

# **Texas Department of Housing and Community Affairs**



## **Board Book**

**Thursday, June 12, 2025**

**10:00 AM**

**Dewitt C. Greer State Highway Building  
125 E. 11th Street  
Williamson Board Room  
Austin, TX 78701**

## **Governing Board**

*Leo Vasquez III, Chair  
Kenny Marchant, Vice-Chair  
Ajay Thomas, Member  
Anna Maria Farias, Member  
Holland Harper, Member  
Cindy Conroy, Member*

**Texas Department of Housing and Community Affairs  
Programmatic Impact Fiscal Year 2025**

**CY25 9% LIHTC Program**

- Total Applications Rec'd: 97
- Total Market Rate Units Proposed: 300
- Total Low-Income Units Proposed: 6,864
- Total HTCs Requested: \$154,973,052

*Construction Type:*

- Total Proposed New Construction Projects: 74
- Total Proposed Reconstruction Projects: 6
- Total Proposed Rehab Projects: 17

**CY25 4% LIHTC Program**

**Active or Approved Applications:**

- Total Applications: 46
- Total Units Proposed: 10,541

**Closed Applications:**

- Total Applications: 0
- Number of Low-Income Units Proposed: 0

*Construction Type*

- Total Proposed New Construction Projects: 24
- Total Proposed Rehab/Reconstruction Projects: 22

**Owner Financing and Down Payment**

- 30-year, fixed interest rate mortgage loans
- Mortgage credit certificates
- Down payment, closing cost assistance
- Homebuyer education

*Programs:*

- Single Family Homeownership

Expended Funds: \$437,228,639  
Total Households Served: 1,799

**Energy Related Assistance**

- Utility bill payment assistance
- Energy consumption education
- Weatherization for energy efficiency

*Programs:*

- Comprehensive Energy Assistance Program (CEAP)
- Weatherization Assistance Program (WAP)

Expended CEAP Funds: \$4,205,551  
Total Households Served: 11,514

**Homelessness Services**

- Shelter building rehabilitation, conversion, operations
- Essential services e.g., health services, transportation, job training, employment services

*Programs:*

- Emergency Solutions Grant Program (ESG)
- Homeless Housing and Services Program (HHSP)

Expended Funds: \$4,205,551  
Total Individuals Served: 11,514

**Rental Assistance**

- Short, long term rent payment help
- Assistance linked with services, Transitional assistance

*Programs:*

- Tenant-Based Rental Assistance (TBRA)
- Section 8 Housing Choice Vouchers
- Section 811

Expended Funds: \$12,162,097  
Total Households Served: 2,197

**Owner Rehabilitation Assistance**

- Home rehabilitation, reconstruction
- Manufactured housing unit replacement
- Accessibility modifications e.g., ramp, grab bar installation

*Programs:*

- Homeowner Reconstruction Assistance Program (HRA)\*
- Amy Young Barrier Removal Program Expended

Funds: \$10,841,284  
Total Households Served: 111

**Supportive Services**

Provides administrative support for essential services for low-income individuals through Community Action Agencies

*Program:*

- Community Services Block Grant Program (CSBG)

Expended Funds: \$15,924,459  
Total Individuals Served: 99,510

**Single Family Development**

- Single family development, reconstruction, rehabilitation
- NSP, Do-it-yourself, "sweat equity" construction (bootstrap), rehabilitation, Contract for Deed refinance

*Programs:*

- Single Family Development Program (SFD)\*
- Contract for Deed (CFD)

Expended Funds: \$1,325,500  
Total Households Served: 27

**Total Expended Funds: \$626,373,426**

**Total Households Served: 167,575**

All FY2025 data as reported in TDHCA's 2025 performance measures.

*Note: Some households may have been served by more than one TDHCA program. For some programs, allocation is used as a proxy for expenditures. Because of timing of funds request, the funds expended for the quarter may be readjusted substantially by year end.*

**Reporting Period: 9/1/2024-2/28/2025** (4% Program figures as of 3/10/2025; 9% LIHTC Program figures as of 3/19/2025)

\* Administered through the federally funded HOME Investment Partnerships Program

**CALL TO ORDER****ROLL CALL****CERTIFICATION OF QUORUM**

**Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.**

**Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.**

**CONSENT AGENDA**

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

**EXECUTIVE**

1. Presentation, discussion, and possible action on the Board meeting minutes summary for May 8, 2025 Beau Eccles

**ASSET MANAGEMENT**

2. Presentation, discussion, and possible action regarding a Material Amendment to the Application for Riverview Manor (HTC #22159/23808, HOME #24505) Rosalio Banuelos
3. Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Pine Creek Senior Village (HTC #24115) Rosalio Banuelos
4. Presentation, discussion, and possible action regarding a Material Application Amendment to the Housing Tax Credit Application for 2910 Motley Senior Living (HTC #24030) Rosalio Banuelos

**LEGAL**

5. Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Waters at Willow Run (HTC 13600 / Bond 13600B / CMTS 4888) Sascha Stremmler

**CONSENT AGENDA REPORT ITEMS**

6. TDHCA Quarterly Status Report on Temporary Allocations - June 2025 Brooke Boston

7. Media Analysis and Outreach Report, April 2025

Michael Lyttle

## ACTION ITEMS

Executive Session: the Chair may call an Executive Session at this point in the agenda in accordance with the below-cited provisions

## EXECUTIVE

8. Executive Director's Report

Bobby Wilkinson

## INTERNAL AUDIT

9. Report on the Meeting of the Internal Audit and Finance Committee

Ajay Thomas  
Board Member

## FINANCIAL ADMINISTRATION

10. Presentation, discussion, and possible action on the SFY 2026 Operating Budget

Paul Ford

11. Presentation, discussion, and possible action on the SFY 2026 Housing Finance Division Budget

Paul Ford

## FUNDING ANNOUNCEMENTS AND AWARDS

12. Presentation, discussion, and possible action regarding the Issuance of a Multifamily Housing Governmental Note (The Legacy on Kiest) Series 2025, Resolution No. 25-022, and a Determination Notice of Housing Tax Credits

Teresa Morales

13. Presentation, discussion, and possible action on the 2026 Low Income Home Energy Assistance Program State Plan and Awards

Michael De Young

14. Presentation, discussion, and possible action on the 2026-2027 Community Services Block Grant State Plan and Awards

Michael De Young

15. Presentation, discussion, and possible action on the approval of a loan for 2910 Motley Senior Living

Connor Jones

## MULTIFAMILY BOND

16. Presentation, discussion and possible action regarding a waiver of 10 TAC §11.101(b)(1)(A)(vii) of the Qualified Allocation Plan (QAP) relating to the percentage of efficiency and/or one-bedroom units for Lofts at Creekview.

Teresa Morales

## ASSET MANAGEMENT

17. Presentation, discussion, and possible action regarding a Material Amendment to the Land Use Restriction Agreements for Villa Elaina (HTF #853338) and The Cornerstone (HTF #1000358)

Rosalio Banuelos



18. Presentation, discussion, and possible action regarding a Material Amendment for Sunset Ridge formerly Green Manor Apartments (HTC #24261)

Rosalio Banuelos

**LEGAL**

19. Presentation, discussion, and possible action on recommendation to debar Rise Residential Construction Riverside, LLC, Melissa Fisher, Sonoma Housing Advisors, LLC, and James R. (Bill) Fisher, relating to Riverside Heights Senior Living AKA Legacy Riverside Senior Living Community (HTC #20613 / Bond #20613B / CMTS 5659)

Sascha Stremmler

**MULTIFAMILY FINANCE**

20. Presentation, discussion, and possible action on point penalties for 2024 9% Housing Tax Credit Applications related to the Readiness to Proceed scoring item
21. Presentation, discussion, and possible action on an appeal of the termination of Trinity East Senior (25090)
22. Presentation, discussion, and possible action on a scoring appeal for Meadow Heights (25065)
23. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for three Buena Vida Developments
24. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for 2910 Motley Senior Living and 3606 S Cockrell Hill Road Senior
25. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Bailey at Stassney
26. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Bailey at Berkman
27. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Stella Haven
28. Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Ovetta Rosedale

Cody Campbell

Cody Campbell

Cody Campbell

Josh Goldberger

Josh Goldberger

Josh Goldberger

Josh Goldberger

Josh Goldberger

Josh Goldberger

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| 29. | Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Georgian Oaks   | Josh Goldberger |
| 30. | Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Dashwood Trails | Josh Goldberger |
| 31. | Presentation, discussion, and possible action to issue a list of approved Applications for 2025 Housing Tax Credits (HTC) in accordance with Tex. Gov't Code §2306.6724(e)                                    | Cody Campbell   |

**PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH THERE WERE POSTED AGENDA ITEMS**

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

**OPEN SESSION**

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

**ADJOURN**

To access this agenda and details on each agenda item in the board book, please visit our website at [www.tdhca.texas.gov](http://www.tdhca.texas.gov) or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on X (Twitter).

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Danielle Leath, 512-475-4606, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Danielle Leath, al siguiente número 512-475-4606 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

There is not a remote online or telephone option for public participation in this meeting, so those wishing to make public comment during the meeting must appear in person. This meeting will, however, be streamed online for public viewing.



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1028**

**Agenda Date: 6/12/2025**

**Agenda #: 1.**

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Presentation, discussion, and possible action on the Board meeting minutes summary for May 8, 2025

**RECOMMENDED ACTION**

Approve the Board meeting minutes summary for May 8, 2025

**RESOLVED**, that the Board meeting minutes summary for May 8, 2025, is hereby approved as presented.

**Texas Department of Housing and Community Affairs Governing Board**  
**Board Meeting Minutes Summary**  
**May 8, 2025**

On Thursday, the eighth day of May 2025, at 10:00 a.m., the regular meeting of the Governing Board (Board) of the Texas Department of Housing and Community Affairs ("TDHCA" or "the Department") was held at the Dewitt C. Greer State Highway Building, Williamson Board Room, 125 E. 11<sup>th</sup> Street, Austin, Texas 78701.

The following members, constituting a quorum, were present and voting:

- Leo Vasquez, III, Chair
- Kenny Marchant, Vice Chair
- Cindy Conroy
- Anna Maria Farias
- Holland Harper
- Ajay Thomas

Mr. Vasquez served as Chair, and James "Beau" Eccles served as Secretary.

1) The Board approved the Consent Agenda (items 1-10) and Consent Agenda Report Item (item 11) as presented.

2) Action Item 12 – the Executive Director's Report – was presented by Bobby Wilkinson, TDHCA Executive Director. The Board heard the report and took no further action.

3) Action Item 13 – Presentation, discussion, and possible action on Resolution No. 25-021 amending previously adopted resolution relating to the Issuance of Multifamily Housing Revenue Bonds (The Ridge at Loop 12) Series 2025A-1, Series 2025A-2, and Taxable Bonds Series 2025B – was presented by Teresa Morales, TDHCA Director of Multifamily Bonds, with additional information from Mr. Wilkinson. The Board unanimously adopted staff recommendation to approve the bond resolution.

4) Action Item 14 – Report on legislation from the Regular Session of the 89th Texas Legislature – was presented by Michael Lyttle, TDHCA Director of External Affairs. Additional information was provided by Mr. Wilkinson and Cody Campbell, TDHCA Director of Multifamily Finance. The Board heard the report and took no further action.

5) Chairman Vasquez exercised his right to take up agenda items out of order and Mr. Campbell presented Action Item 24 – Presentation, discussion, and possible action on an appeal of the termination of Trinity East Senior. Additional information was provided by Mr. Wilkinson and Mr. Eccles. Following public comment (listed below), the Board unanimously adopted a

motion to table the item and allow the application to work through the agency's administrative deficiency process.

- Mr. Lyttle read letters into the record in support of the appeal from The Honorable Borris Miles, Texas State Senator, District 13; and The Honorable Jolanda "Jo" Jones, Texas State Representative, District 147
- Jamie Bryant, Houston Housing Authority, provided comments in support of the appeal
- Mike Nichols, City of Houston Housing and Community Development, provided comments in support of the appeal
- Barry Palmer, Coats Rose attorney representing the Houston Housing Authority, provided comments in support of the appeal
- Marilyn White, Trinity East United Methodist Church, provided comments in support of the appeal
- Neal Rackleff, Houston Housing Authority, provided comments in support of the appeal

6) Action Item 15 – Report on Third Party Request for Administrative Deficiency under 10 TAC §11.10 of the 2025 Qualified Allocation Plan – was presented by Mr. Campbell with additional information from Mr. Wilkinson. The Board heard the report, heard public comment (listed below), and took no further action.

- Robbye Meyer, Arx Advantage, provided comments on the item

7) Action Item 16 – Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for The Manchester (HTC #19471) – was presented by Rosalio Banuelos, TDHCA Director of Asset Management, with additional information from Mr. Wilkinson. The Board unanimously adopted staff recommendation to approve the material amendment request.

8) Action Item 17 – Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Lakeway Apartment Homes (HTC #19427) – was presented by Mr. Banuelos. Following public comment (listed below), the Board by a 4-2 vote (Members Marchant and Harper voted nay) adopted staff recommendation to approve the material amendment request.

- Melissa Fisher, RISE Residential, provided comments in support of staff recommendation

9) Action Item 18 – Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application and Land Use Restriction Agreement for Lakeview Pointe Senior Living (HTC #17435) – was presented by Mr. Banuelos. The Board by a 5-1 vote (Member Harper voted nay) adopted staff recommendation to approve the material amendment request.

10) Action Item 19 – Presentation, discussion, and possible action on the draft 2025-2029 State of Texas Consolidated Plan – was presented by Jeremy Stremmler, TDHCA Manager of the Housing Resource Center. The Board unanimously approved staff recommendation to release the plan for public comment.

11) Action Item 20 – Presentation, discussion, and possible action on the proposed amendments to 10 TAC Chapter 10 Subchapter E, Post Award and Asset Management Requirements, §10.406 Ownership Transfers, and directing their publication for public comment in the *Texas Register* – was presented by Mr. Banuelos. The Board unanimously approved staff recommendation to publish the amendments for public comment in the *Texas Register*.

12) Action Item 21 – Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for New Hope Housing Wheatley – was presented by Mr. Campbell. Following public comment (listed below), the Board unanimously adopted staff recommendation to approve the force majeure request.

- Joy Horak-Brown, New Hope Housing, provided comments in support of staff recommendation
- Jason Aldridge, National Equity Fund, provided comments in support of staff recommendation

13) Action Item 22 – Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Town East Trails – was presented by Mr. Campbell. The Board unanimously adopted staff recommendation to approve the force majeure request.

14) Action Item 23 – Presentation, discussion, and possible action on a request for an extension of the previously approved deadline to Place in Service for Commons at St. Anthony's – was presented by Mr. Campbell. Following public comment (listed below), the Board adopted staff recommendation to approve the extension request.

- Kent Hance, KRS Housing and the applicant, provided comments in support of staff recommendation
- Mr. Lyttle indicated that TDHCA received letters of support for staff recommendation from The Honorable Kevin Sparks, Texas State Senator, District 31; The Honorable Caroline Fairly, Texas State Representative, District 87; The Honorable John Smithee, Texas State Representative, District 86; and The Honorable Cole Stanley, Mayor of Amarillo.

15) During the portion of the meeting for public comment on matters other than items for which there were posted agenda items, the following person made comment:

- Jake Mooney, affordable housing developer

Except as noted otherwise, all materials presented to and reports made to the Board were approved, adopted, and accepted. These minutes constitute a summary of actions taken. The full transcript of the meeting, reflecting who made motions, offered seconds, etc., questions and responses, and details of comments, is retained by TDHCA as an official record of the meeting.

There being no further business to come before the Board, the meeting adjourned at 12:38 p.m. The next meeting is scheduled for Thursday, June 12, 2025.

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Secretary

Approved:

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Chair





## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

**File #: 1027**

**Agenda Date: 6/12/2025**

**Agenda #: 2.**

Presentation, discussion, and possible action regarding a Material Amendment to the Application for Riverview Manor (HTC #22159/23808, HOME #24505)

#### **RECOMMENDED ACTION**

**WHEREAS**, Riverview Manor (the Development) received a 9% Housing Tax Credit (HTC) award in 2022 with a Force Majeure reallocation in 2023 and Multifamily Direct Loan (MFDL) HOME funds in 2025 to construct 36 units of multifamily housing for the elderly in Kerrville, Kerr County;

**WHEREAS**, to remove the portion of the property that contains the floodway, Riverview Manor, L.P. (Development Owner or Owner) requests approval to decrease the size of the Development site from 2.17 acres to 1.486 acres, which results in a 46.03% increase in residential density from 16.590 units per acre to 24.226 units per acre;

**WHEREAS**, Board approval is required for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F), and the Owner has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, was not reasonably foreseeable or preventable by the Owner at the time of Application, and would not have adversely affected the selection of the Application;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment of the Application for Riverview Manor is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

#### **BACKGROUND**

Riverview Manor received a 9% Housing Tax Credit (HTC) award in 2022 with a Force Majeure reallocation of credits in 2023 followed by an award of MFDL HOME funds in 2025 to construct 36 units of multifamily housing for the elderly, of which all units are designated as low-income units, in Kerrville, Kerr County. In a letter dated May 15, 2025, Brian Kimes, the representative for the Owner, requested approval for a material amendment to the Application. The amendment is for a 46.03% increase in the residential density, from 16.590 units per acre to

24.226 units per acre, which requires approval by the Board under Tex. Gov't Code §2306.6712 (d)(6) and 10 TAC §10.405(a)(4)(F). The change is a result of a decrease in the Development site acreage from 2.17 to 1.486 acres, a reduction of 0.684 acre (31.52%).

The original site plan at application included a floodway, which is disallowed by HUD, that was to remain undeveloped. The Board approved an award of HOME funds in March 2025. However, the Owner has indicated that HUD funds are not allowed to be used for developments that contain floodway on the property. To remedy this, the parcel is being split to remove the portion that contains the floodway area. Nothing else about the Development has changed.

The proposed site change was approved by the City of Kerrville, and a Minor Re-Plat was filed on May 12, 2025. The Owner is committed to maintaining the parcel that is in the floodway and it will serve as additional green space. The enclosed table compares the site plan of the Development at Application and the revised site after the amendment.

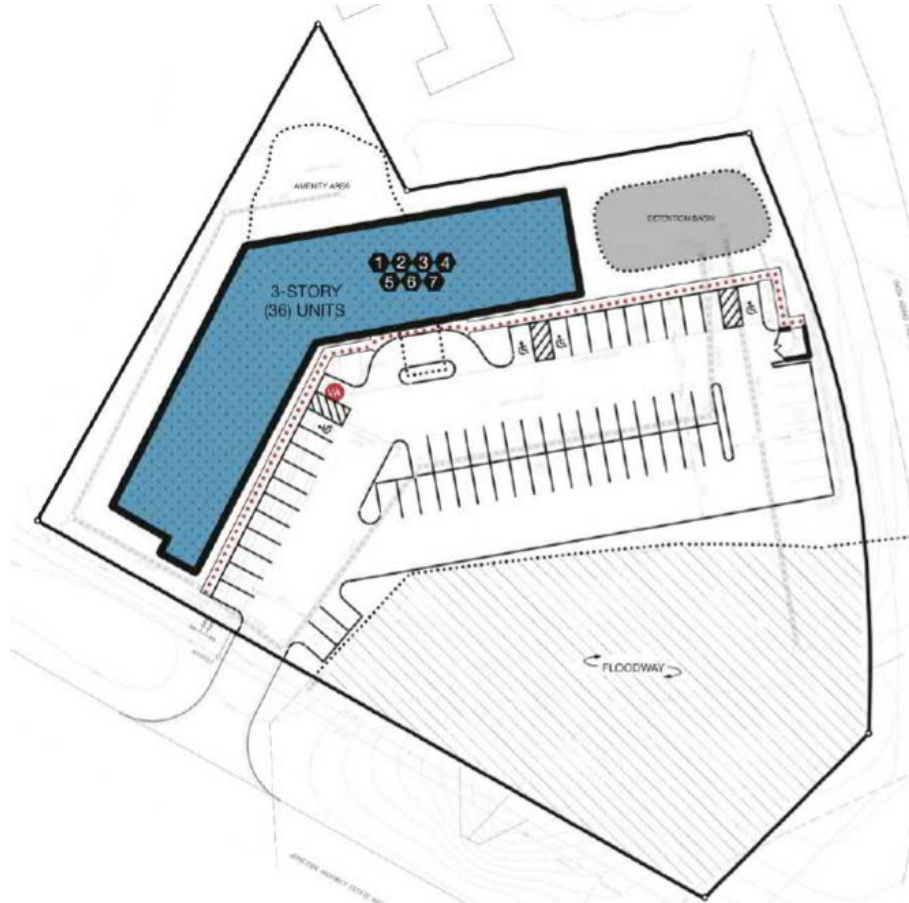
The requested amendment does not materially alter the Development in a negative manner and would not have affected the selection of the Development for the HTC award.

Staff recommends approval of the requested material amendment to the Application.

