written approval of HUD (so long as the Project is subject to a mortgage insured or held by HUD). No amendment to this Indenture or the Bond Loan Agreement shall conflict with the provisions of the Program Obligations.

(c) The Bonds are not a debt of the United States of America, HUD, FHA, GNMA or any other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

(d) There is no pledge hereunder or under the Bond Loan Agreement of the gross revenues or any of the assets of the Project.

(e) Neither a default under this Indenture nor under the Bond Loan Agreement shall constitute a default under the Lender Loan Documents related to the Project.

(f) Nothing contained herein or in the Bond Loan Agreement shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Lender Loan Documents related to the Project for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provision contained therein, or in regard to matters or questions arising under said Lender Loan Documents so long as any such amendment, change or modification shall not adversely affect the payment terms of the Bonds.

(g) None of the Issuer, the Trustee, or any of the owners of the Bonds has or shall be entitled to assert any claim against the Project, any reserves or deposits required by HUD in connection with the Project, or the rents or deposits or other income of the Project.

(h) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Lender Loan Documents.

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

(j) In the event of an assignment or conveyance of the Lender Loan to the Federal Housing Commissioner, subsequent to the issuance of the Bonds, all money, other than Bond proceeds, remaining in all funds and accounts other than the Rebate Fund and any other funds remaining under the Indenture after payment or provision for payment in full of debt service on the Bonds and the fees and expenses of the Issuer, Trustee, and other such parties unrelated to the

Borrower (other than funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be signed in its name by its authorized officer, and the Trustee has caused this Indenture to be signed in its name by its duly authorized officer, all as of the day and year first above written.

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY  
AFFAIRS, as Issuer

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

Name: James B. "Beau" Eccles

Title: Secretary to Board

*Issuer Signature Page to Trust Indenture*

TDHCA (Gulfway Manor)

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

**EXHIBIT A**  
**FORM OF BOND**

No. R- \_\_\_\_\_ \$ \_\_\_\_\_

**UNITED STATES OF AMERICA**  
**STATE OF TEXAS**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(GULFWAY MANOR)**  
**SERIES 2024**

Unless this Bond is presented by an authorized representative of the Securities Depository (as defined in the Indenture) to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of the Securities Depository (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of the depository), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

DATED DATE	INTEREST RATE	MATURITY DATE	CUSIP NUMBER
July 1, 2024	[INTEREST RATE]%	August 1, 2028	[CUSIP]

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

FOR VALUE RECEIVED, the Texas Department of Housing and Community Affairs (the “*Issuer*”), a public and official agency of the State of Texas (the “*State*”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of U.S. Bank Trust Company, National Association, a national banking association, as trustee, or its successor in trust (the “*Trustee*”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the initial delivery of the Bond until maturity, at the Interest Rate per annum identified above, or at the Remarketing Rate, as the case may be, payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed

by the Trustee to the registered owner hereof at his address as it appears on the registration books of the Issuer, or, upon the request of any registered holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered owner to the Trustee in writing, such interest to the maturity hereof being payable semi-annually on each February 1 and August 1, commencing February 1, 2025, in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE BOND LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THIS BOND AGAINST ANY PAST, PRESENT, OR FUTURE MEMBERS OF THE GOVERNING BODY OF THE ISSUER OR ANY OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF THE ISSUER, OR OF ANY SUCCESSOR TO THE ISSUER, AS SUCH, EITHER DIRECTLY OR THROUGH THE ISSUER OR ANY SUCCESSOR TO THE ISSUER, UNDER ANY RULE OF LAW OR EQUITY, STATUTE, OR CONSTITUTION OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, AND ALL SUCH LIABILITY OF ANY SUCH MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF, AND CONSIDERATION FOR, THE EXECUTION AND ISSUANCE OF THIS BOND.

This Bond is one of an issue of the \$[27,500,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Gulfway Manor) Series 2024 (the “*Bonds*”), of like date and tenor, except as to number and denomination, issued under and pursuant to the laws of the State and in particular Chapter 2306, Texas Government Code, as amended (the “*Act*”), and a resolution of the Issuer adopted on [June 13], 2024, for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping by Gulfway Housing Partners, LP, a Texas limited partnership (the “*Borrower*”), of a multifamily rental housing development consisting of approximately 151 units known as Gulfway Manor Apartments and located at 1750 Treyway Lane, Corpus Christi, Nueces County, TX 78412 (the “*Project*”). The proceeds of the Bonds are being loaned to the Borrower by the Issuer under a Loan Agreement dated as of July 1, 2024, between the Borrower and the Issuer (the “*Bond Loan Agreement*”) and evidenced by a Promissory Note dated the Closing Date from the Borrower to the Issuer (the “*Note*”).