**Material Alterations as defined in Texas Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F)**

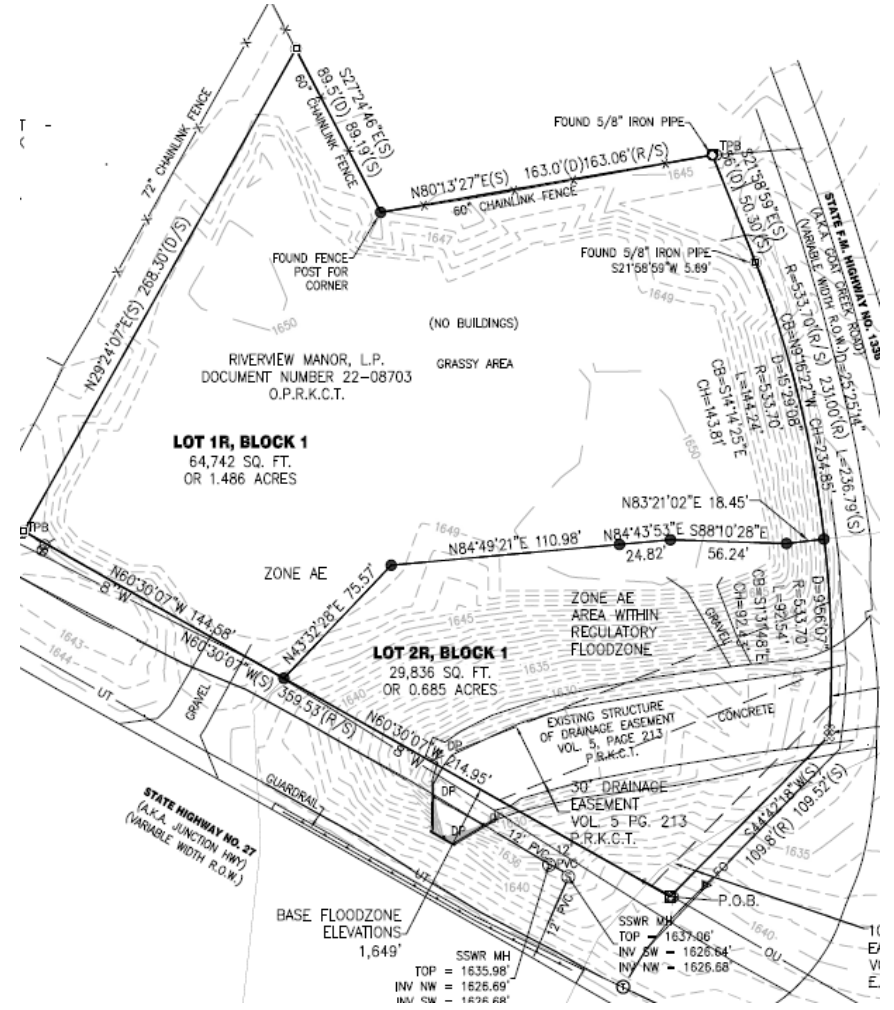
**Application**

Density: 16.590 units/acre (36 units on a 2.17 acre tract)



**Amendment**

Density: 24.226 units/acre (36 units on a 1.486 acre tract)





**JES DEV CO, INC**

May 15, 2025

Mr. Rosalio Banuelos  
Director of Multifamily Asset Management  
Texas Department of Community Affairs  
221 East 11th Street  
Austin, TX 78701

Re: Material Amendment Regarding a Change in Density for Riverview Manor,  
Kerrville, Kerr County, TDHCA# 22159/23808

Dear Mr. Banuelos:

We are writing to request a material amendment change in density for Riverview Manor, TDHCA #22159/23808932. Riverview Manor, L.P. was approved by the TDHCA board to receive an award of MFDL-HOME funds under the NOFA 2024-2 in March of 2025, but HUD funds are not allowed to be used for developments that contain floodway on the property. To remedy this, we are splitting the parcel to remove the portion of the property that contains the floodway. The way the parcel is split is shown in Exhibit A. There was no intention or plan to develop any portion of the property that contained the floodway, but the floodway area is now being separated to allow us to use the previously approved MFDL-HOME funds. The total size of the original site was 2.171 acres, but once 0.685 acres of floodway is removed, the size of the remaining buildable acreage will be 1.486 acres. There will continue to be the same 36 total units as originally proposed, so the density has increased from 16.6 units per acre to 24.2 units per acre. The increased density is still allowable under Kerrville zoning requirements. The density increased by 46%, which is greater than the 15% threshold allowable by staff, thus we are seeking TDHCA board approval. Nothing about the development has changed, except for the density of the parcel that the building is being constructed on.

We have received approval to split the parcel with the City of Kerrville and separate the developable portion of the lot from the portion of the lot with floodway. The City handled this as a minor plat amendment and the approval process has been completed administratively. The recorded minor replat has been included in Exhibit B. We have

committed to maintaining the parcel that is in the floodway and it will serve as additional green space for the residents of Riverview Manor.

Please let us know if you need any additional information at this time.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. Kimes", with a stylized, cursive script.

Brian Kimes

Authorized Representative

## Exhibit A

### Updated ALTA Survey



[illegible]

MY COMMISSION EXPIRES: \_\_\_\_\_

DREW PAXTON, DIRECTOR OF DEVELOPMENT SERVICES

DREW PAXTON, DIRECTOR OF DEVELOPMENT SERVICES

KYLE BURROW, CITY ENGINEER

## OWNER'S TITLE

B. CITY OF KERRVILLE PLAT FILE NO. 2025-015

## NOTARY PUBLIC IN AND FOR THE STATE OF MISSOURI

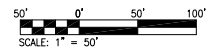
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NADENE ALFORD, KERR COUNTY CLERK

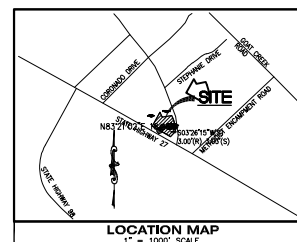
<u>OWNER</u>	<u>SURVEYOR</u>
RIVERVIEW MANOR, L.P.	COLE & ASSOCIATES, INC.
7733 FORSYTH BOULEVARD, SUITE 1600	TERRY D. WESTERMAN R.P.L.S.

7733 FORSYTH BOULEVARD, SUITE 1600  
CLAYTON, MO 63015  
(737) 228-4962

TERRY D. WESTERMAN R.P.L.S.  
401 S. 18TH STREET, SUITE 200  
ST. LOUIS, MISSOURI 63103  
(972) 624-6000

**MINOR RE-PLAT**

LOT 1R & LOT 2R, BLOCK 1  
HI-HO ADDITION  
2.17 ACRE TRACT  
BEING PART OF LOT 1, BLOCK 1  
FOXWORTH-GALBRAITH SUBDIVISION  
OF SURVEY NO.122 OF THE P.R.  
OLIVER SURVEY  
ABSTRACT NO. 265  
CITY OF KERRVILLE  
KERR COUNTY, TEXAS



<div style="display: flex; justify-content: space-between;"> <div> <p>DESIGN/DRAWN BY</p> <p>DRAWN BY: WTB</p> <p>CHECKED BY: DLJ/TDW</p> <p>DRAWING SCALE: 1" = 50'</p> <p>DATE: 04/04/2025</p> <p>Job Number: 22-0031</p> <p>Sheet Number: 1 OF 1</p> </div> <div> <p>ST. LOUIS 1001 N. 3RD STREET SUITE 300 ST. LOUIS, MO 63103 www.colearch.com</p> <p>LANDSCAPE ARCHITECTURE 700 / 100 TRANSPORTATION PLANNING 1000 / 1000 PLANNING</p> <p>© cole®</p> <p>ALL RIGHTS RESERVED. NO PART OF THIS PUBLICATION MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM THE PUBLISHER.</p> </div> </div>		<p>1600 JUNCTION HIGHWAY KERRVILLE, TX 78026</p>		<p>MINOR FLAT</p>		<p>DEVELOPER/OWNER: <b>PIPERVIEW MANOR, L.P.</b> 7738 FORTH BLVD. SUITE 800 CLAYTON, MO 63015 737-228-4662</p>		<p>DATE: NO REVISION DESCRIPTION:</p>	
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## FILED AND RECORDED

Instrument Number: 25-02794

Recording Fee: 80.00

Number of Pages: 2

Filing and Recording Date: 5/12/2025 3:54:44 PM

I hereby certify that this instrument was FILED on the date and times stamped hereon and RECORDED in the OFFICIAL PUBLIC RECORDS of Kerr County, Texas.



*Nadene Alford*

**Nadene Alford, Clerk**  
Kerr County, Texas

NOTICE: It is a crime to intentionally or knowingly file a fraudulent court record or instrument with the Clerk.

**DO NOT DESTROY - Warning, this document is part of the Official Public Record.**



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

**File #: 1029**

**Agenda Date: 6/12/2025**

**Agenda #: 3.**

Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application for Pine Creek Senior Village (HTC #24115)

#### **RECOMMENDED ACTION**

**WHEREAS**, Pine Creek Senior Village (the Development) received a 9% Housing Tax Credit (HTC) award in 2024 to construct 66 units of multifamily housing for the elderly in Nacogdoches, Nacogdoches County;

**WHEREAS**, CSH Pine Creek Senior Village, Ltd. (Applicant) requests approval to replace a portion of the development site, revise the site plan, and decrease the size of the development site from 4.664 acres to 4.00 acres, which results in a 16.60% increase in residential density from 14.151 units per acre to 16.500 units per acre;

**WHEREAS**, Board approval is required for a significant modification of the site plan and for a modification of the residential density of at least 5% as directed in Tex. Gov't Code §2306.6712 (d)(1) and (6) and 10 TAC §10.405(a)(4)(A) and (F), and the Applicant has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not materially alter the Development in a negative manner, was not reasonably foreseeable or preventable by the Applicant at the time of Application, and would not have adversely affected the selection of the Application;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment of the Application for Pine Creek Senior Village is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the Board's determination.

#### **BACKGROUND**

Pine Creek Senior Village received a 9% Housing Tax Credit (HTC) award in 2024 to construct 66 units of multifamily housing for the elderly, of which all units are designated as low-income units, in Nacogdoches, Nacogdoches County. In a letter dated April 26, 2025, Jervon Harris, the representative for the Applicant, requested approval for a material amendment to the Application. The amendment is for a 16.60% increase in the residential density, from 14.151 units per acre to 16.500 units per acre, which requires approval by the Board under Tex. Gov't Code §2306.6712(d)(6) and 10 TAC §10.405(a)(4)(F). The change is a result of a decrease in the

Development site acreage from 4.66 to 4.00 acres, a reduction of 0.664 acre (14.24%).

The original site plan included Tract 1, that comprised of 4.00 acres, and Tract 2 that comprised 0.664 acres. The Applicant contemplated that Tract 2 would provide access to Tract 1 as a public road and to be dedicated as a public right-of-way. However, it was determined that accessing the intended development site (Tract 1) by constructing a driveway over and dedicating right-of-way (Tract 2) would not meet City of Nacogdoches (City) and Texas Department of Transportation (TxDOT) requirements for site and fire truck access. The changes required to meet City and TxDOT requirements for access over Tract 2 would result in significant cost increases and negative impact to feasibility. As a result, the Applicant is requesting approval to reconfigure the development site to instead include a portion of the adjacent property, portions of Tract 1, and all of Tract 2. The proposed modification to the development site results in a decrease to the site acreage from 4.664 acres to 4.00 acres. This is a 14.24% reduction in site acreage and a 16.60% increase in residential density. The enclosed table compares the site plan of the Development at Application and the revised site plan after the amendment.

In addition, the Common Area increased from 10,935 square feet to 13,012 square feet (2,077 square feet or 18.99% increase). The Net Rentable Area of 42,600 square feet remains unchanged. Parking requirements continue to meet local code. The total number of units, proposed unit mix, number of buildings and proposed common amenities all remain unchanged. The Applicant indicated there will be an increase of \$110,325 (0.68%) in total development costs, from \$16,252,246 at Application to \$16,362,571 with the proposed amendment; this includes \$90,325 in additional acquisition costs and \$20,000 in additional site work costs.

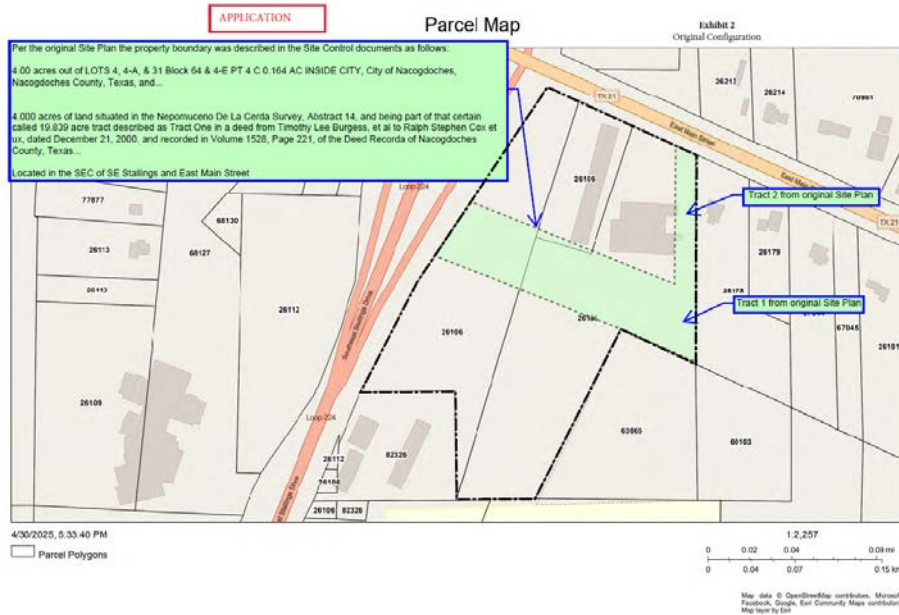
The requested amendment does not materially alter the Development in a negative manner and would not have affected the selection of the Development for the HTC award. Additionally, the revised design will continue to meet accessibility requirements.

Staff recommends approval of the requested material amendment to the Application.

# Material Alterations as defined in Texas Gov't Code §2306.6712(d)(1) and (6) and 10 TAC §10.405(a)(4)(A) and (F)

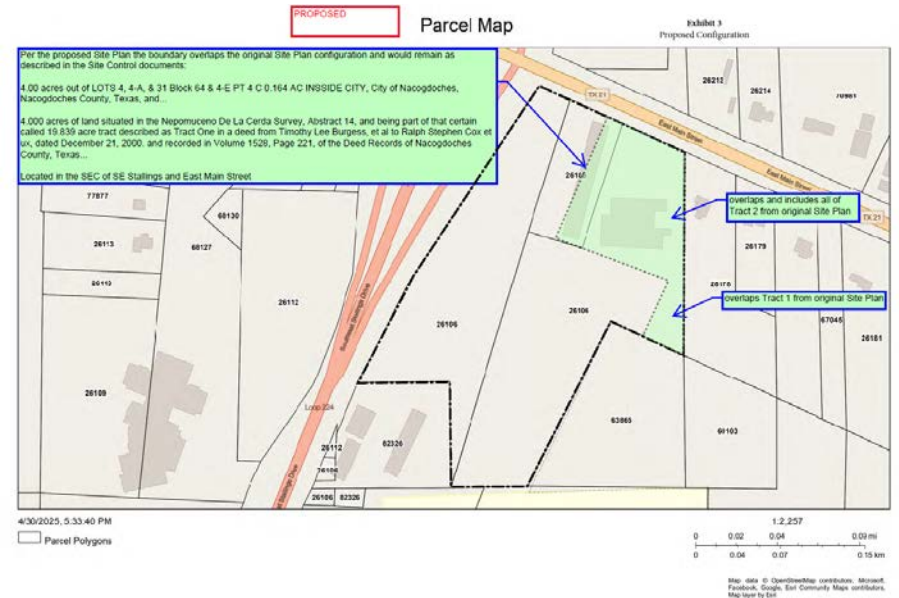
## Application

Density: 14.151 units/acre (66 units on a 4.664 acre tract)



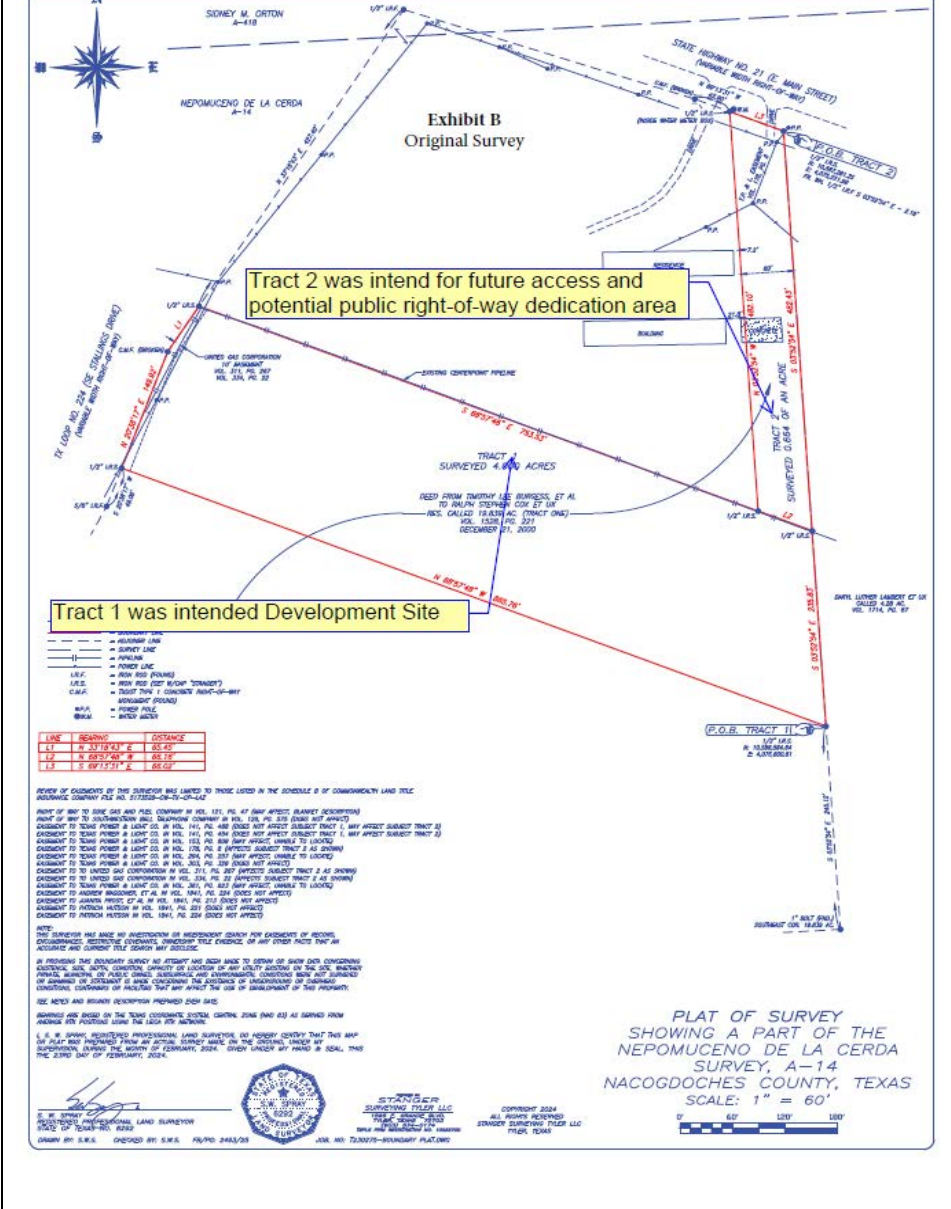
## Amendment

Density: 16.500 units/acre (66 units on a 4.00 acre tract)

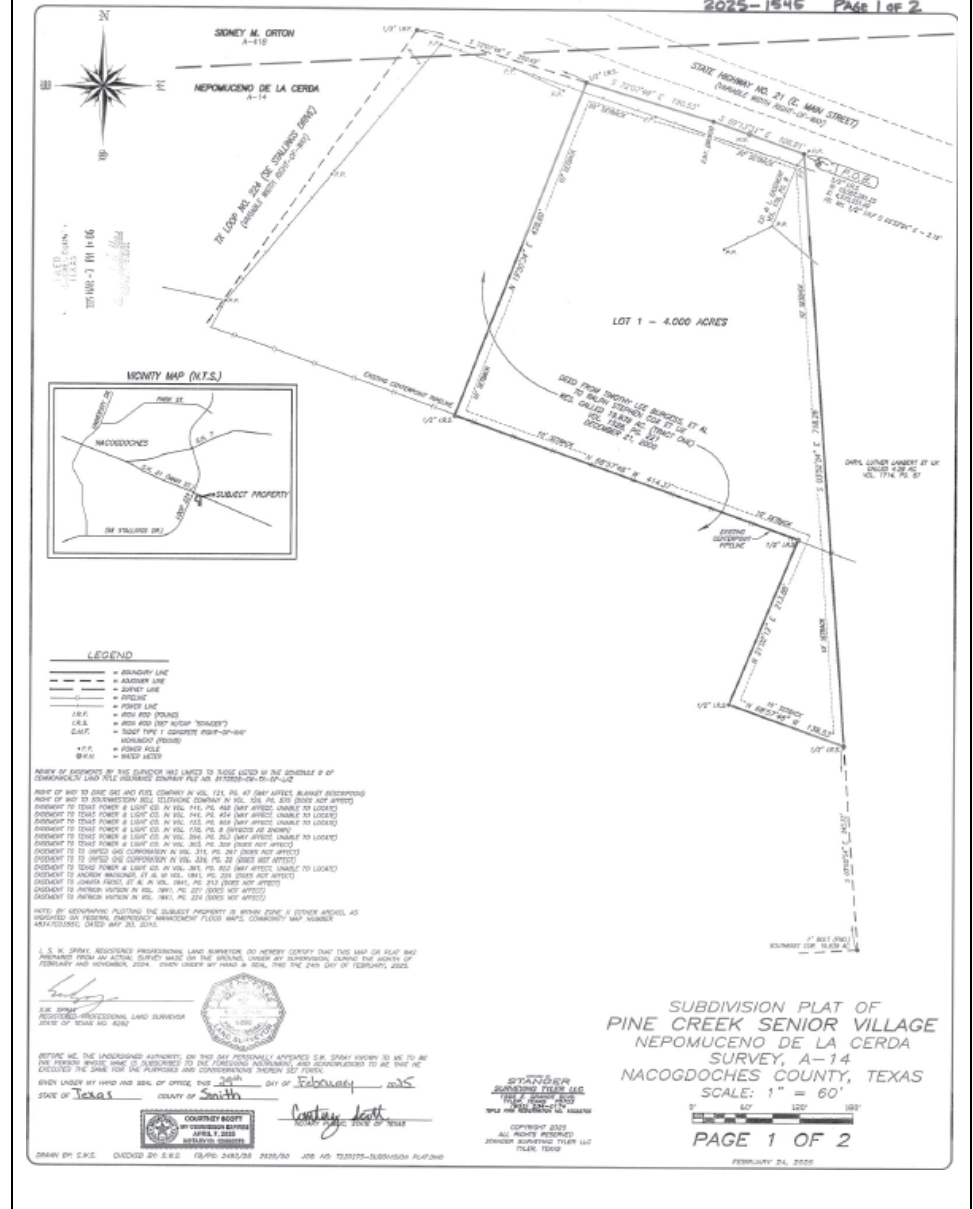


**Material Alterations as defined in Texas Gov't Code §2306.6712(d)(1) and (6) and 10 TAC §10.405(a)(4)(A) and (F)**

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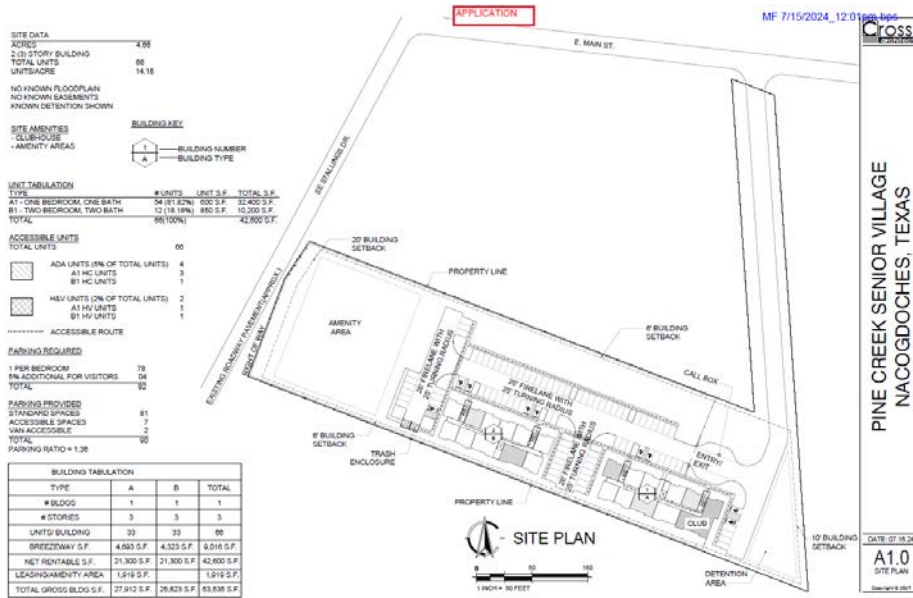
Amendment	



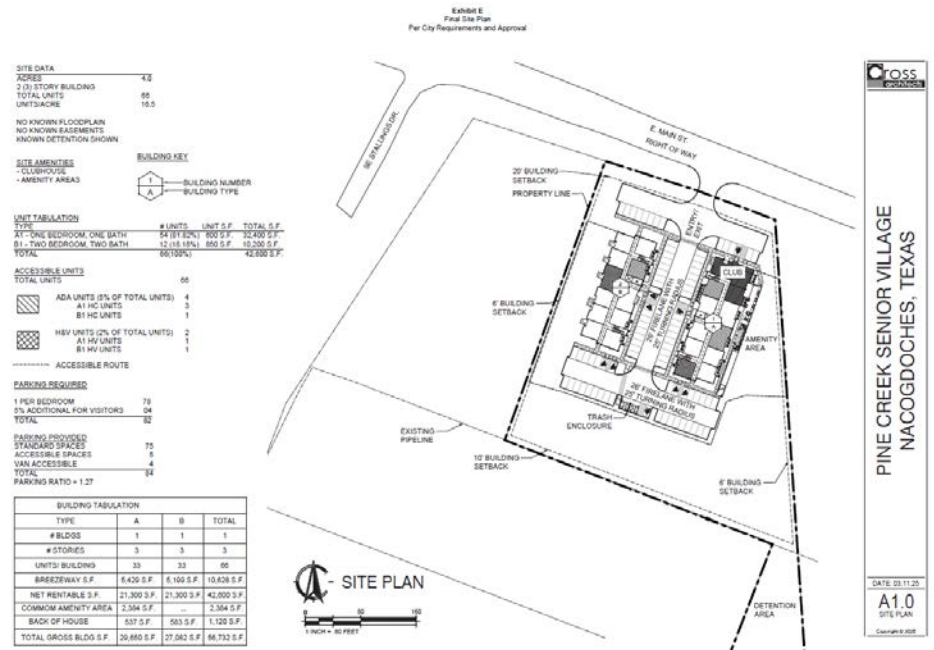


# Material Alterations as defined in Texas Gov't Code §2306.6712(d)(1) and (6) and 10 TAC §10.405(a)(4)(A) and (F)

## Application



## Amendment



**CSH PINE CREEK SENIOR VILLAGE, Ltd**

3701 Kirby Drive, Suite 860

Houston, Texas 77098

April 26, 2025

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, Texas 78701

Via Email: [Rosalio.Banuelos@tdhca.state.tx.us](mailto:Rosalio.Banuelos@tdhca.state.tx.us)

Re: Notification and Request for Administrative Approval – Pine Creek Senior Village, TDHCA #24115

Dear Mr. Banuelos,

On behalf of CSH Pine Creek Senior Village, Ltd. (the Applicant), please accept this letter as formal notification and request for administrative approval for modifications to the Application for Pine Creek Senior Village based on the property boundary being reconfigured during the course of permit and platting approvals from the City of Nacogdoches in addition to review and confirmation of access requirement with TxDOT prior to platting and permitting.

As evidenced by excerpts from the original Site Control documents (Exhibit A), the original Survey (Exhibit B) and the original Legal Description (Exhibit C) submitted with the Application, the intended property acreage for the Development Site (Tract 1) was 4.0 acres originally. Based on the acreage as originally intended the effective density was 16.5 units per acres.

As shown on the Final Plat (Exhibit D) and the revised Site Plan (Exhibit E), the property boundary was reconfigured to meet City and State requirements while maintaining the intended acreage of 4.0 acres such that the density would remain consistent with the intended effective density of 16.5 units per acres at Application and less than the density of 17.50 unit per acres stated in the notification letters at pre-Application.

The site plan and property boundary changes were unforeseen and resulted from the City and TxDOT review of the site and fire truck access requirement to obtain Permits and Plat approval from the City. Furthermore, it was determined that accessing the intended development site (depicted as Tract 1 on Exhibits A, B and C) by constructing a driveway over and dedicating right-of-way (Tract 2 on Exhibit A, B and C) would not meet City and TxDOT requirements for site and fire truck access. The changes required to meet City and TxDOT requirements for access over Tract 2 would result in significant cost increases and negative impact to feasibility.

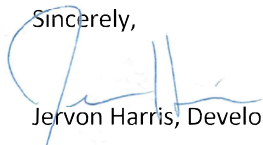
There has been no change to the net rentable area of 42,600 SF. The common area increased from 10,935 SF to 13,012 SF. There has been no reduction in the net rentable area or common area.

There have been no changes that would affect scoring items.

The Applicant believes that changes constitute minor modifications and kindly requests a letter of acknowledgement from TDHCA for the proposed changes to the property configuration, legal description and overall site plan. In the event the changes can not be approved administratively, the Applicant humbly request the request be presented to the Board at the Board meeting on June 12, 2025.

Please don't hesitate to contact me with any questions or clarifications.

Sincerely,



Jervon Harris, Development Consultant



EXHIBIT "A"

A tract or tracts of unimproved land consisting of 4.00 acres out of LOTS 4, 4-A, & 31  
Block 64 & 4-E PT 4 C 0.164 AC INSIDE CITY (Nacogdoches, Tx)

Tract 1 - per Site Control

Tract 1  
Subject Site  
4 acres approx

Tract 2  
Shared Access and Utility Easement  
(the "Easement Property")



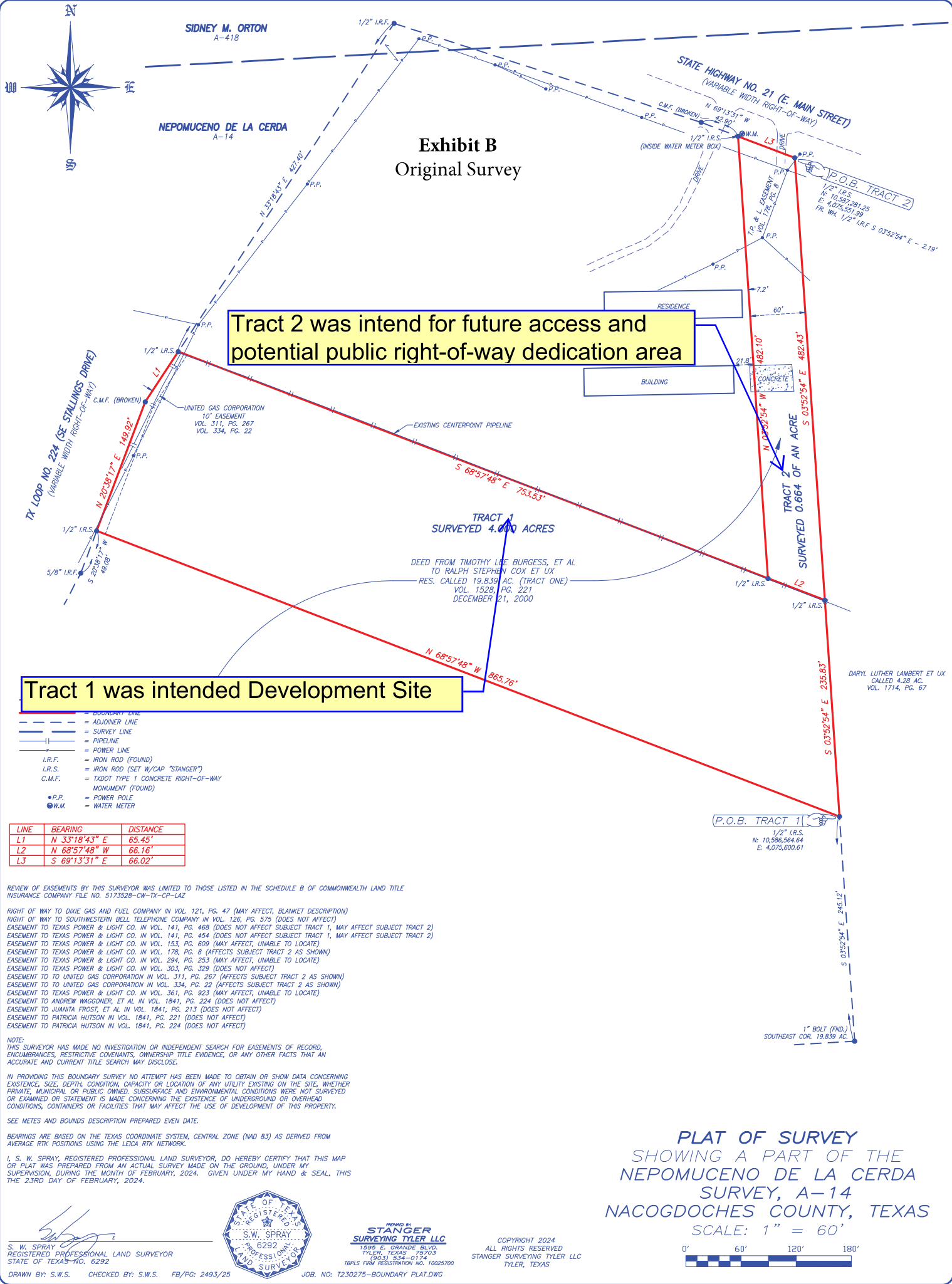


Exhibit B  
Original Survey

Tract 2 was intend for future access and potential public right-of-way dedication area

Tract 1 was intended Development Site

- BOUNDARY LINE
- - - ADJOINER LINE
- SURVEY LINE
- PIPELINE
- POWER LINE
- I.R.F. = IRON ROD (FOUND)
- I.R.S. = IRON ROD (SET W/CAP "STANGER")
- C.M.F. = TYPED TYPE 1 CONCRETE RIGHT-OF-WAY MONUMENT (FOUND)
- P.P. = POWER POLE
- W.M. = WATER METER

LINE	BEARING	DISTANCE
L1	N 33°18'43" E	65.45'
L2	N 68°57'48" W	66.16'
L3	S 69°13'31" E	66.02'

REVIEW OF EASEMENTS BY THIS SURVEYOR WAS LIMITED TO THOSE LISTED IN THE SCHEDULE B OF COMMONWEALTH LAND TITLE INSURANCE COMPANY FILE NO. 5173528-CW-TX-CP-LAZ

RIGHT OF WAY TO DIXIE GAS AND FUEL COMPANY IN VOL. 121, PG. 47 (MAY AFFECT, BLANKET DESCRIPTION)  
RIGHT OF WAY TO SOUTHWESTERN BELL TELEPHONE COMPANY IN VOL. 126, PG. 575 (DOES NOT AFFECT)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 141, PG. 468 (DOES NOT AFFECT SUBJECT TRACT 1, MAY AFFECT SUBJECT TRACT 2)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 141, PG. 454 (DOES NOT AFFECT SUBJECT TRACT 1, MAY AFFECT SUBJECT TRACT 2)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 153, PG. 609 (MAY AFFECT, UNABLE TO LOCATE)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 178, PG. 8 (AFFECTS SUBJECT TRACT 2 AS SHOWN)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 294, PG. 253 (MAY AFFECT, UNABLE TO LOCATE)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 303, PG. 329 (DOES NOT AFFECT)  
EASEMENT TO UNITED GAS CORPORATION IN VOL. 311, PG. 267 (AFFECTS SUBJECT TRACT 2 AS SHOWN)  
EASEMENT TO UNITED GAS CORPORATION IN VOL. 334, PG. 22 (AFFECTS SUBJECT TRACT 2 AS SHOWN)  
EASEMENT TO TEXAS POWER & LIGHT CO. IN VOL. 361, PG. 923 (MAY AFFECT, UNABLE TO LOCATE)  
EASEMENT TO ANDREW WAGGONER, ET AL IN VOL. 1841, PG. 224 (DOES NOT AFFECT)  
EASEMENT TO JUANITA FROST, ET AL IN VOL. 1841, PG. 213 (DOES NOT AFFECT)  
EASEMENT TO PATRICIA HUTSON IN VOL. 1841, PG. 221 (DOES NOT AFFECT)  
EASEMENT TO PATRICIA HUTSON IN VOL. 1841, PG. 224 (DOES NOT AFFECT)

NOTE:  
THIS SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SURVEY MAY DISCLOSE.

IN PROVIDING THIS BOUNDARY SURVEY NO ATTEMPT HAS BEEN MADE TO OBTAIN OR SHOW DATA CONCERNING EXISTENCE, SIZE, DEPTH, CONDITION, CAPACITY OR LOCATION OF ANY UTILITY EXISTING ON THE SITE, WHETHER PRIVATE, MUNICIPAL OR PUBLIC OWNED. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT SURVEYED OR EXAMINED OR STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND OR OVERHEAD CONDITIONS, CONTAINERS OR FACILITIES THAT MAY AFFECT THE USE OF DEVELOPMENT OF THIS PROPERTY.

SEE METES AND BOUNDS DESCRIPTION PREPARED EVEN DATE.

BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE (NAD 83) AS DERIVED FROM AVERAGE RTK POSITIONS USING THE LEICA RTK NETWORK.

I, S. W. SPRAY, REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS MAP OR PLAT WAS PREPARED FROM AN ACTUAL SURVEY MADE ON THE GROUND, UNDER MY SUPERVISION, DURING THE MONTH OF FEBRUARY, 2024. GIVEN UNDER MY HAND & SEAL, THIS THE 23RD DAY OF FEBRUARY, 2024.

S. W. SPRAY  
REGISTERED PROFESSIONAL LAND SURVEYOR  
STATE OF TEXAS NO. 6292  
DRAWN BY: S.W.S. CHECKED BY: S.W.S. FB/PG: 2493/25  
JOB NO: T230275-BOUNDARY PLAT.DWG



PREPARED BY  
**STANGER SURVEYING TYLER LLC**  
1595 E. GRANDE BLVD.  
TYLER, TEXAS 75703  
(903) 534-0174  
TIFLS FIRM REGISTRATION NO. 10025700

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ALL RIGHTS RESERVED  
STANGER SURVEYING TYLER LLC  
TYLER, TEXAS

PLAT OF SURVEY  
SHOWING A PART OF THE  
NEPOMUCENO DE LA CERDA  
SURVEY, A-14  
NACOGDOCHES COUNTY, TEXAS  
SCALE: 1" = 60'






2025-1545 PAGE 1 OF 2

DRAWN BY: S.W.S. CHECKED BY: S.W.S. FB/PG: 2493/25 2525/50 JOB. NO: T230275-SUBDIVISION PLAT.DWG

SUBDIVISION PLAT OF  
PINE CREEK SENIOR VILLAGE  
NEPOMUCENO DE LA CERDA  
SURVEY, A-14  
NACOGDOCHES COUNTY, TEXAS  
SCALE: 1" = 60'



PAGE 1 OF 2

FEBRUARY 24, 2025

## OWNER'S STATEMENT

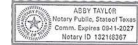
THAT STEPHEN COX AND SANDRA COX ARE THE OWNERS OF THE PROPERTY SUBDIVIDED IN THE ABOVE AND FOREGOING MAP OF PINE CREEK SENIOR VILLAGE OF HEREBY MAKE SUBDIVISION SAID PROPERTY ACCORDING TO THE LINES, LOTS AND EASEMENTS THEREON SHOWN, AND DESIGNATE SAID SUBDIVISION AS PINE CREEK SENIOR VILLAGE IN THE UNINCORPORATED DE LA SERA SURGEY, ABSTRACT NO. 4, NACOGDOCHES COUNTY, TEXAS, AND DEDICATE TO PUBLIC USE, AS SUCH, THE PARKS AND EASEMENTS SHOWN THEREON FOREVER, AND DO HEREBY BIND OURSELVES, OUR SUCCESSORS AND ASSIGNS, TO WARRANTY AND FOREVER DEFEND THE TITLE TO THE LAND SO DEDICATED.

WITNESS MY HAND IN Naugochus (CITY) Naugochus (COUNTY) Texas (STATE)  
THIS 28<sup>th</sup> DAY OF February 2023  
Stephen Cox  
STEPHEN COX

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED STEPHEN COX, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN SET FORTH.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 28<sup>th</sup> DAY OF February, 2025

STATE OF Texas COUNTY OF Newspackages

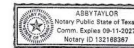


WITNESS MY HAND IN Naragoches (CITY) Naragoches (COUNTY) Texas (STATE)  
THIS 28<sup>th</sup> DAY OF February, 2025  
Dandra Cox  
DANDRA COX

BEFORE ME, THE UNDERSIGNED AUTHORITY, ON THIS DAY PERSONALLY APPEARED STEPHEN COX KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN SET FORTH.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS 28<sup>th</sup> DAY OF February, 2025



STATE OF Texas COUNTY OF Nueces



CERTIFICATE OF APPROVAL BY THE CITY PLANNER AND CITY ENGINEER

THIS IS TO CERTIFY THAT THE CITY PLANNER AND CITY ENGINEER OF THE CITY OF NACOGDOCHES, TEXAS, HAS APPROVED THIS PLAT AND SUBDIVISION OF PINE CREEK SENIOR VILLAGE, AS SHOWN HEREON.

IN TESTIMONY WHEREOF, WITNESS THE OFFICIAL SIGNATURE OF THE CITY PLANNER AND THE CITY ENGINEER OF THE CITY OF NACOGDOCHES, TEXAS, THIS 5 DAY OF march, 2025

 CITY PLANNER  CITY ENGINEER

CERTIFICATE OF REGISTRATION


I, SANDRA "SANDY" YATES, COUNTY CLERK OF NACOGDOCHES COUNTY, TEXAS, DO HEREBY CERTIFY THAT THIS FORGING INSTRUMENT IN WRITING, WITH ITS CERTIFICATE OF AUTHENTICATION, WAS FILED AND DULY RECORDED IN MY OFFICE ON THIS 7<sup>th</sup> DAY OF March, 2025 AT 1:00 O'CLOCK PM IN CLERKS DOCUMENT NUMBER 2025-1545 OF THE REAL PROPERTY RECORDS OF NACOGDOCHES COUNTY, TEXAS.