The Bonds are issued under a Trust Indenture dated as of July 1, 2024 (the “*Indenture*”), between the Issuer and the Trustee, and, to the extent provided therein, are equally and ratably secured and entitled to the protection given by the Indenture. Pursuant to the Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Bond Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Bond Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund created pursuant to Section 4.01(b) of the Indenture, and from moneys deposited into the Collateral Fund created pursuant to Section 4.01(e) of the Indenture.

Reference is made to the Indenture, the Note and the Bond Loan Agreement and to all amendments and supplements thereto for a description of the property pledged and assigned and the provisions, among others, with respect to the nature and extent of the security, the rights, duties and other obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the rights of the holders of the Bonds and provisions for defeasance of such rights. Capitalized terms used herein have the same meaning as set forth in the Indenture. The terms and conditions set forth herein concerning payment and other rights and remedies of the owners of the Bonds are descriptive only and are subject in all cases to the terms and conditions as set forth in the Indenture.

This Bond is negotiable and is transferable, as provided in the Indenture, only upon the books of the Issuer kept at the office of the Trustee, by the registered owner hereof in person or by his duly authorized attorney, and may be exchanged for new Bonds of the same aggregate principal amount of authorized denominations, maturity and interest rate, in registered form, but only upon presentation and surrender of this Bond, all in the manner and subject to the limitations and conditions provided in the Indenture. The Issuer and the Trustee may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for all purposes; and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or integral multiples of \$1,000 thereafter.

The Bonds are subject to mandatory tender in whole and not in part on each Mandatory Tender Date (as defined in the Indenture), and shall be purchased at a price equal to 100% of the principal amount of such Bonds, plus accrued interest, if any to the applicable Mandatory Tender Date, and without premium, as set forth in the Indenture.

The Bonds are subject to redemption prior to maturity as provided in the Indenture.

In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds then outstanding under the Indenture may become or may be declared due and payable before the stated maturities thereof, together with the interest accrued thereon.

The Holder of this Bond shall have no right to enforce the provisions of the Indenture, or to institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. The Trustee shall treat the registered owner of this Bond as the Person exclusively entitled to payment of principal and interest, and the exercise of all rights and powers of the owner of this Bond.

In any case where the date of maturity of or an Interest Payment Date for this Bond shall not be a Business Day, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless either (1) the Certificate of Authentication hereon has been executed by the Trustee, or (2) the Comptroller's Registration Certificate hereon has been executed by an authorized representative of the Comptroller of Public Accounts of the State of Texas.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair or Vice Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer

(SEAL)

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

Title: [Vice] Chair

ATTEST:

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

Title: Secretary

**[Initial Bond Only]**

**[FORM OF COMPTROLLER'S CERTIFICATE]**

COMPTROLLER'S REGISTRATION CERTIFICATE

OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
STATE OF TEXAS

REGISTER NO. \_\_\_\_\_

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas and that this Bond has been registered by the Comptroller of the Public Accounts of the State of Texas.

WITNESS MY HAND AND SEAL OF OFFICE at Austin, Texas, this \_\_\_\_\_.

(COMPTROLLER'S SEAL)

Comptroller of Public Accounts  
of the State of Texas

**[Definitive Bonds Only]**

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the Indenture referred to in this Bond.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

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

Date of Authentication: \_\_\_\_\_, 20\_\_\_\_

**FORM OF ASSIGNMENT**

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto  
(Please Print or Type Name and Address of Assignee): \_\_\_\_\_

\_\_\_\_\_  
(Social Security or Taxpayer Identification Number: \_\_\_\_\_  
\_\_\_\_\_) the within Bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_

\_\_\_\_\_  
attorney to transfer the said Bond on the books of the within named issuer maintained by the  
Trustee for the registration thereof, with full power of substitution in the premises.

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever. The signature must be guaranteed.