WITNESS MY HAND AND SEAL OF OFFICE, AT NACOGDOCHES, TEXAS, THE DATE ABOVE WRITTEN.

Sandra "Sandy" Yates  
SANDRA "SANDY" YATES, COUNTY CLERK  
OF MACGREGGOCHE'S COUNTY, TEXAS

*Jennifer Allen*  
DEPUTY CLERK

SUBDIVISION PLAT OF  
PINE CREEK SENIOR VILLAGE  
NEPOMUCENO DE LA CERDA  
SURVEY, A-14  
NACOGDOCHES COUNTY, TEXAS  
SCALE: 1" = 60'



PAGE 2 OF 2

FEBRUARY 24, 2025

Exhibit E  
Final Site Plan  
Per City Requirements and Approval

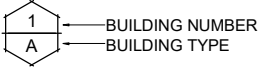
SITE DATA

ACRES	4.0
2 (3) STORY BUILDING	
TOTAL UNITS	66
UNITS/ACRE	16.5

NO KNOWN FLOODPLAIN  
NO KNOWN EASEMENTS  
KNOWN DETENTION SHOWN

SITE AMENITIES  
- CLUBHOUSE  
- AMENITY AREAS

BUILDING KEY



UNIT TABULATION

TYPE	# UNITS	UNIT S.F.	TOTAL S.F.
A1 - ONE BEDROOM, ONE BATH	54 (81.82%)	600 S.F.	32,400 S.F.
B1 - TWO BEDROOM, TWO BATH	12 (18.18%)	850 S.F.	10,200 S.F.
TOTAL	66(100%)		42,600 S.F.

ACCESSIBLE UNITS  
TOTAL UNITS 66

ADA UNITS (5% OF TOTAL UNITS)	4
A1 HC UNITS	3
B1 HC UNITS	1
H&V UNITS (2% OF TOTAL UNITS)	2
A1 HV UNITS	1
B1 HV UNITS	1

ACCESSIBLE ROUTE

PARKING REQUIRED

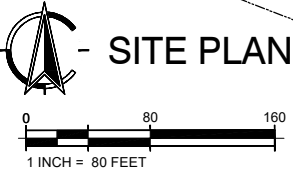
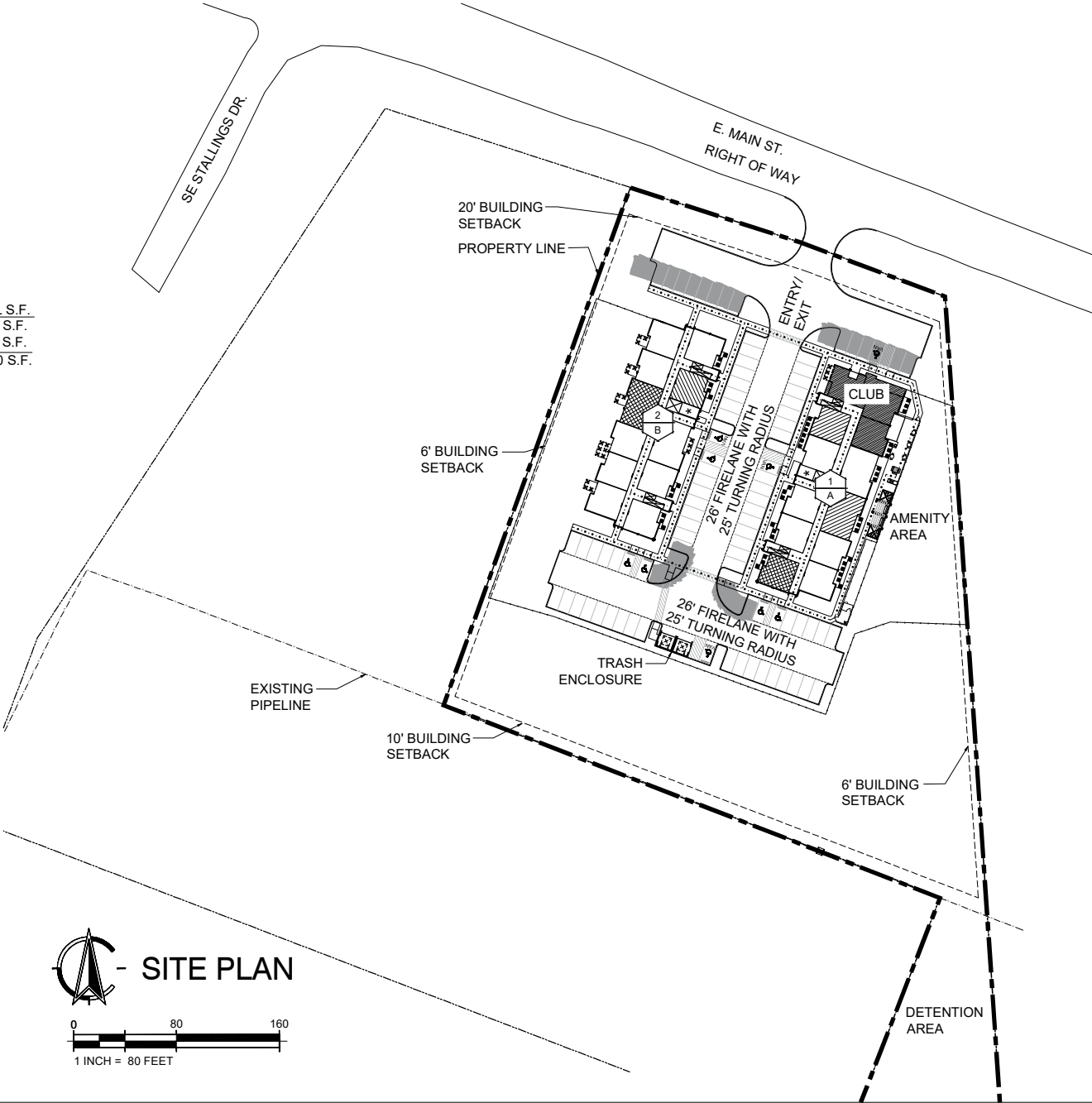
1 PER BEDROOM	78
5% ADDITIONAL FOR VISITORS	04
TOTAL	82

PARKING PROVIDED

STANDARD SPACES	75
ACCESSIBLE SPACES	5
VAN ACCESSIBLE	4
TOTAL	84

PARKING RATIO = 1.27

BUILDING TABULATION			
TYPE	A	B	TOTAL
# BLDGS	1	1	1
# STORIES	3	3	3
UNITS/BUILDING	33	33	66
BREEZEWAY S.F.	5,429 S.F.	5,199 S.F.	10,628 S.F.
NET RENTABLE S.F.	21,300 S.F.	21,300 S.F.	42,600 S.F.
COMMON AMENITY AREA	2,384 S.F.	--	2,384 S.F.
BACK OF HOUSE	537 S.F.	583 S.F.	1,120 S.F.
TOTAL GROSS BLDG S.F.	29,650 S.F.	27,082 S.F.	56,732 S.F.



- SITE PLAN



PINE CREEK SENIOR VILLAGE  
NACOGDOCHES, TEXAS

DATE: 03.11.25

A1.0  
SITE PLAN

Copyright © 2025

**CSH PINE CREEK SENIOR VILLAGE, Ltd**

3701 Kirby Drive, Suite 860

Houston, Texas 77098

Pine Creek Senior Village, TDHCA #24115

Notification and Request for Approval of Modifications

Pine Creek Senior Village was described as being 4.00 acres from the parent tract as shown on Exhibit 1 and Exhibit 2 attached hereto with the following being the description from the Site Control Documents and the Legal Description provided with the Application:

Per Site Control Documents

**4.00 acres out of LOTS 4, 4-A, & 31 Block 64 & 4-E PT 4 C 0.164 AC INSIDE CITY, City of Nacogdoches, Nacogdoches County, Texas**

Per Original Legal Description

**4.000 acres of land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Records of Nacogdoches County, Texas.**

As highlighted on Exhibit 3 depicting the configuration with the proposed Site Plan change, the Applicant is proposing to reconfigure the Site Plan to meet City and State requirements in accordance with the recorded plat containing the description below whereas the description of the property would remain consistent with how the property was described in the Site Control Documents and the Legal Description above from the Application:

Per Proposed Legal Description

**4.000 acres of land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Records of Nacogdoches County, Texas**

The configuration of the proposed Site Plan overlaps with and includes portions of the boundary from the original Site Plan configuration while maintaining the descriptions from above. The reconfigured Site Plan is inclusive of portions of Tract 1 and all of Tract 2 identified in the original Site Control documents. Being that the proposed Site Plan overlaps with and includes portions of the original property boundary with the same legal descriptions from above, the development would not be moved to a new site and would not be entirely outside the property identified in the Site Control documents at Application.

The Applicant is requesting approval for a modification to reconfigure the Site Plan whereas the proposed Site Plan (Exhibit 4) would include portions of the original property while maintaining the same property description from the Site Control documents being **4.00 acres out of LOTS 4, 4-A, & 31 Block 64 & 4-E PT 4 C 0.164 AC INSIDE CITY, City of Nacogdoches, Nacogdoches County, Texas** and the same Legal Description being **4.000 acres of land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Records of Nacogdoches County, Texas.**

There has been no change to the net rentable area of 42,600 SF. The common area increased from 10,935 SF to 13,012 SF. There has been no reduction in the net rentable area or common area.

Pine Creek Senior Village was the only application remaining in Sub-Region 5 Rural following the termination of application #24178. The proposed modification would not have affected scoring. Scoring and/or tie-breakers were not a determining factor in the Award.

# Parcel Map

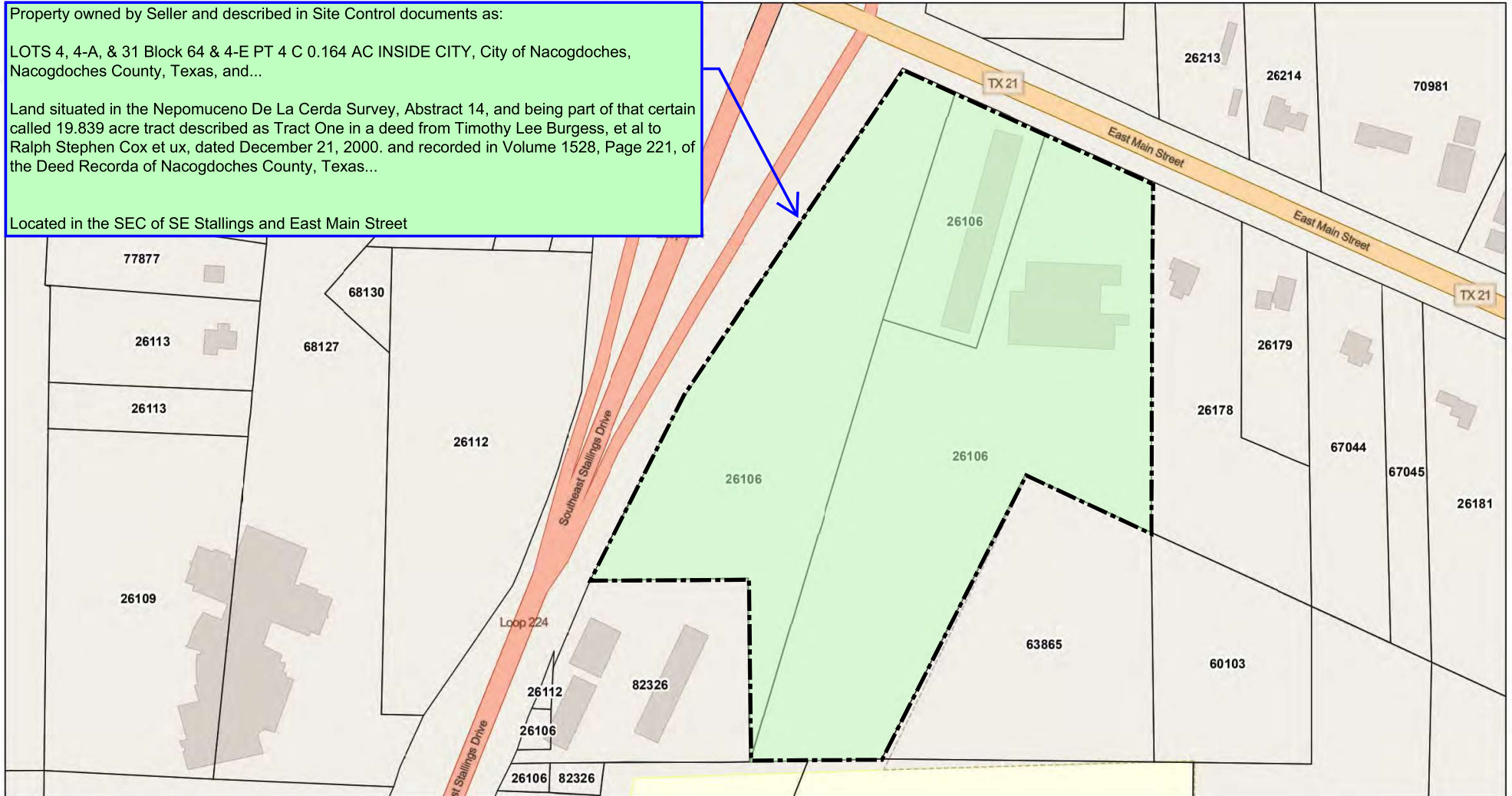
Exhibit 1 Rec'd 5/1/2025@7:14pm via email from Jevron Harris  
Parent Tract

Property owned by Seller and described in Site Control documents as:

LOTS 4, 4-A, & 31 Block 64 & 4-E PT 4 C 0.164 AC INSIDE CITY, City of Nacogdoches, Nacogdoches County, Texas, and...

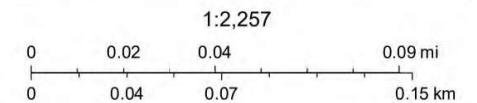
Land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Record of Nacogdoches County, Texas...

Located in the SEC of SE Stallings and East Main Street



4/30/2025, 5:33:40 PM

Parcel Polygons



Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri



# Parcel Map

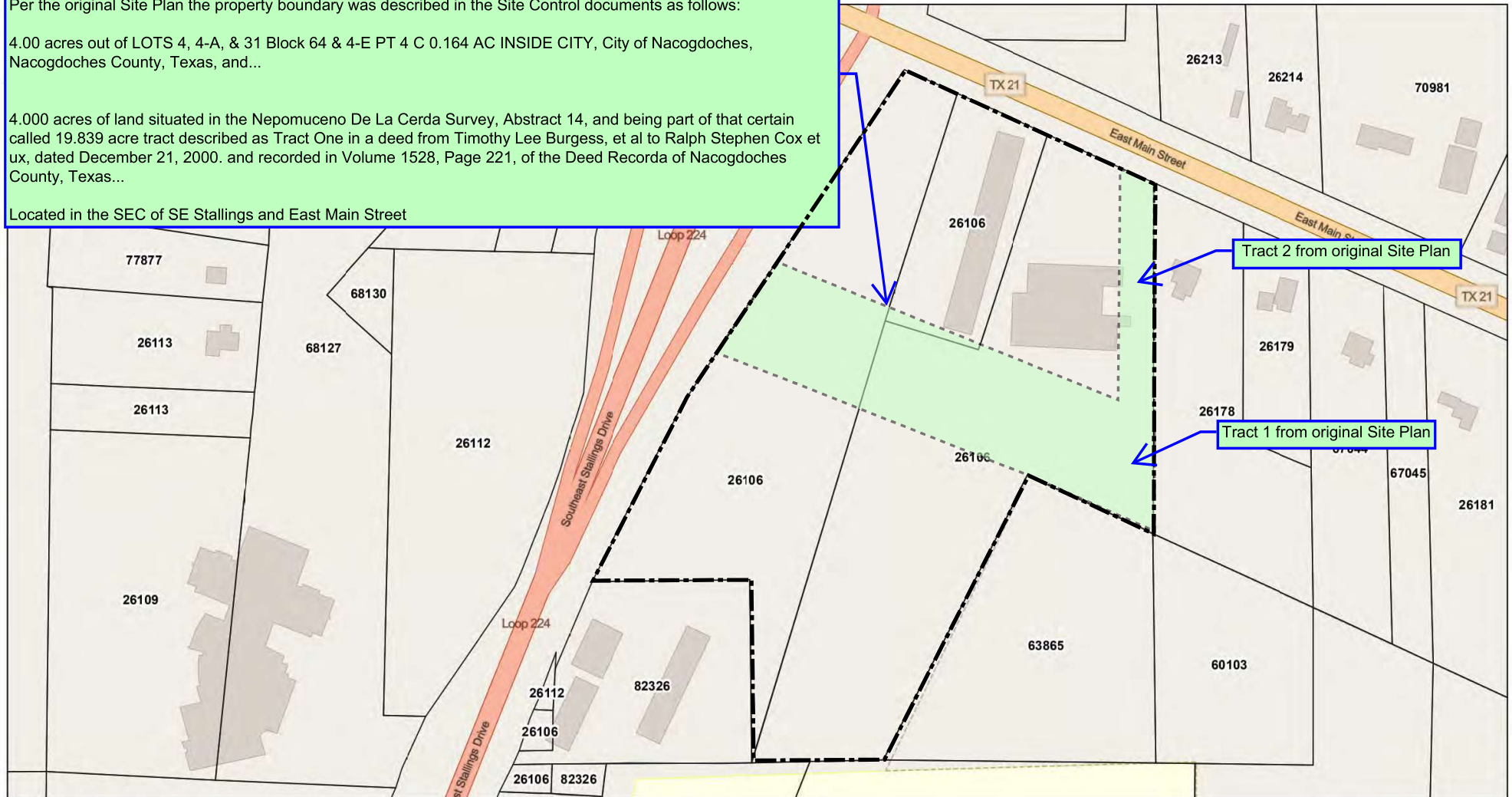
Exhibit 2 Rec'd 5/1/2025@7:14pm via email from Jevron Harris  
Original Configuration

Per the original Site Plan the property boundary was described in the Site Control documents as follows:

4.00 acres out of LOTS 4, 4-A, & 31 Block 64 & 4-E PT 4 C 0.164 AC INSIDE CITY, City of Nacogdoches, Nacogdoches County, Texas, and...

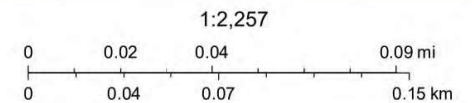
4.000 acres of land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Record of Nacogdoches County, Texas...

Located in the SEC of SE Stallings and East Main Street



4/30/2025, 5:33:40 PM

Parcel Polygons



Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri

# Parcel Map

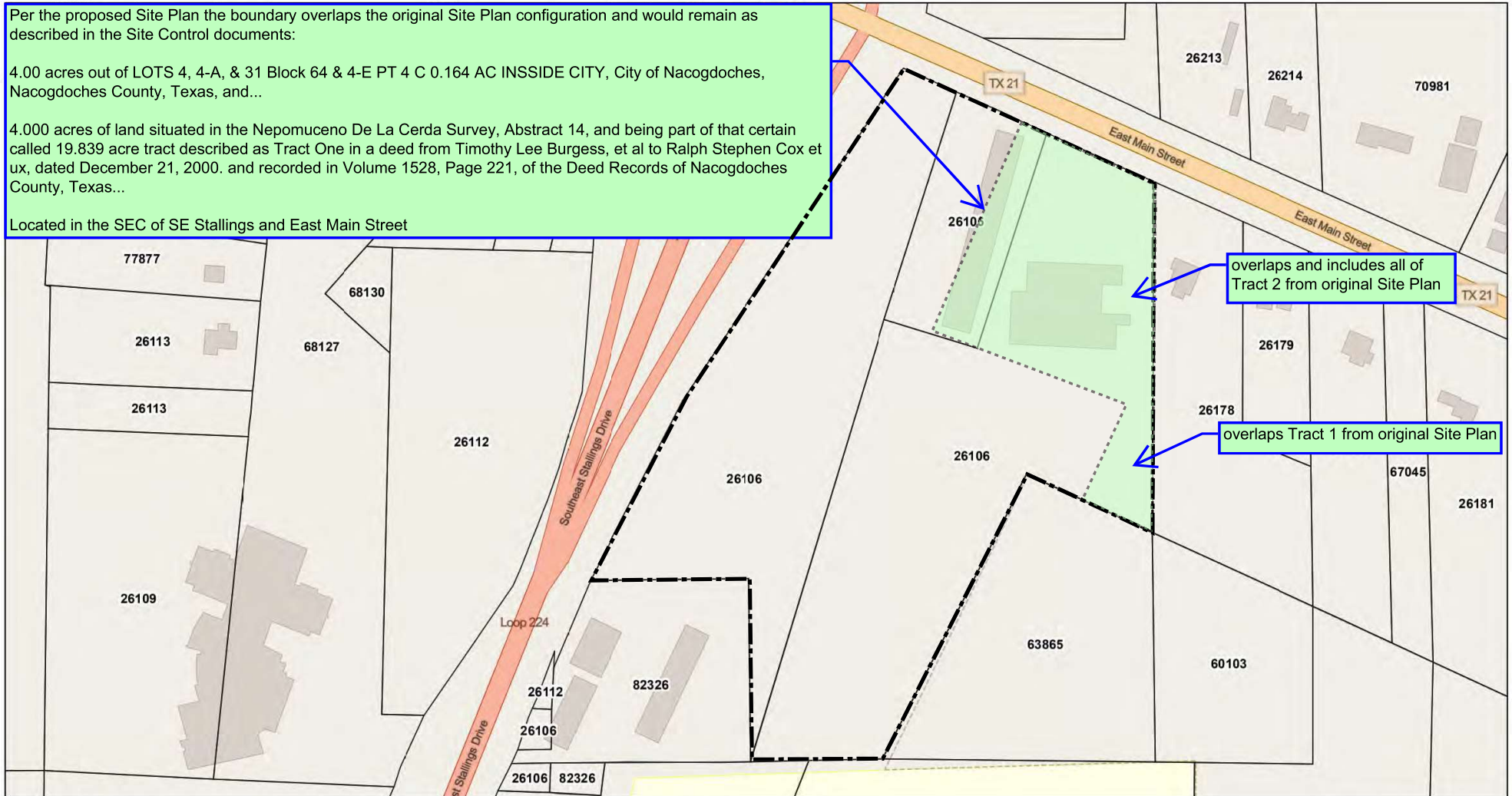
Exhibit 3 Rec'd 5/1/2025@7:14pm via email from Jevron Harris  
Proposed Configuration

Per the proposed Site Plan the boundary overlaps the original Site Plan configuration and would remain as described in the Site Control documents:

4.00 acres out of LOTS 4, 4-A, & 31 Block 64 & 4-E PT 4 C 0.164 AC INSSIDE CITY, City of Nacogdoches, Nacogdoches County, Texas, and...

4.000 acres of land situated in the Nepomuceno De La Cerda Survey, Abstract 14, and being part of that certain called 19.839 acre tract described as Tract One in a deed from Timothy Lee Burgess, et al to Ralph Stephen Cox et ux, dated December 21, 2000. and recorded in Volume 1528, Page 221, of the Deed Records of Nacogdoches County, Texas...

Located in the SEC of SE Stallings and East Main Street

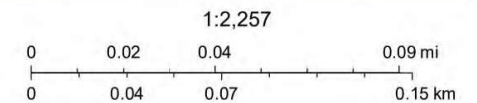


overlaps and includes all of Tract 2 from original Site Plan

overlaps Tract 1 from original Site Plan

4/30/2025, 5:33:40 PM

Parcel Polygons



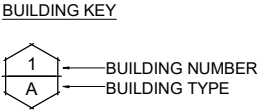
Map data © OpenStreetMap contributors, Microsoft, Facebook, Google, Esri Community Maps contributors, Map layer by Esri



SITE DATA	
ACRES	4.0
2 (3) STORY BUILDING	
TOTAL UNITS	66
UNITS/ACRE	16.5

NO KNOWN FLOODPLAIN  
NO KNOWN EASEMENTS  
KNOWN DETENTION SHOWN

SITE AMENITIES  
- CLUBHOUSE  
- AMENITY AREAS



UNIT TABULATION			
TYPE	# UNITS	UNIT S.F.	TOTAL S.F.
A1 - ONE BEDROOM, ONE BATH	54 (81.82%)	600 S.F.	32,400 S.F.
B1 - TWO BEDROOM, TWO BATH	12 (18.18%)	850 S.F.	10,200 S.F.
TOTAL	66(100%)		42,600 S.F.

ACCESSIBLE UNITS	
TOTAL UNITS	66

	ADA UNITS (5% OF TOTAL UNITS)	4
	A1 HC UNITS	3
	B1 HC UNITS	1
	H&V UNITS (2% OF TOTAL UNITS)	2
	A1 HV UNITS	1
	B1 HV UNITS	1

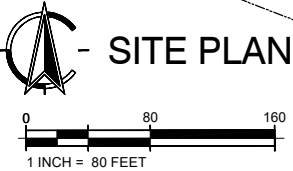
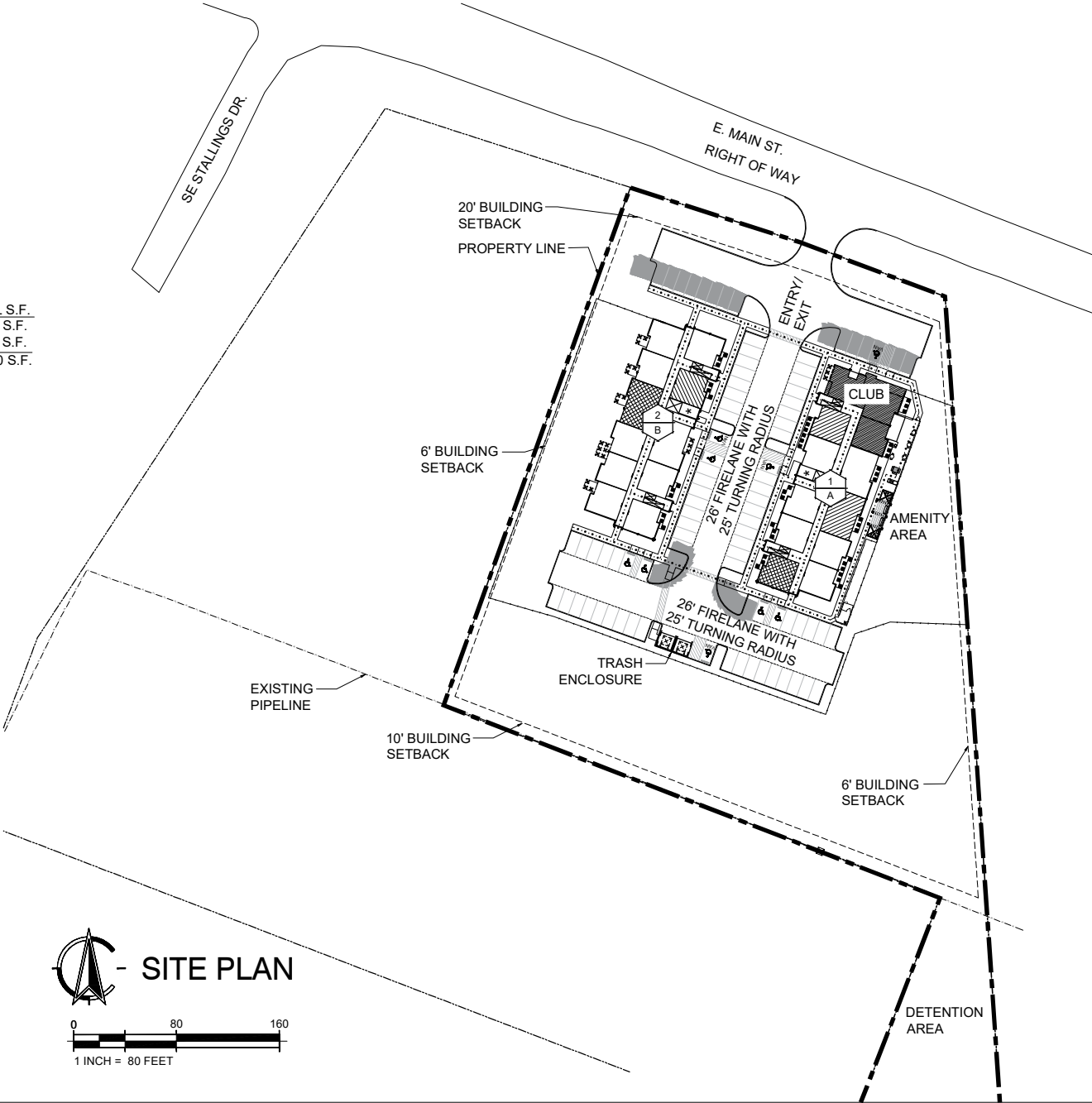
ACCESSIBLE ROUTE

**PARKING REQUIRED**

1 PER BEDROOM	78
5% ADDITIONAL FOR VISITORS	04
TOTAL	82

PARKING PROVIDED	
STANDARD SPACES	75
ACCESSIBLE SPACES	5
VAN ACCESSIBLE	4
TOTAL	84
PARKING RATIO = 1.27	

BUILDING TABULATION			
TYPE	A	B	TOTAL
# BLDGS	1	1	1
# STORIES	3	3	3
UNITS/BUILDING	33	33	66
BREEZEWAY S.F.	5,429 S.F.	5,199 S.F.	10,628 S.F.
NET RENTABLE S.F.	21,300 S.F.	21,300 S.F.	42,600 S.F.
COMMON AMENITY AREA	2,384 S.F.	--	2,384 S.F.
BACK OF HOUSE	537 S.F.	583 S.F.	1,120 S.F.
TOTAL GROSS BLDG S.F.	29,650 S.F.	27,082 S.F.	56,732 S.F.





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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File #: 1030

Agenda Date: 6/12/2025

Agenda #: 4.

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Presentation, discussion, and possible action regarding a Material Application Amendment to the Housing Tax Credit Application for 2910 Motley Senior Living (HTC #24030)

**RECOMMENDED ACTION**

**WHEREAS**, 2910 Motley Senior Living (the Development) received a 9% Housing Tax Credit (HTC) award in 2024 for the new construction of 133 units, of which 88 are designated as low-income units, for the elderly in Mesquite, Dallas County;

**WHEREAS**, due to the need to fill a funding gap, which is expected to be filled by obtaining Multifamily Direct Loan (MFDL) funding from the Department, 2910 Motley Senior Living, Ltd. (the Applicant) requests approval to change the Qualified Low Income Housing Development Election from Average Income to the set-aside requirement that specifies that at least 40% or more of the residential units must be both rent restricted and occupied by individuals whose income is 60% or less of the median gross income (i.e., 40% at 60% minimum set-aside election);

**WHEREAS**, one of the major factors in the City of Mesquite granting this incentive to the Development is the number of market units (33.8% of total units) being provided to the community, but per 10 TAC §13.3(d)(2)(a), if average income is elected no more than 15% of the total units can be designated market rate and still remain eligible for MFDL funds;

**WHEREAS**, with a change to the 40% at 60% set-aside, the number of market rate units can remain the same, and the Development can be eligible for MFDL funds;

**WHEREAS**, Board approval is required for a request to implement a revised election under §42 (g) of the Code prior to filing of IRS Form(s) 8609 as directed by 10 TAC §10.405(a)(4)(G), and the Applicant has complied with the amendment requirements therein; and

**WHEREAS**, the requested change does not negatively affect the Development, impact the viability of the transaction, impact the scoring of the Application, or impact the HTC award;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material application amendment for 2910 Motley Senior Living is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

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**BACKGROUND**

2910 Motley Senior Living (HTC #24030) was approved for a 9% HTC award in 2024 for the new construction of 133 units, of which 88 are designated as low-income units, for the elderly in Mesquite, Dallas County. Construction of the Development has not begun. The Applicant originally elected Average Income as the Qualified Low Income Housing Development Election, with an average income under 54%, which would allow the property to serve households with incomes ranging from 20% to 80% of the Area Median Income (AMI).

In a letter received on April 16, 2025, Cody Hunt, the representative for the Applicant, requested approval for a material amendment to the Application to revise the Qualified Low Income Housing Development Election from Average Income to the set-aside requirement that specifies at least 40% or more of the residential units must be both rent restricted and occupied by individuals whose income is 60% or less of the median gross income (i.e., 40% at 60% minimum set-aside election). With this change, the Development would have 29 units at 30% AMI, 36 units at 50% AMI, 23 units at 60% AMI, and 45 market rate units. The average income for the low-income units would decrease to 46.02%.

The Applicant states that since initial application in March 2023, total development costs have increased from \$32 million to \$36.5 million. In addition to this, interest rates since March 2023 have continued to increase, and equity pricing decreased. Additionally, potential tariffs have caused inflating construction pricing. These factors resulted in a need to fill a funding gap that the Applicant expects to fill using a direct loan from the Department. However, 10 TAC §13.3(d) (2)(a) states that if average income is elected no more than 15% of total units can be designated market rate and still remain eligible for the MFDL funds. With the change to the 40% at 60% income election, the number of market rate units can remain the same, and the Development can be eligible for the MFDL funds. The Applicant indicated that it was not reasonably foreseeable at initial Application that this project would need MFDL funds in order to remain financially feasible. The recommendation for the direct loan funds from the Department will be presented separately from this amendment to the HTC Application.

The Development was re-underwritten based on the proposed set-asides and revised financial information that was submitted. The analysis supports no change to the HTC allocation and demonstrates the Development remains feasible with the additional proposed changes to the financing structure. Additionally, staff reviewed the original Application and scoring documentation against this amendment request and has concluded that none of the changes would have resulted in selection or threshold criteria changes that would have affected the selection of the Application in the competitive round.

Staff recommends approval of the material amendment request.



Real Estate Analysis Division

May 27, 2025

Addendum to Underwriting Report

TDHCA Application #: 25501\_24030 Program(s): 9% HTC / MDL

2910 Motley Senior Living

Address/Location: 2910 Motley Drive

City: Mesquite County: Dallas Zip: 75150

	APPLICATION HISTORY
Report Date	PURPOSE
05/08/25	Amendment & MDL Award - 2025-1 NOFA - NHTF
07/19/24	Initial Underwriting Report

ALLOCATION

TDHCA Program	Previous Allocation				RECOMMENDATION						
	Amount	Int. Rate	Amort	Term	Amount	Int. Rate	Amort	Perm. Term	Perm. Lien	Const. Term	Const. Lien
MF Direct Loan Const. to Perm. (Repayable)					\$5,331,291	2.0%	40	40.0 yrs	2	24M	2
LIHTC (9% Credit)	\$2,000,000				\$2,000,000						

\* Multifamily Direct Loan and HOME ARP Terms:

\* The term of a Multifamily Direct Loan or HOME ARP loan should match the term of any superior loan (within 6 months).

\*\* Construction loan term cannot exceed the recommendation above, but may be less depending on actual closing date. Final construction term will be noted in the loan documents

CONDITIONS STATUS

- Receipt and acceptance before Direct Loan Closing:
  - a: Updated application exhibits: Rent Schedule, Utility Allowance, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources; and documentation necessary to support any changes from previous underwriting.
  - b: Substantially final construction contract with Schedule of Values.
  - c: Updated term sheets with substantially final terms from all lenders.
  - d: Substantially final draft of limited partnership agreement.
  - e: Senior loan documents and/or partnership documents must contain a provision that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a minimum 1.0 DCR if subordinate to FHA financing.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

#### Previous Set-Asides

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	9
50% of AMI	50% of AMI	36
60% of AMI	60% of AMI	35
70% of AMI	70% of AMI	6
80% of AMI	80% of AMI	2

#### NEW SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	29
50% of AMI	50% of AMI	36
60% of AMI	60% of AMI	23

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
30% of AMFI	30% of AMFI	29

#### ANALYSIS

The development originally received an annual 9% HTC allocation of \$2,000,000 in July 2024.

The applicant is requesting an amendment approval to change the minimum set-aside election from an Average Income election to a 40-60 election. With a change to the 40-60 set-aside, the number of Market Rate units can remain the same, the development can be eligible for MFDL funds and receive support from the City of Mesquite.

Since application in March 2024, Total Development Costs for this project have increased (potential tariffs and inflation), Equity pricing has decreased, and interest rates continue to rise. These factors resulted in a need to fill a funding gap, which the applicant has worked to fill through MFDL funding.

The applicant is now applying for a MDL 2025-1 NHTF loan of \$5,331,291 to remain financially feasible. The MDL loan will have a lower interest rate of 2% and longer amortization period of 40 years allowing this Project to be feasible under DCR requirements.

The common area square footage changed from 36,576 S.F. to 36,498 S.F. (Club decreased from 6,485 s.f. to 6,408 s.f., Laundry decreased from 494 s.f. to 0 s.f. and Storage increased from 3,320 s.f. to 3,813 s.f.)

The LURA will encompass all 5.841 acres of the site.

### **Operating Pro Forma**

Using TDHCA ProForma. Underwriter used comparable Dallas county properties to estimate expenses. Underwriter is using the most current 2025 program rent limits for 9% HTC and 2025 limits for NHTF. The Applicant submitted a rent schedule using the 2024 program rent limits for 9% HTC however, the Underwriter updated the Applicant's rent schedule with the 2025 HTC rents.

The Utility Allowances for the one bedroom units decreased by \$5.00 and the two bedroom units decreased by \$7.00 from previous underwriting.

Effective Gross Income decreased by \$19k, Total Expenses increased by \$28k and as a result, Net Operating Income (NOI) decreased by \$47k. Expense per unit increased from \$6,195 to \$6,408.

The Applicant is not expecting to collect the full market rate for their market rents (MR). Underwrote the 45 MR units to the rents they expect to collect (1-BR at \$1,602 and 2-BR at \$1,865).

### **Development Cost**

The applicant's Building Costs have increased by \$412,280 and Total Housing Development Costs have increased by \$767,707.

No change to the Developer Fee from previous underwriting.

A Schedule of Values or contract bid was not provided, therefore, the Underwriter recosted out the building using the Architectural Drawings provided in the application with the 2025 Marshall and Swift's costs.

### **Sources of Funds**

The construction loan lender did not change (Regions Bank - HUD 221(d)4).

Construction loan decreased from \$15,785,400 to \$11,430,000 and the interest rate increased from 5.25% to 5.80%.

Application was submitted with MDL construction interest of 2% - per Multifamily Direct Loan rule 13.8(b)(2) "No interest will accrue during the construction term;"

Underwriter adjusted construction interest from 2% to 0%.

The permanent loan lender did not change (Regions Bank - HUD 221(d)4). Permanent loan amount decreased from \$15,785,400 to \$11,430,000 and the interest increased from 5.25% to 5.80%. This loan remains in the first lien position.

The senior financing is a PNC FHA 221(d)4 construction-to-permanent loan and has a separate MIP fee of 0.25%.

Applicant is now including \$5,331,291 MDL NHTF loan construction to permanent loan 0% during construction and 2% in the permanent period. The construction period is in the **second** lien position and the permanent period is in the second lien position.

The Debt Coverage Ratio on the senior debt is 1.34 times. The Combined DCR for a Multifamily Direct Loan subordinate to FHA debt is determined based on 75% of Surplus Cash remaining after the senior debt service. The Combined DCR is 1.00 as required by the QAP.

The equity bridge loan lender did not change (Regions Bank). Equity bridge loan decreased from \$14,502,272 to \$13,850,061 and the interest increased from 5.00% to 6.78%.

The Equity Investor is still Regions Bank. The capital contribution decreased by \$399,960 and the credit price decreased from \$0.91 to \$0.89.

The Deferred Developer Fee increased by \$191,776 and pays off in 14 years.

**Recommendation**

Underwriter recommends a second lien, fully amortized Multifamily Direct Loan of \$5,331,291 at 2.00% interest, 40 year term, and a 40 year amortization period. Under these terms, the annualized debt service payment is \$193,734. The construction term is assumed at 24 months. The MDL funding is 2025-1 NHTF funds.

In addition, Underwriter recommends that the 9% LIHTC allocation of \$2,000,000 remains the same.

Underwriter: Mario Castellanos

Manager of Real Estate Analysis: Robert Castillo

Director of Real Estate Analysis: Jeanna Adams

UNIT MIX/RENT SCHEDULE
<b>2910 Motley Senior Living, Mesquite, 9% HTC / MDL #25501_24030</b>

LOCATION DATA	
CITY:	Mesquite
COUNTY:	Dallas
Area Median Income	\$117,300
PROGRAM REGION:	3
PROGRAM RENT YEAR:	2025

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	NHTF	ARP	Match
Eff	-	0.0%	0	0	0	0
1	62	46.6%	0	13	0	5
2	71	53.4%	0	16	0	6
3	-	0.0%	0	0	0	0
4	-	0.0%	0	0	0	0
5	-	0.0%	0	0	0	0
<b>TOTAL</b>	<b>133</b>	<b>100.0%</b>	<b>-</b>	<b>29</b>	<b>-</b>	<b>11</b>

PRO FORMA ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	64.41%
APP % Acquisition	4.00%
APP % Construction	9.00%
Average Unit Size	855 sf

<b>46%</b>	<b>Income</b>	20%	30%	40%	50%	60%	70%	80%	EO / MR	<b>TOTAL</b>
<b>Average</b>	<b># Units</b>	-	29	-	36	23	-	-	45	<b>133</b>
<b>Income</b>	<b>% Total</b>	0.0%	21.8%	0.0%	27.1%	17.3%	0.0%	0.0%	33.8%	<b>100.0%</b>

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		MFDL NHTF Units		Match Units	UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	Type	Gross Rent	Match Units	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst	
TC 30%	\$660	NHTF 30%	\$660	0	13	1	1	706	\$660	\$64	\$596	\$0	\$0.84	\$596	\$7,748	\$7,748	\$596	\$0.84	\$0	\$1,602	\$2.27	\$1,780
TC 50%	\$1,100			2	32	1	1	706	\$1,100	\$64	\$1,036	\$0	\$1.47	\$1,036	\$33,152	\$33,152	\$1,036	\$1.47	\$0	\$1,602	\$2.27	\$1,780
TC 60%	\$1,320			3	3	1	1	706	\$1,320	\$64	\$1,256	\$0	\$1.78	\$1,256	\$3,768	\$3,768	\$1,256	\$1.78	\$0	\$1,602	\$2.27	\$1,780
MR				0	14	1	1	706	\$0	\$64		NA	\$2.27	\$1,602	\$22,428	\$22,428	\$1,602	\$2.27	NA	\$1,602	\$2.27	\$1,780
TC 30%	\$792	NHTF 30%	\$792	0	16	2	2	984	\$792	\$84	\$708	\$0	\$0.72	\$708	\$11,328	\$11,328	\$708	\$0.72	\$0	\$1,865	\$1.90	\$2,072
TC 50%	\$1,320			0	4	2	2	984	\$1,320	\$84	\$1,236	\$0	\$1.26	\$1,236	\$4,944	\$4,944	\$1,236	\$1.26	\$0	\$1,865	\$1.90	\$2,072
TC 60%	\$1,584			6	20	2	2	984	\$1,584	\$84	\$1,500	\$0	\$1.52	\$1,500	\$30,000	\$30,000	\$1,500	\$1.52	\$0	\$1,865	\$1.90	\$2,072
MR				0	18	2	2	984	\$0	\$84		NA	\$1.90	\$1,865	\$33,570	\$33,570	\$1,865	\$1.90	NA	\$1,865	\$1.90	\$2,072
MR				0	13	2	2	990	\$0	\$84		NA	\$1.88	\$1,865	\$24,245	\$24,245	\$1,865	\$1.88	NA	\$1,865	\$1.88	\$2,080
TOTALS/AVERAGES:					133	113,714						\$0	\$1.51	\$1,287	\$171,183	\$171,183	\$1,287	\$1.51	\$0	\$1,742	\$2.04	\$1,937

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$2,054,196</b>	<b>\$2,054,196</b>
-------------------------------------	--------------------	--------------------

\*MFDL units float among Unit Types

\*\* Match Units will be restricted at 50 percent income/Low HOME rents, and 60 percent income/High HOME rents.