Signature guaranteed by:

[Bank, Trust Company or Firm]

\_\_\_\_\_  
Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

**EXHIBIT B**  
**FORM OF REQUISITION**

BORROWER: GULFWAY HOUSING PARTNERS, LP

PROJECT: GULFWAY MANOR APARTMENTS

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

In the Amount of \$ \_\_\_\_\_

To: U.S. Bank Trust Company, National Association, as trustee

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 Request for Payment attached to this Requisition:

AMOUNT	SOURCE	PAYABLE TO:
	[identify name of Account and Fund]	[Borrower's account number]
		[third party payment/wire instructions must be attached]

REQUISITION – CONTENTS AND ATTACHMENTS

Borrower's Representations and Warranties

Contractor's Application and Certification for Payment (AIA Form G 702)

Requisitions and Invoices Supporting Application

**REPRESENTATIONS AND WARRANTIES**

1. To the Borrower's knowledge, no changes have been made in the Plans and Specifications that require and have not received the prior approval of any Governmental Authority having jurisdiction over the Project or any other parties from whom such approval is required.
2. To the Borrower's knowledge, the construction and equipping of the Project has been performed in accordance with the Plans and Specifications.

3. Funding of this Requisition shall be in accordance with the terms and provisions of (i) the Loan Agreement dated as of July 1, 2024 (the “*Agreement*”), and (ii) the Trust Indenture dated as of July 1, 2024, with respect to the Bonds (the “*Indenture*”).
4. All monies requisitioned by the Borrower for acquisition and construction and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor or other contractor or supplier or other party entitled to payment and, to 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.
5. All of the information submitted to the Trustee in connection with this Requisition is true and accurate as of the date of submission.
6. The representations and warranties set forth in the Documents are true and correct as of the date hereof with the same effect as if made on this date unless such representation or warranty relates to a specific time.
7. 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 of notice or both, would constitute an Event of Default on the part of the Borrower under the terms of the Documents, (ii) except as previously disclosed by the Borrower to the Issuer, the Borrower has not received notice from or been informed by any Governmental Authority 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 Project has not been constructed in accordance with all applicable requirements and (iii) the Documents are in full force and effect.
8. The Borrower represents and warrants that, following the disbursement by the Trustee of the aggregate amounts requested under these Requisitions, (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.
9. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Indenture or the Tax Exemption Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

BORROWER:

GULFWAY HOUSING PARTNERS, LP  
a Texas limited partnership

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

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

By: \_\_\_\_\_  
Stephen R. Whyte, President

Approved:

MERCHANTS CAPITAL CORP.

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

BRIDGEWATER BANK

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



**CONTRACTOR'S APPLICATION FOR PAYMENT**

## **REQUISITIONS AND INVOICES**

**EXHIBIT C**

**FORM OF REQUISITION  
(Costs of Issuance)**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
Multifamily Housing Revenue Bonds  
(Gulfway Manor)  
Series 2024**

Dated: \_\_\_\_\_

Costs of Issuance Requisition No. \_\_\_\_

To: U.S. Bank Trust Company, National Association as trustee (the “*Trustee*”) under the Trust Indenture dated as of July 1, 2024, between the Texas Department of Housing and Community Affairs and the Trustee (the “*Indenture*”).

Terms used herein and not otherwise defined shall have the meanings given to such terms in the Indenture.

The undersigned, Borrower Representative of Gulfway Housing Partners, LP (the “*Borrower*”), hereby certifies to you that he/she is authorized and empowered to submit this Requisition to you and that attached hereto as Schedule “A” is a schedule of Costs of Issuance incurred in connection with the issuance of the above described Bonds, including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned’s information and belief, such amounts are true and correct.

This Requisition is being delivered to you in accordance with the referenced Indenture pursuant to which the Bonds were issued. You are hereby instructed to withdraw from the Cost of Issuance Fund created under the Indenture the amounts shown across from each payee listed on Schedule “A” hereto and pay such amounts to each such payee by wire transfer, check delivered by first class mail or by such other means as is acceptable to you and any such payee.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has signed this Requisition by and on behalf of the Borrower.

BORROWER:

GULFWAY HOUSING PARTNERS, LP  
a Texas limited partnership

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

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

By: \_\_\_\_\_  
Stephen R. Whyte, President

**SCHEDULE “A”**

**SCHEDULE OF COSTS OF ISSUANCE**

PAYEE	AMOUNT