# STABILIZED PRO FORMA

2910 Motley Senior Living, Mesquite, 9% HTC / MDL #25501\_24030

		STABILIZED FIRST YEAR PRO FORMA														
		COMPARABLES			APPLICANT			PRIOR REPORT		TDHCA				VARIANCE		
		Database	County Comps		% EGI	Per SF	Per Unit	Amount	Applicant	TDHCA	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT						\$1.51	\$1,287	\$2,054,196	\$2,074,944	\$2,074,944	\$2,054,196	\$1,287	\$1.51		0.0%	\$0
Application, Pet, Late and NSF Fees							\$15.90	\$25,380	25,152							
Laundry, Vending, Cable							\$9.10	\$14,520	14,520							
Total Secondary Income							\$25.00			39,672	\$39,900	\$25.00			0.0%	\$0
POTENTIAL GROSS INCOME								\$2,094,096	\$2,114,616	\$2,114,616	\$2,094,096				0.0%	\$0
Vacancy & Collection Loss							7.5% PGI	(157,057)	(158,596)	(158,596)	(157,057)	7.5% PGI			0.0%	-
EFFECTIVE GROSS INCOME								\$1,937,039	\$1,956,020	\$1,956,020	\$1,937,039				0.0%	\$0

General & Administrative	\$76,402	\$574/Unit	\$54,426	\$409	4.47%	\$0.76	\$651	\$86,554	\$54,726	\$54,426	\$76,402	\$574	\$0.67	3.94%	13.3%	10,152
Management	\$62,061	3.1% EGI	\$67,151	\$505	4.00%	\$0.68	\$583	\$77,482	\$97,801	\$97,801	\$77,482	\$583	\$0.68	4.00%	0.0%	-
Payroll & Payroll Tax	\$192,196	\$1,445/Unit	\$188,450	\$1,417	10.06%	\$1.71	\$1,465	\$194,838	\$194,838	\$188,450	\$188,450	\$1,417	\$1.66	9.73%	3.4%	6,388
Repairs & Maintenance	\$107,169	\$806/Unit	\$109,560	\$824	4.43%	\$0.75	\$645	\$85,788	\$85,788	\$86,450	\$86,450	\$650	\$0.76	4.46%	-0.8%	(662)
Electric/Gas	\$36,014	\$271/Unit	\$32,097	\$241	1.31%	\$0.22	\$191	\$25,450	\$25,451	\$32,097	\$32,097	\$241	\$0.28	1.66%	-20.7%	(6,647)
Water, Sewer, & Trash	\$114,114	\$858/Unit	\$93,802	\$705	4.44%	\$0.76	\$646	\$85,977	\$69,177	\$93,802	\$93,802	\$705	\$0.82	4.84%	-8.3%	(7,825)
Property Insurance	\$90,101	\$0.79 /sf	\$91,085	\$685	4.81%	\$0.82	\$700	\$93,100	\$93,100	\$91,085	\$91,085	\$685	\$0.80	4.70%	2.2%	2,015
Property Tax (@ 100%) 2.334446	\$148,998	\$1,120/Unit	\$219,536	\$1,651	8.58%	\$1.46	\$1,250	\$166,250	\$166,250	\$148,998	\$237,430	\$1,785	\$2.09	12.26%	-30.0%	(71,180)
Reserve for Replacements					1.72%	\$0.29	\$250	\$33,250	\$33,250	\$33,250	\$33,250	\$250	\$0.29	1.72%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.18%	\$0.03	\$26	\$3,520	\$3,520	\$3,520	\$3,520	\$26	\$0.03	0.18%	0.0%	-
TOTAL EXPENSES					44.00%	\$7.49	\$6,408	\$852,209	\$823,901	\$829,879	\$919,968	\$6,917	\$8.09	47.49%	-7.4%	\$ (67,759)
NET OPERATING INCOME ("NOI")					56.00%	\$9.54	\$8,157	\$1,084,830	\$1,132,119	\$1,126,141	\$1,017,071	\$7,647	\$8.94	52.51%	6.7%	\$ 67,759

CONTROLLABLE EXPENSES		\$3,599/Unit				\$3,588/Unit										
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<div>CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS</div> <div>2910 Motley Senior Living, Mesquite, 9% HTC / MDL #25501_24030</div>
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		DEBT / GRANT SOURCES																	
		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE									AS UNDERWRITTEN DEBT/GRANT STRUCTURE								
																	Cumulative		
		Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Prior Underwriting		Principal	Term	Amort	Rate	Pmt	DCR	LTC		
UW	App	Applicant	TDHCA																
DEBT (Must Pay)	Fee	1.33	1.42	764,214	5.80%	40	40.0	\$11,430,000	\$15,785,400	\$15,785,400	\$11,430,000	40.0	40.0	5.80%	\$764,214	1.33	31.4%		
Regions Bank - HUD 221(d)4	0.25%	1.06	1.13	\$193,734	2.00%	40	40.0	\$5,331,291			\$5,331,291	40.0	40.0	2.00%	\$193,734	1.00	14.6%		
CASH FLOW DEBT / GRANTS																			
City of Mesquite		1.06	1.13		0.00%	0	0.0	\$500			\$500	0.0	0.0	0.00%		1.00	0.0%		
City of Mesquite		1.06	1.13		0.00%	0	0.0	\$0	\$500	\$500	\$0	0.0	0.0	0.00%		1.00	0.0%		
GP Equity		1.06	1.13		0.00%	0	0.0	\$0	\$100	\$100	\$0	0.0	0.0	0.00%		1.00	0.0%		
				\$957,948	TOTAL DEBT / GRANT SOURCES			\$16,761,791	\$15,786,000	\$15,786,000	\$16,761,791	TOTAL DEBT SERVICE			\$957,948	1.00	46.0%		
NET CASH FLOW		\$59,123	\$126,882	TDHCA NET OPERATING INCOME \$1,017,071 \$59,123														NET CASH FLOW	

	EQUITY SOURCES												
	APPLICANT'S PROPOSED EQUITY STRUCTURE							AS UNDERWRITTEN EQUITY STRUCTURE					
	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Prior Underwriting		Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
Applicant						TDHCA							
EQUITY / DEFERRED FEES													
Regions Bank	LIHTC Equity	48.9%	\$2,000,000	\$0.89	\$17,798,220	\$18,198,180	\$18,198,180	\$17,798,220	\$0.8899	\$2,000,000	48.9%	\$15,038	Previous Allocation
GP Equity		0.0%			\$100			\$100			0.0%		
RIVA/The Land Experts	Deferred Developer Fees	5.1%	(50% Deferred)		\$1,865,941	\$1,674,165	\$1,674,165	\$1,865,941	(50% Deferred)		5.1%	Total Developer Fee: \$3,708,278	
TOTAL EQUITY SOURCES		54.0%			\$19,664,261	\$19,872,345	\$19,872,345	\$19,664,261			54.0%		
TOTAL CAPITALIZATION					\$36,426,052	\$35,658,345	\$35,658,345	\$36,426,052			15-Yr Cash Flow after Deferred Fee:		\$279,303

		DEVELOPMENT COST / ITEMIZED BASIS													
		APPLICANT COST / BASIS ITEMS								TDHCA COST / BASIS ITEMS				COST VARIANCE	
		Eligible Basis		Total Costs			Prior Underwriting		Total Costs			Eligible Basis			
		Acquisition	New Const. Rehab				Applicant	TDHCA				New Const. Rehab	Acquisition		
Land Acquisition				\$31,579 / Unit	\$4,200,000	\$4,200,000	\$4,200,000	\$4,200,000	\$31,579 / Unit			0.0%	\$0		
Building Acquisition		\$0		\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit		\$0	0.0%	\$0		
Broker Fees					\$126,000	\$126,000	\$126,000	\$126,000				0.0%	\$0		
Off-Sites				\$ / Unit	\$0	\$0	\$0	\$0	\$ / Unit		\$0	0.0%	\$0		
Site Work			\$1,579,473	\$11,876 / Unit	\$1,579,473	\$1,579,474	\$1,579,474	\$1,579,473	\$11,876 / Unit	\$1,579,473		0.0%	\$0		
Site Amenities			\$962,239	\$7,235 / Unit	\$962,239	\$935,923	\$935,923	\$962,239	\$7,235 / Unit	\$962,239		0.0%	\$0		
Building Cost			\$15,552,581	\$136.77 /sf	\$116,937/Unit	\$15,552,581	\$15,140,301	\$16,904,829	\$15,054,753	\$113,194/Unit	\$132.39 /sf	\$15,054,753	3.3%	\$497,828	
Contingency			\$802,775	4.44%	4.44%	\$802,775	\$690,666	\$690,666	\$802,775	4.56%	4.56%	\$802,775	0.0%	\$0	
Contractor Fees			\$2,533,202	13.41%	13.41%	\$2,533,202	\$2,471,798	\$2,471,798	\$2,533,202	13.77%	13.77%	\$2,533,202	0.0%	\$0	
Soft Costs		\$0	\$2,747,523		\$22,115 / Unit	\$2,941,273	\$2,543,038	\$2,543,038	\$2,941,273	\$22,115 / Unit		\$2,747,523	\$0	0.0%	\$0
Financing		\$0	\$1,387,725		\$20,647 / Unit	\$2,746,110	\$2,717,277	\$2,717,277	\$2,746,110	\$20,647 / Unit		\$1,387,725	\$0	0.0%	\$0
Developer Fee			\$0	\$3,708,278	14.50%	14.50%	\$3,708,278	\$3,708,278	\$3,708,278	14.79%	14.79%	\$3,708,278	\$0	0.0%	\$0
Reserves					8 Months	\$1,274,121	\$1,545,590	\$1,545,590	\$1,274,121	8 Months				0.0%	\$0
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$29,273,796		\$273,880 / Unit	\$36,426,052	\$35,658,345	\$37,422,873	\$35,928,224	\$270,137 / Unit		\$28,775,968	\$0	1.4%	\$497,828
Acquisition Cost		\$0				\$0	\$0								
Contingency			\$0			\$0	\$0								
Contractor's Fee			\$0			\$0	\$0								
Financing Cost			\$0												
Developer Fee		\$0	\$0			\$0	\$0								
Reserves						\$0	\$0								
ADJUSTED BASIS / COST		\$0	\$29,273,796		\$273,880/unit	\$36,426,052	\$35,658,345	\$37,422,873	\$35,928,224	\$270,137/unit		\$28,775,968	\$0	1.4%	\$497,828
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$36,426,052									

**CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS**

**2910 Motley Senior Living, Mesquite, 9% HTC / MDL #25501\_24030**

CREDIT CALCULATION ON QUALIFIED BASIS				
Applicant		TDHCA		
Acquisition	Construction Rehabilitation	Acquisition	Construction	
ADJUSTED BASIS	\$0	\$29,273,796	\$0	\$28,775,968
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$29,273,796	\$0	\$28,775,968
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$38,055,935	\$0	\$37,408,758
Applicable Fraction	64.41%	64.41%	64%	64%
TOTAL QUALIFIED BASIS	\$0	\$24,513,438	\$0	\$24,096,564
Applicable Percentage	4.00%	9.00%	4.00%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$2,206,209	\$0	\$2,168,691
CREDITS ON QUALIFIED BASIS	\$2,206,209		\$2,168,691	

ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS			FINAL ANNUAL LIHTC ALLOCATION		
Method	Annual Credits	Proceeds	Credit Price \$0.8899	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$2,206,209	\$19,633,300	----	----	----
Needed to Fill Gap	\$2,209,677	\$19,664,161	----	----	----
Previous Allocation	\$2,000,000	\$17,798,220	\$2,000,000	\$0	\$0

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Elevator Served	113,714 SF	\$90.93	10,340,333
Adjustments				
Exterior Wall Finish	2.80%		2.55	\$289,529
Elderly	9.00%		8.18	930,630
9-Ft. Ceilings	3.35%		3.05	346,401
Roof Adjustment(s)			(0.25)	(28,429)
Subfloor			(0.21)	(24,259)
Floor Cover			3.75	426,428
Breezeways	\$54.04	21,696	10.31	1,172,555
Balconies	\$53.36	9,446	4.43	503,999
Plumbing Fixtures	\$1,460	346	4.44	505,160
Rough-ins	\$715	266	1.67	190,190
Built-In Appliances	\$2,200	133	2.57	292,600
Exterior Stairs	\$4,250	10	0.37	42,500
Heating/Cooling			4.11	467,365
Storage Space	\$54.04	3,813	1.81	206,073
Carports	\$21.40	13,608	2.56	291,211
Garages	\$41.00	0	0.00	0
Common/Support Area	\$122.99	6,408	6.93	788,108
Elevators	\$129,800	2	2.28	259,600
Other:			0.00	0
Fire Sprinklers	\$4.60	145,631	5.89	669,903
SUBTOTAL			155.39	17,669,898
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
TOTAL BUILDING COSTS			155.39	\$17,669,898
Plans, specs, survey, bldg permits	3.30%		(5.13)	(\$583,107)
Contractor's OH & Profit	11.50%		(17.87)	(2,032,038)
NET BUILDING COSTS		\$113,194/unit	\$132.39/sf	\$15,054,753

## Long-Term Pro Forma

**2910 Motley Senior Living, Mesquite, 9% HTC / MDL #25501\_24030**

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,937,039	\$1,975,780	\$2,015,295	\$2,055,601	\$2,096,713	\$2,314,941	\$2,555,882	\$2,821,900	\$3,115,605	\$3,439,880	\$3,797,906	\$4,193,195
TOTAL EXPENSES	3.00%	\$919,968	\$946,792	\$974,405	\$1,002,831	\$1,032,094	\$1,191,851	\$1,376,571	\$1,590,180	\$1,837,225	\$2,122,968	\$2,453,508	\$2,835,903
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$1,017,071</b>	<b>\$1,028,988</b>	<b>\$1,040,890</b>	<b>\$1,052,770</b>	<b>\$1,064,619</b>	<b>\$1,123,090</b>	<b>\$1,179,311</b>	<b>\$1,231,720</b>	<b>\$1,278,381</b>	<b>\$1,316,912</b>	<b>\$1,344,398</b>	<b>\$1,357,291</b>
EXPENSE/INCOME RATIO		47.5%	47.9%	48.4%	48.8%	49.2%	51.5%	53.9%	56.4%	59.0%	61.7%	64.6%	67.6%
<b>MUST -PAY DEBT SERVICE</b>													
Regions Bank - HUD 221(d)4		\$764,214	\$764,027	\$763,830	\$763,620	\$763,398	\$762,073	\$760,303	\$757,940	\$754,784	\$750,569	\$744,939	\$737,422
TDHCA MDL - 2025-1 NHTF		\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734	\$193,734
TOTAL DEBT SERVICE		\$957,948	\$957,762	\$957,564	\$957,354	\$957,132	\$955,807	\$954,037	\$951,674	\$948,518	\$944,303	\$938,674	\$931,156
DEBT COVERAGE RATIO		1.0	1.01	1.01	1.02	1.03	1.08	1.13	1.17	1.21	1.24	1.27	1.29
<b>ANNUAL CASH FLOW</b>													
Deferred Developer Fee Balance		\$59,123	\$71,226	\$83,326	\$95,416	\$107,487	\$167,283	\$225,273	\$280,045	\$329,863	\$372,609	\$405,724	\$426,135
Deferred Developer Fee Balance		\$1,806,818	\$1,735,592	\$1,652,266	\$1,556,850	\$1,449,363	\$732,065	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		\$0	\$0	\$0	\$0	\$0	\$0	\$279,303	\$1,571,594	\$3,123,649	\$4,904,506	\$6,871,322	\$8,966,944



Texas Department of Housing and Community Affairs  
221 E. 11<sup>th</sup> Street  
Austin, TX 78701

RE: 25501\_24030 2910 Motley Senior Living – 40-60 Set-Aside Material Amendment

To Whom it May Concern,

The purpose of this letter is to request approval to change the minimum set-aside election from an Average Income election to a 40-60 election. This change will greatly benefit the project.

**The Reason the Change is Necessary & Good Cause for the Change**

2910 Motley Senior Living has been in process since 2022. The initial 9% Housing Tax Credit Application was submitted in March 2023 with a Total Development Cost of \$32 million. When it did not successfully receive an award, it was resubmitted in March 2024, but the Total Development Costs for this project increased to \$36.5 million and has continued to increase recently due to potential tariffs inflating construction pricing. In addition to this, interest rates have continued to increase. These factors resulted in a need to fill a funding gap, which we have worked to fill through MFDL funding of \$5,331,290. This funding from TDHCA is crucial to the success of this deal as the local jurisdictions have no funding available to provide to the development. This development is very important to the City of Mesquite as it has been in process since 2022, and the number of market rate units was crucial for the Resolutions of Support and Zoning Change. Per 10 TAC 13.3(d)(2)(a), if average income is elected, no more than 15% of total units can be designated Market Rate and still remain eligible for MFDL funds. With a change to the 40-60 set-aside, the number of Market Rate units can remain the same, the development can be eligible for MFDL funds and receive support from the City of Mesquite.

**Updated Financial Exhibits**

Please see attached updated financial exhibits under Exhibit A following this letter, which includes updated exhibits. Acknowledgement from the Lender and Equity Syndicator are forthcoming.

**An explanation of whether the necessity of the amendment was reasonably foreseeable at the time of Application**

Since application in March 2024, Total Development Costs for this project have increased, Equity pricing has decreased, and interest rates continue to rise. No soft funding was considered in the application for tax credits. It was not reasonably foreseeable at initial application that this project would need MFDL in order to remain financially feasible.

We have also sent the required application fee via FedEx with check #661 paid by Riva Switzerland, Inc.

We request that this amendment be approved. If you have any questions, please do not hesitate to contact me via email at [chunt@rivaswitzerland.com](mailto:chunt@rivaswitzerland.com).

Best Regards,



Cody Hunt

Authorized Representative



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #: 1050**

**Agenda Date: 6/12/2025**

**Agenda #: 5.**

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Presentation, discussion, and possible action regarding the adoption of an Agreed Final Order concerning Waters at Willow Run (HTC 13600 / Bond 13600B / CMTS 4888)

#### **RECOMMENDED ACTION**

**WHEREAS**, Waters at Willow Run, owned by The Waters at Willow Run, LP (Owner), had uncorrected compliance findings relating to the applicable land use restriction agreement and the associated statutory and rule requirements;

**WHEREAS**, the ownership group has a history of violations and has signed four prior agreed final orders, most recently in June 2024;

**WHEREAS**, TDHCA identified new findings of noncompliance during its regularly scheduled 2024 file monitoring review at Waters at Willow Run, and referred that noncompliance for an administrative penalty when it was not timely corrected;

**WHEREAS**, unresolved compliance findings included: failure to submit annual rents for approval, failure to maintain the specific unit mix required by the HOME LURA, a tenant income certification violation for one unit, and household income violations for two units;

**WHEREAS**, the final referred noncompliance was resolved on April 27, 2025, after intervention by the Enforcement Committee;

**WHEREAS**, an Enforcement Committee informal conference was held on April 29, 2025, and Owner agreed, subject to Board approval, to enter into an Agreed Final Order assessing an administrative penalty of \$5,400.00; and

**WHEREAS**, staff has based its recommendations for an Agreed Final Order on the Department's rules for administrative penalties and an assessment of each and all of the statutory factors to be considered in assessing such penalties, applied specifically to the facts and circumstances present in this case.

**NOW, therefore, it is hereby**

**RESOLVED**, that an Agreed Final Order assessing an administrative penalty of \$5,400.00, for noncompliance at Waters at Willow Run (HTC 13600 / Bond 13600B / CMTS 4888), substantially in the form presented at this meeting, and authorizing any non-substantive technical corrections, is hereby adopted as the order of this Board.

#### **BACKGROUND**

**Property Information:** The Waters at Willow Run, LP (Owner) is the Owner of Waters at Willow Run (Property), an apartment complex composed of 242 units, located in Travis and Williamson Counties. All units are restricted at 60% AMI. The Waters at Willow Run, LP is controlled by Atlantic Housing Foundation, Inc. (AHF), a South Carolina nonprofit corporation. Officers for

AHF include: Michael N. Nguyen (President and CEO) and Will Saqueton (Secretary and Treasurer). Board of Trustees members for AHF include: Michael Nguyen, Rachel Hayden, Mike Duffy, Ruben Gomez, Stephanie Laxton, James Smith, Bob Voelker, Gina Fernandini, and Darren James. The property is self-managed by a related entity, Atlantic Housing Management, LLC. CMTS lists Michael Nguyen as the primary contact for the Owner and property management.

The Property is subject to two Land Use Restriction Agreements (collectively the LURAs), in consideration for an allocation of 4% Low Income Housing Tax Credits and multifamily housing revenue bonds to build and operate the Property. The LURAs were effective in 2016 and 2013, respectively.

**Prior Referrals:** AHF and its affiliates currently control two actively monitored developments that are monitored by TDHCA, and it recently applied for bond funding to rehabilitate two other developments. AHF previously controlled six additional TDHCA-monitored properties, of which one was sold in April, and five have expired LURAs. AHF has a history of penalty referrals, regularly failing to submit complete corrective documentation or respond to Department correspondence. During a 2018 informal conference, Owner representatives agreed to attend training, stated that they were hiring additional compliance staff, and stated that they were committed to improving internal processes and accountability to ensure future compliance. AHF made improvements after signing the three 2018 Agreed Final Orders noted below; however, problems resumed in 2021 during the pandemic, and continue today. During 2024, related property, Waters at Sunrise (HTC 14417 / HOME 102231 / CMTS 5046), was referred for a penalty. That administrative penalty referral was substantive, and corrective documentation submitted in response to the referral was incomplete. The Compliance Division asked the Enforcement Committee to move forward with that administrative penalty referral due to a pattern of substantive repeated noncompliance and administrative penalty referrals by AHF. Prior Agreed Final Orders include:

- 2018 Agreed Final Order for Waters at Sunrise (HTC 14417 / HOME 102231 / CMTS 5046) included an administrative penalty of \$500.00, which was forgiven when the Owner submitted acceptable evidence of affirmative marketing. This development is still actively-monitored.
- 2018 Agreed Final Order for Redbud Trail (Bond MF018 / HTF 92041B / CMTS 2515) included an administrative penalty of \$1,500.00, relating to file monitoring noncompliance including: household income, written policies and procedures, utility allowance, affirmative marketing, and not implementing the Tenant Rights and Resources Guide. Redbud Trail violated this 2018 Order, but paid the full penalty upon demand and submitted final corrections a few days later. This LURA expired on December 29, 2024.
- 2018 Agreed Final Order for Stonebriar Village of Plainview (HTC 99102 / CMTS 2174) included an administrative penalty of \$500.00, which was forgiven when the owner submitted acceptable evidence that it had completed exterior painting and driveway repairs. AHF sold this development in April 2025.
- 2024 Agreed Final Order for Waters at Sunrise (HTC 14417 / HOME 102231 / CMTS 5046) included an administrative penalty of \$7,500.00, relating to file monitoring



noncompliance including: household income, utility allowance, annual rent approval, unit mix, asset verifications, and not implementing the Tenant Rights and Resources Guide. Waters at Sunrise submitted partial corrections, but violated the order. It paid the full penalty, and then submitted the remaining corrections. This development is still actively-monitored.

**Current Administrative Penalty Referral:** TDHCA identified new findings of noncompliance during a file monitoring review conducted at the Property on September 4, 2024. The TDHCA Compliance Division referred the following findings to the Enforcement Committee for an administrative penalty on February 25, 2025, all of which were resolved after referral, but before the scheduled informal conference:

- Failure to provide pre-onsite documentation.
- Failure to provide eight points of social services.
- Failure to provide Tenant Rights and Resources Guide Acknowledgment for four units.
- Failure to collect Annual Eligibility Certification for two units.
- Program unit not leased to a low-income household for one unit.

**Penalty Analysis and Factors:** Owner participated in an informal conference with the Enforcement Committee on April 29, 2025. The Enforcement Committee analyzed the required statutory factors for determining an appropriate administrative penalty as follows:

Debarment eligibility: AHF currently controls fewer than five developments, so it is not eligible for debarment consideration based upon repeated violations in a portfolio, but an administrative penalty is appropriate.

- 1. The seriousness, extent, and gravity of the violations:** There are no health and safety violations, and there is no evidence of fraud, waste, or abuse. Accordingly, the referral is less serious when compared to other types of referred noncompliance, and most of the referred noncompliance relates to record-keeping and organizational problems. However, it is serious that no supportive services were being provided at the time of the monitoring review. Additionally, the owner's continued and repeated failure to respond to TDHCA monitoring is serious, reflecting supervisory and organizational problems that could lead to more serious future noncompliance.
- 2. Hazard posed to the health or safety of the public:** There are no hazards posed for health or safety.
- 3. Hazard posed to the public's economic welfare:** There are potential economic impacts for failure to collect a complete tenant file to prove initial eligibility, however, overall impact of the current violations is limited since all affected households did qualify for the program. Supportive services can also have economic impacts depending upon services selected, for example, food pantry, scholastic tutoring, and notary services were among the services selected, all of which are economically valuable for tenants.

4. **History of previous penalty orders:** Four prior orders for related properties. This history has not changed AHF's pattern of failing to submit timely responses to TDHCA monitoring.
5. **Efforts made to correct the violations:** All noncompliance was corrected shortly before the informal conference. However, Owner failed to submit any response to the Compliance Division until the Enforcement Committee intervened. This is a repeated problem, with AHF not responding fully or timely to deadlines set by Compliance, but quickly submitting corrections after referral for a penalty. During the 2024 informal conference, Owner representatives stated that their policy was for a single staff member to be responsible for uploading corrections to TDHCA. That person failed to submit corrections in response to the corrective action deadline, and then submitted incomplete documentation in response to the administrative penalty referral. She is no longer with AHF. The Enforcement Committee noted in 2024 that this is a risky strategy, and owner representatives admitted that there was no chain of supervision for reviewing corrections, or managerial oversight of deadlines. They had a new management team, all hired during the fall and winter of 2023, and they implemented changes in May 2024, including a shared calendar for TDHCA deadlines to be handled by the management team, which included the Director of Property Management for AHF, Associate Director of Property Management for AHF, and the Compliance Manager for AHF. They would share responsibility for ensuring timely responses to TDHCA deadlines, and would meet every Monday to discuss the calendar and upcoming deadlines. Additionally, the Compliance Manager for AHF would double-check all corrective documentation from the site prior to uploading corrections to TDHCA going forward.

The Enforcement Committee thought that 2024 plan was adequate, however, they noted at the time that the primary CMTS contact, Michael Nguyen, does not respond to any correspondence, and defers all responses to staff. Enforcement Committee members were concerned that, given past patterns, the changes discussed by the new management team may not succeed long-term without strong supervision from Mr. Nguyen, especially if there is additional staff turn-over. As the Committee feared in 2024, all of the problems noted above were repeated in 2025, including failure to respond to a TDHCA notice of noncompliance due to AHF staff turn-over without adequate supervision. Michael Nguyen attended the informal conference on April 29, 2025, and indicated that it is still his policy for a single staff member to be responsible for compliance matters and uploading corrections to TDHCA. A new management system called Asana will now be used for tracking workflow. Supportive services responsibilities have been transferred to AHF's Community Services Department, reporting to director, Latoya Jones, who in turn reports to Will Sasqueton, the Secretary and Treasurer for AHF.

6. **Any other matters that justice may require:** There is a history of prior penalty referrals, and AHF signed four prior Agreed Final Orders, as outlined above. The TDHCA Compliance Division asked the Enforcement Committee to move forward with this

administrative penalty referral due to a pattern of repeated noncompliance and administrative penalty referrals by the Owner. AHF currently controls fewer than five developments, so they are not eligible for debarment consideration based upon repeated violations in a portfolio, but an administrative penalty is appropriate.

Additionally, there is a pending 4% HTC application to rehabilitate Water at Stone Creek. It had a previous 1993 Bond award that went inactive for monitoring by TDHCA on December 31, 2008. The previous participation review classified AHF as a category 3, and many conditions were set for this award due to the penalty history noted above, which the Department hopes will help to avoid future penalty referrals if properly implemented. A list of those conditions is at Exhibit 1.

- 7. Amount necessary to deter future violations:** AHF does not communicate well, which makes it difficult for TDHCA to efficiently monitor them. Continued future penalty referrals for AHF are likely unless it implements the Bond award conditions noted above, which will require investment in staff and systems. AHF also indicated that there was a cost to implement Asana. AHF violated the 2024 Agreed Final Order for Waters at Sunrise and paid the full penalty, but still ignored the corrective action deadline for Waters at Willow Run, suggesting that a maximum potential penalty assessment is appropriate. The maximum potential administrative penalty for the current referral is low because the noncompliance is not extensive, and all noncompliance is corrected.

Consistent with direction from the Department's Enforcement Committee, an administrative penalty in the amount of \$5,400.00 is recommended. This will be a reportable item of consideration under previous participation for any new award to the principals of the Owner. AHF has accepted these terms.

## **Exhibit 1**

### **Improvement Conditions Associated with Bond Application # 25403 Waters at Stone Creek.**

- (1) Atlantic Housing Foundation is required to prepare or update its internal procedures to improve compliance outcomes and to provide copies of such new or updated procedures to the Department by June 30, 2025.
- (2) Owner is required to designate a person or persons to receive Compliance correspondence and ensure that this person or persons will provide timely responses to the Department for and on behalf of the proposed Development and all other Development subject to TDHCA LURAs over which the Owner has the power to exercise Control. A list of the person, or persons positions, should be provided to the Department no later than June 30, 2025.
- (3) Atlantic Housing Foundation agrees to replace the existing management company, consultant, or management personnel, with another of its choosing, for any of their properties identified with new Events of Noncompliance that are triggered due to non-responsiveness (no corrective action submitted during the designated corrective action period) on any Monitoring Event notified from July 1, 2025 through December 31, 2026.
- (4) Owner agrees to establish an email distribution group in CMTS (or other Department required system), to be kept in place until no later than December 31, 2026, and include agreed upon employee positions and/or designated Applicant members. A list of the employee positions and/or designated Applicant members, with the email distribution group name, should be provided to the Department no later than June 30, 2025.
- (5) Atlantic Housing Foundation is required to ensure that officers with the ability to exercise control (including Wilfredo Saqueton and Michael N. Nguyen), Property Management staff for Atlantic Housing Foundation, on site management staff and any other members with Compliance oversight attend and review the trainings listed in subparagraphs (A) and (B) of this paragraph and provide TDHCA with a certification of attendance or completion no later than October 31, 2025.
  - (A) Housing Tax Credit Training sponsored by the Texas Apartment Association;
  - (B) Review the following TDHCA Compliance Training Presentation webinars located at Website:  
<https://www.tdhca.texas.gov/compliance-program-training-presentations>
    - i. Compliance Monitoring Training:
      - 2022 Monitoring Reviews Beginning to End Training
      - 2024 Forms Training
      - 2024 Supportive Services Training
      - 2024 Monitoring Review, Monitoring Report and Corrective Action Training
    - ii. CMTS and Reporting Training:
      - 2024 Online Reporting, Annuals Owners Compliance Reports, Quarterly Vacancy Report and Unit Status Report Training
      - 2024 Monitor Review Questionnaire Training
    - iii. HOTMA:
      - 2023 September HOTMA Training
      - 2023 October HOTMA Training
      - 2024 Assets and HOTMA Changes Training
      - 2024 October HOTMA and Associated New Regulatory Changes
    - iv. Income Eligibility Training:
      - 2024 Income Determination Training

ENFORCEMENT ACTION AGAINST	§	BEFORE THE
THE WATERS AT WILLOW RUN, LP WITH	§	TEXAS DEPARTMENT OF
RESPECT TO WATERS AT WILLOW RUN	§	HOUSING AND COMMUNITY
(HTC 13600 / BOND 13600B / CMTS 4888)	§	AFFAIRS
	§	

### **AGREED FINAL ORDER**

#### **General Remarks and official action taken:**

On this 12<sup>th</sup> day of June, 2025, the Governing Board (Board) of the Texas Department of Housing and Community Affairs (TDHCA or Department) considered the matter of whether enforcement action should be taken against **THE WATERS AT WILLOW RUN, LP**, a Texas limited partnership (Respondent).

This Agreed Order is executed pursuant to the authority of the Administrative Procedure Act (APA), Tex. Gov't Code §2001.056, which authorizes the informal disposition of contested cases. In a desire to conclude this matter without further delay and expense, the Board and Respondent agree to resolve this matter by this Agreed Final Order. The Respondent agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the findings of fact and conclusions of law set out in this Order.

Upon recommendation of the Enforcement Committee, the Board makes the following findings of fact and conclusions of law and enters this Order:

### **WAIVER**

Respondent acknowledges the existence of their right to request a hearing as provided by Tex. Gov't Code §2306.044, and to seek judicial review, in the District Court of Travis County, Texas, of any order as provided by Tex. Gov't Code §2306.047. Pursuant to this compromise and settlement, the Respondent waives those rights and acknowledges the jurisdiction of the Board over Respondent.

### **FINDINGS OF FACT (FOF)**

#### **Jurisdiction:**

1. During 2013, Respondent received an allocation of 4% Low Income Housing Tax Credits and multifamily housing revenue bonds to build and operate Waters at Willow Run (HTC 13600 / Bond 13600B / CMTS 4888) (Property).
2. Respondent signed two land use restriction agreements (collectively, the LURAs) regarding the Property:

- a. In connection with the tax credit funding, Respondent signed a Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement for Low Income Housing Tax Credits (HTC LURA) regarding the Property. The HTC LURA was dated as of September 20, 2016, filed of record at Document Number 2016203029 of the Official Public Records of Real Property of Travis County, Texas (the Travis County Records), and also filed of record at Document Number 2016114860 of the Official Public Records of Real Property of Williamson County, Texas (the Williamson County Records); and
  - b. In connection with the Bond funding, Respondent signed a Regulatory and Land Use Restriction Agreement (Bond LURA) regarding the Property. The Bond LURA was dated as of September 1, 2013, filed of record at Document Number 2013174710 of the Travis County Records, and also filed of record at Document Number 2013090897 of the Williamson County Records.
3. Respondent is subject to the regulatory authority of TDHCA.

Compliance Violations<sup>1</sup>:

4. The Department conducted an on-site monitoring review on September 4, 2024, to determine whether Respondent was in compliance with LURA requirements to lease units to low-income households and maintain records demonstrating eligibility. TDHCA compliance monitors found violations of the LURA and TDHCA rules. The monitors sent notifications of noncompliance, setting a corrective action deadline of January 6, 2025. Respondent did not submit any corrective documentation, and the following violations were referred for an administrative penalty:
  - a. Respondent failed to submit pre-onsite documentation, including a monitor review questionnaire, a violation of 10 TAC §10.607 (Reporting Requirements) and §10.618 (Monitoring and Inspections), which require all developments to submit necessary documentation as requested in preparation for an upcoming monitoring review. Acceptable corrective documentation was submitted on March 24, 2025, after intervention by the Enforcement Committee.
  - b. Respondent failed to provide evidence that eight points of required supportive services were being provided, a violation of Addendum B of the HTC LURA and 10 TAC §10.619 (Monitoring for Social Services). Acceptable corrective documentation was submitted on April 27, 2025, after intervention by the Enforcement Committee.
  - c. Respondent failed to provide a Tenant Rights and Resources Guide for units 733, 1025, 1226, and 1314, a violation of 10 TAC §10.613 (Lease Requirements),

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<sup>1</sup> Within this Agreed Final Order, all references to violations of TDHCA Compliance Monitoring rules at 10 TAC Chapter 10 refers to the versions of the code in effect at the time of the compliance monitoring reviews and/or inspections that resulted in recording each violation. All past violations remain violations under the current code and all interim amendments.

which requires owners to post a laminated copy of the Guide in a common area of the leasing office and provide a copy to each household during the application process and upon any subsequent change to common amenities, unit amenities, or services. This violation was corrected on March 28, 2025, after intervention by the Enforcement Committee.

- d. Respondent failed to provide an Annual Eligibility Certification for units 1025 and 1314, a violation of 10 TAC §10.612 (Tenant File Requirements), which requires developments to annually collect an Annual Eligibility Certification form from each household. This violation was corrected on March 28, 2025, after intervention by the Enforcement Committee.
  - e. Respondent failed provide a complete Tenant Income Certification form for unit 724 at initial occupancy, a violation of 10 TAC §10.611 (Determination, Documentation and Certification of Annual Income), Section 4 of the HTC LURA, and Section 4 of the Bond LURA, which require screening of tenants to ensure qualification for the program at initial occupancy. This violation was corrected on March 28, 2025, after intervention by the Enforcement Committee.
5. All violations listed above are considered resolved at the time of this Order.

#### **CONCLUSIONS OF LAW**

- 1. The Department has jurisdiction over this matter pursuant to Tex. Gov't Code §§2306.041-.0503 and 10 TAC Chapter 2.
- 2. Respondent is a "housing sponsor" as that term is defined in Tex. Gov't Code §2306.004(14).
- 3. Pursuant to IRC §42(m)(1)(B)(iii), housing credit agencies are required to monitor for noncompliance with all provisions of the IRC and to notify the Internal Revenue Service of such noncompliance.
- 4. Pursuant to Tex. Gov't Code Chapter 2306, Subchapter DD and Tex. Gov't Code §2306.185, TDHCA is authorized to make Housing Tax Credit Allocations for the State of Texas and is required to monitor to ensure compliance.
- 5. Respondent violated 10 TAC §10.607 and §10.618 in 2024, by not submitting pre-onsite documentation in preparation for the monitoring review.
- 6. Respondent violated 10 TAC §10.619 and Addendum B of the HTC LURA in 2024, by failing to provide evidence that eight points of required supportive services were being provided.

7. Respondent violated leasing requirements in 10 TAC §10.613 in 2024, by failing to provide a Tenant Rights and Resources Guide to four households and have the households sign acknowledgment forms.
8. Respondent violated 10 TAC §10.612 in 2024, by failing to collect an Annual Eligibility Certification for one household.
9. Respondent violated 10 TAC §10.611, Section 4 of the HTC LURA, and Section 4 of the Bond LURA, in 2024, by failing to provide a tenant income certification and documentation to ensure qualification for the program for one household.
10. Because Respondent is a housing sponsor with respect to the Property, and has violated TDHCA rules, the Board has personal and subject matter jurisdiction over Respondent pursuant to Tex. Gov't Code §2306.041 and §2306.267.
11. Because Respondent is a housing sponsor, TDHCA may order Respondent to perform or refrain from performing certain acts in order to comply with the law, TDHCA rules, or the terms of a contract or agreement to which Respondent and TDHCA are parties, pursuant to Tex. Gov't Code §2306.267.
12. Because Respondent has violated rules promulgated pursuant to Tex. Gov't Code §2306.053 and has violated agreements with the Agency to which Respondent is a party, the Agency may impose an administrative penalty pursuant to Tex. Gov't Code §2306.041.
13. An administrative penalty of \$5,400.00 is an appropriate penalty in accordance with 10 TAC Chapter 2.

Based upon the foregoing findings of fact and conclusions of law, and an assessment of the factors set forth in Tex. Gov't Code §2306.042 to be considered in assessing such penalties as applied specifically to the facts and circumstances present in this case, the Governing Board of the Texas Department of Housing and Community Affairs orders the following:

**IT IS HEREBY ORDERED** that Respondent is assessed an administrative penalty in the amount of \$5,400.00.

**IT IS FURTHER ORDERED** that Respondent shall pay and is hereby directed to pay the \$5,400.00 administrative penalty by cashier's check payable to the "Texas Department of Housing and Community Affairs" on or before July 14, 2025, to the following address:

<b>If via overnight mail (FedEx, UPS):</b>	<b>If via USPS:</b>
TDHCA Attn: Ysella Kaseman 221 E 11 <sup>th</sup> St Austin, Texas 78701	TDHCA Attn: Ysella Kaseman P.O. Box 13941 Austin, Texas 78711



**IT IS FURTHER ORDERED** that Respondent shall follow the requirements of 10 TAC §10.406, and obtain approval from the Department prior to consummating a sale of the property, if contemplated.

**IT IS FURTHER ORDERED** that the terms of this Agreed Final Order shall be published on the TDHCA website.

*[Remainder of page intentionally blank]*

*Approved by the Governing Board of TDHCA on June 12th, 2025.*

By: \_\_\_\_\_  
Name: Leo Vasquez  
Title: Chair of the Board of TDHCA

By: \_\_\_\_\_  
Name: James "Beau" Eccles  
Title: Secretary of the Board of TDHCA

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 12<sup>th</sup> day of June, 2025, personally appeared Leo Vasquez, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas

**THE STATE OF TEXAS §**  
**§**  
**COUNTY OF TRAVIS §**

Before me, the undersigned notary public, on this 12<sup>th</sup> day of June, 2025, personally appeared James "Beau" Eccles, proved to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal)

\_\_\_\_\_  
Notary Public, State of Texas



Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

NOTARY PUBLIC IN AND FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1021**

**Agenda Date: 6/12/2025**

**Agenda #: 6.**

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TDHCA Quarterly Status Report on Temporary Allocations - June 2025

**BACKGROUND**

Attached



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### TDHCA Quarterly Status Report on Temporary Allocations – June 2025

This report reflects one-time or temporary federally awarded allocations of funds, including those focused specifically on the Department’s COVID-19 pandemic response. Programs previously funded, but now closed<sup>1</sup>, are now reflected only in this front page grand total, but are no longer summarized in the following pages. Only programs that remain actively open or unclosed are reflected in the following pages. The totals on this page exclude funds that TDHCA already had in house that were then reprogrammed in the initial months of the pandemic.<sup>2</sup>

#### PERFORMANCE TO DATE ACROSS ALL OPEN AND CLOSED PROGRAMS

Cumulative Performance to Date Across All Programs Reported			
Total of All Funding	Total Funds Obligated	Total Funds Spent	Total Served to Date <sup>3</sup>
\$4,634,605,928	\$4,441,341,962 (95.83%)	\$4,288,936,051 (92.54%)	515,358 households 4,749,397 persons 1,086,961 meals <sup>4</sup> provided 394 units <sup>5</sup> committed

<sup>1</sup> Closed programs reflected in these totals include LIHEAP (CARES, ARP and 2023 Continuing Resolution), LIHWAP, Housing Choice Voucher Administration and Additional MVP vouchers, ESG CARES, and CSBG CARES.

<sup>2</sup> These included ~\$11M of HOME TBRA, ~\$1.4M of CSBG Discretionary, and minimal amounts of HHSP; those activities assisted 2,612 households and 9,930 persons, not otherwise reflected in the totals above.

<sup>3</sup> Based on reporting requirements, some programs report households and some report persons. Persons reported above do not comprise the members of the households reported, but are separate persons assisted.

<sup>4</sup> Meals served through the HSS Program not otherwise reflected in either the count of households or persons served.

<sup>5</sup> Units committed are from HOME-ARP and ERA Multifamily activities.

## OPEN PROGRAMS

<b>Program (Expend. Deadline)</b>	<b>Brief Overview</b>	<b>Program Status</b>	<b>Served to Date</b>	<b>Total Program Funds</b>	<b>Funds Obligated*</b>	<b>Funds Expended*</b>
<b>CDBG</b>  (November 3, 2026)	Funded through the CARES Act via HUD. Funds were used for a variety of activities including rental assistance, mortgage payment assistance, assisting providers of persons with disabilities, and food expenses. Remaining activity is the Community Resiliency Program (CRP), and legal services for persons with disabilities.	The CRP has 13 active contracts with small rural communities for activities such as community/senior/ health centers, and ambulances. Program is on target to expend all funds by the November 2026 deadline.	3,533,842 Persons	\$141,846,258	\$141,846,258 100%	\$116,058,608 81.82%
<b>Texas Rent Relief</b>  (September 30, 2025)	Funded through the Consolidated Appropriations Act for ERA1 and the American Rescue Plan (ARPA) for ERA2, via Treasury, provided up to 18 months of rental and utility assistance. Households facing eviction were prioritized for processing. Total of all ERA received across ERA1, ERA2, and reallocations was \$2,687,062,464. A portion of ERA funds are for Housing Stability Services (see row below). \$6M of ERA2 funds are designated for other affordable rental housing.	Program closed July 7, 2023 with final payments to approved households issued on October 6, 2023. TRR staff continues working on reconciliation, audit, reporting, and closeout. All ERA1 funds expended by deadline.  Figures are subject to some adjustments as staff continues to work on reconciliation and closeout.	324,146 House-holds  63 Units	\$2,466,516,459	\$2,466,516,459 100%	\$2,460,345,654 99.75%
<b>Housing Stability Services (HSS)</b>  (September 30, 2025)	Programmed from the ERA funds noted on the row above, a portion of funds were authorized for housing stabilization. Program provides funds to local communities or nonprofits with services to help households maintain or obtain stable housing including legal services, outreach services, shelter services, community services, veterans services, and services offered at permanent supportive housing properties.	Under ERA1 funds 28 contracts were completed. Currently there are 47 contracts (25 of which are closed as of 5/16/2025). Program is on target to expend all funds by the September 2025 deadline.	1,086,961 Meals  130,480 Households	\$220,546,004	\$220,546,004 100%	\$202,703,300 91.1%
<b>HOME ARP</b>  (September 30, 2030)	Funded through ARPA via HUD, funds are to be used to the benefit of homeless, at risk of homelessness, those fleeing domestic violence, and populations with housing instability. Funds have been programmed for development of rental housing and non-congregate shelter, and operating costs/capacity building for nonprofit organizations.	Awarded \$53.1 M in rental development. Awarded \$3.2M in nonprofit capacity building/operating (NCO). Non-congregate shelter (NCS) Invitation to Apply released for approx. \$64M.	331 Units	\$133,478,052	\$68,722,714 51%	\$39,419,755 30%

<b>HAF</b> (September 30, 2026)	Funded through ARPA via Treasury, the bulk of funds helped households avoid displacement through payments for mortgage, utility, property taxes, insurance premiums and HOA fees. Approximately \$16 million was also provided to local organizations to assist households in accessing HAF funds, to provide housing counseling services and to provide legal services; separate from the total households served with HAF, more than 9,100 households were served and 1,600 outreach events hosted.	Program closed to new applications October 10, 2023; final subrecipient contract was completed in June 2024. Final HAF Payments made as of April 15, 2025.  HAF staff continues working on reconciliation, reporting, and closeout.	58,536 households	\$842,214,006	\$841,404,041 99.90%	\$840,120,168 99.75%
<b>Emergency Housing Vouchers (EHV)</b> (obligate by September 30, 2030)	Funded through ARPA, via HUD, dedicates vouchers for emergency rental TDHCA was allocated 798 vouchers by HUD, with additional funds to provide services. Vouchers are for households who are: (1) homeless, (2) at risk of homelessness, (3) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking, or (4) recently homeless.	Assistance was provided in the Balance of State Continuum of Care (COC), Heart of Texas Homeless Coalition area, and Tarrant County Homeless Coalition area. These partners are in the final stages and all vouchers have been issued. 953 vouchers were issued; after vouchers declined, more than 808 households have been housed.	808 households housed	\$11,490,348	\$16,026,513.80 139.48%	\$18,541,701.80 161.37%
<b>LIHEAP (IIJA)</b> (September 30, 2026)	Funded through the Infrastructure Investment and Jobs Act (IIJA), via USHHS, for home energy costs. Funds released in annual increments over 5 years. Estimated 5-Year total is \$37.6 million. Funds are made available to each state as part of its annual LIHEAP allocation; the Department therefore handles these as part of our annual allocation.	For the first several annual allocations a statewide provider was utilized; their portal was closed September 2023. Remaining Funds are now directed through the regular LIHEAP network of providers. Because funds are received annually, expenditures will be reflected slowly over 5 years. To date, three annual allocations have been received.	41,294 persons	\$32,348,848	\$32,348,848 100%	\$27,228,809 84.17%
<b>BIL WAP</b> (No deadline)	Funded through the Bipartisan Infrastructure Law Weatherization Assistance Program of the IIJA, via Department of Energy, for home weatherization activities. While there is no deadline DOE has encouraged expenditure within 5 years.	Allows for single family and multifamily weatherization of units through a network of existing providers. Efforts to also utilize a statewide vendor have been pursued, but as of yet are not successful. 50% of funds have been released to the state by DOE.	1,214 units	\$173,162,598	\$48,485,527 28%	\$17,561,398 10.14%

\* Funds obligated and expended include funds used for administrative expenses. Funds expended are a percentage of total program funds.

\*\* This grand total of TRR funds includes the Other Rental Assistance activities and excludes the HSS found on the following row.





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1052**

**Agenda Date: 6/12/2025**

**Agenda #: 7.**

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Media Analysis and Outreach Report, April 2025

**Report follows this page.**



## TDHCA Outreach and Media Analysis, April 2025

A compilation of TDHCA media analysis designed to enhance the awareness of TDHCA programs and services among key stakeholder groups and the general public, and outreach activities, such as trainings and webinars. The following is an analysis of print, online and broadcast news, and social media reporting for the time period of April 1-30, 2025 (news articles that specifically mentioned TDHCA generally or along with Department programs).

Total number of articles referencing TDHCA: 29

Breakdown by Medium:<sup>1</sup>

- Print: 6 (Editorials/Columnists = 1)
- Broadcast: 6
- Trade, Government or Internet-Based Publications: 17

Figure 1 News Tone

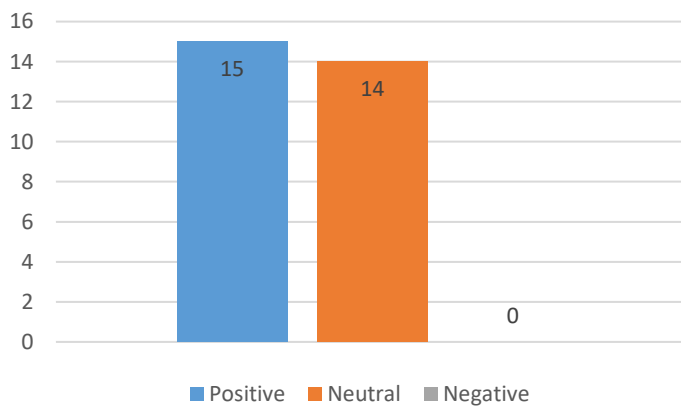
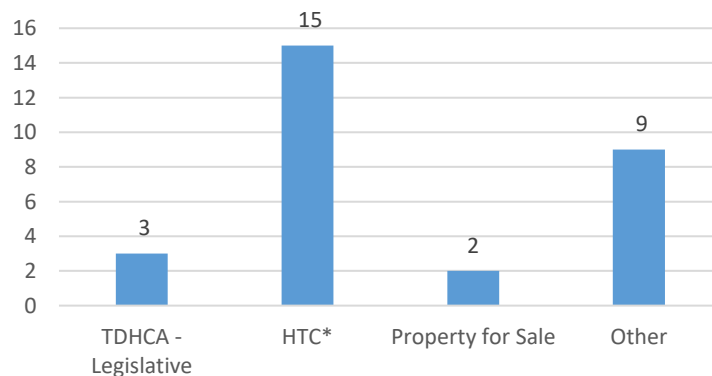
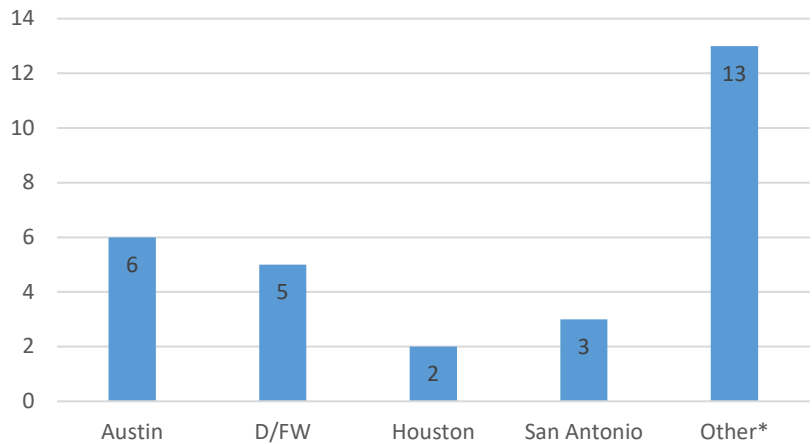


Figure 2 News Topic<sup>2</sup>



<sup>1</sup> Broadcast numbers may represent times in which TDHCA was referenced on a television or radio station's website, rather than in a broadcast segment. <sup>2</sup> News Topics: Programs include Housing Tax Credit.

Figure 3 Media Market



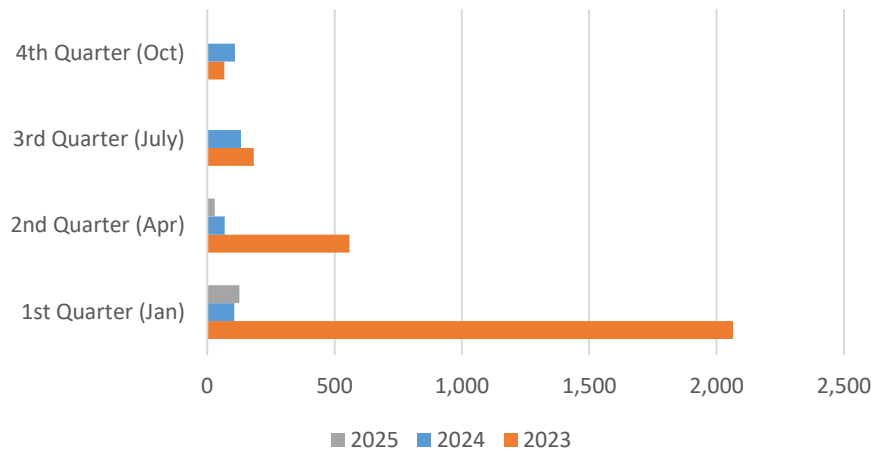
**Summary:**

Reporting on TDHCA activities by the news media totaled 29 references in April 2025. TDHCA’s Housing Tax Credit programs dominated the news cycle with most related to ribbon-cutting ceremonies held throughout Texas.

News mentions during the month were higher than April 2024 (19 total).


The following table illustrates the number of news mentions during each month or quarter of 2025 compared to 2024 and 2023. For the beginning of the second quarter of 2025 (April-June), total news mentions tracked slightly higher (155 total) compared to the number of mentions during the same timeframe of 2024 (125 total), but lower than 2023 (2,299 total). Please note, some pandemic-related programs for which TDHCA had oversight were still operating and accepting applications in 2023.

TDHCA News Trends




### Social media:

Through April 2025, TDHCA has 3,695 followers to its X account and 7,681 fans to its Facebook page. TDHCA's YouTube channel had 5,867 views in April. The following is a summary analysis of TDHCA's efforts to inform stakeholders and the public on federal and state resources, initiatives, and programs.

					
Month/Yr	Posts	Clicks	Engagements	Shared posts	Reactions
January 2025	48	0	57 (includes Comments)	4	50
February 2025	39	0	18 (includes Comments)	3	12
March 2025	59	0	60 (includes Comments)	1	53
April 2025	47	0	46 (includes Comments)	2	40

\* Clicks = number of times an individual clicked on a link provided in a post; however, FB only tracks clicks for posts that reach a minimum engagement level of 30. Engagements = any action a person takes on our post including shares, comments and reactions.

					
Month/Yr	Posts	Clicks	Engagements	Retweets	Liked posts
January 2025	45	0	10	2	6
February 2025	42	11	9	1	3
March 2025	57	0	7	2	5
April 2025	47	0	3	1	2

\* Clicks = number of times an individual clicked on a link provided in a post. Engagements = any action a person takes on our post



Month	Views	Watch time (hours)	Avg. view duration	Avg. % viewed	Unique viewers
January 2025	6,118	521.9	5:07	17.6%	5,158
February 2025	4,979	471.4	5:40	15.8%	4,066
March 2025	5,471	405.6	4:26	15.1%	4,553
April 2025	5,867	563.5	5:45	18.1%	4,715














### Understanding the YouTube Analytics

- **Views:** number of times your videos were viewed
- **Watch Time:** total number of hours your videos were watched by viewers
- **Average View Duration:** total watch time of your video divided by the total number of video plays, including replays. This metric measures your video's ability to engage viewers. The higher the view duration, the more engaging the videos.

- **Average Pct Viewed:** the percent of each video the average viewer watched. It measures your video's ability to hold viewers' attention for its entirety. YouTube generally rewards videos that can hold people's attention with higher search and recommendation rankings.
- **Unique viewers:** the estimated number of individuals who watch your videos over a certain period of time. It helps determine the size of our audience.

### Top 25 videos for April 2025

Content		Views ↓	Watch time (hours)	Average view duration	Average percentage viewed	Unique viewers
Duration	Publish date					
<input type="checkbox"/> <b>Total</b>		<b>5,867</b>	<b>563.5</b>	<b>5:45</b>	<b>18.1%</b>	<b>4,715</b>
<input type="checkbox"/>  3:24	Help for Texans (English)	4,023 68.6%	108.5 19.2%	1:37	47.6%	3,625 76.9%
<input type="checkbox"/>  0:52	Texas Homebuyer Program introduction	454 7.7%	5.7 1.0%	0:45	86.8%	443 9.4%
<input type="checkbox"/>  5:43:58	Income Determination Training Webinar - Jan. 4, 2024	113 1.9%	99.2 17.6%	52:40	15.3%	47 1.0%
<input type="checkbox"/>  4:48:58	Income Determination Training	96 1.6%	36.4 6.5%	22:43	7.9%	50 1.1%
<input type="checkbox"/>  1:32:36	PFC webinar and Office Hours	66 1.1%	21.6 3.8%	19:36	21.2%	42 0.9%
<input type="checkbox"/>  1:47:05	Assets and the Changes from HOTMA	54 0.9%	21.6 3.8%	23:58	22.4%	45 1.0%
<input type="checkbox"/>  1:19:05	Transfers and Household Additions Training	52 0.9%	8.7 1.6%	10:03	12.7%	37 0.8%
<input type="checkbox"/>  1:45:18	Fair Housing 101: The Basics of Fair Housing in Texas	45 0.8%	11.4 2.0%	15:13	14.5%	34 0.7%
<input type="checkbox"/>  5:18:57	TDHCA Training: Section 811 Project Rental Assistanc...	37 0.6%	15.9 2.8%	25:45	8.1%	21 0.5%
<input type="checkbox"/>  1:58:46	Multifamily Compliance: Online Reporting, USR and AO...	37 0.6%	8.0 1.4%	13:01	11.0%	25 0.5%
<input type="checkbox"/>  19:17	TEMAP Monthly Reporting Webinar for Part C Program...	31 0.5%	0.4 0.1%	0:48	4.2%	27 0.6%
<input type="checkbox"/>  1:32:18	Let's Talk About Forms	30 0.5%	18.3 3.3%	36:35	39.7%	24 0.5%

<input type="checkbox"/>	 7:07	Accessing Texas Department of Aging and Disability S...	28	0.5%	1.7	0.3%	3:44	52.5%	22	0.5%
<input type="checkbox"/>	 49:00	2024 Emergency Solutions Grants ESG Implementatio...	26	0.4%	7.2	1.3%	16:35	33.9%	16	0.3%
<input type="checkbox"/>	 1:35:29	Housing Opportunity Through Modernization Act of 20...	26	0.4%	13.5	2.4%	31:15	32.7%	24	0.5%
<input type="checkbox"/>	 1:38:54	Office Hours - NSPIRE	25	0.4%	13.8	2.5%	33:10	33.6%	19	0.4%
<input type="checkbox"/>	 1:17:06	Fair Housing Special Topics: The Violence Against Wo...	24	0.4%	4.1	0.7%	10:15	13.3%	6	0.1%
<input type="checkbox"/>	 51:36	2024 Emergency Solutions Grants (ESG) Implementati...	24	0.4%	3.9	0.7%	9:49	19.1%	20	0.4%
<input type="checkbox"/>	 3:07	Fair Housing in Texas	22	0.4%	0.7	0.1%	2:00	64.6%	15	0.3%
<input type="checkbox"/>	 1:45:17	Utility Allowance Webinar/Office Hours	22	0.4%	3.7	0.7%	10:04	9.6%	15	0.3%
<input type="checkbox"/>	 1:36:03	New Owner Training	22	0.4%	2.3	0.4%	6:16	6.5%	15	0.3%
<input type="checkbox"/>	 1:07:13	2024 Emergency Solutions Grants (ESG) Application S...	21	0.4%	3.8	0.7%	10:46	16.0%	16	0.3%
<input type="checkbox"/>	 1:31:25	Supportive Services, LURA discussion webinar	20	0.3%	13.2	2.3%	39:30	43.2%	13	0.3%
<input type="checkbox"/>	 4:09	Reasonable Accommodations in Texas	20	0.3%	0.4	0.1%	1:15	30.3%	15	0.3%
<input type="checkbox"/>	 2:38:56	Updated HOTMA Training - Oct. 13, 2023	17	0.3%	16.4	2.9%	57:43	36.3%	11	0.2%

### TDHCA Outreach April 2025

A compilation of outreach activities such as meetings, trainings and webinars.

Department	Meeting Date	Meeting Title	Attendees (includes organizer)
Compliance	April 4	Internal Utility Allowance training with Multifamily staff/Webinar	22
Compliance	April 11	Office Hours and Transfers/Additions Trainings	120
Housing Resource Center	April 15	Fair Housing Overview/Fair Housing Webinar	293
Housing Resource Center	April 22	Reasonable Accommodations /Fair Housing Webinar	233
Community Affairs/CSBG	April 23	Virtual Training Workgroup/6 subs	21

Compliance	April 24-25	SW-AHMA (SouthWestern Affordable Housing Management Association) Spring Meeting in Fort Worth	35
Multifamily	April 25	2026 QAP Round Table	65
Community Affairs/CEAP/CSBG/WAP	April 28-30	TCAA Conference/Network	100+
Housing Resource Center	April 29	Assistance Animals Fair Housing Webinar	215
Compliance	April 30	Section 811 PRA Certifications Training	81



# Texas Department of Housing and Community Affairs

## Governing Board

### Board Action Request

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**File #: 1022**

**Agenda Date: 6/12/2025**

**Agenda #: 8.**

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Executive Director's Report

### **ORAL PRESENTATION**





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1017**

**Agenda Date: 6/12/2025**

**Agenda #: 9.**

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Report on the Meeting of the Internal Audit and Finance Committee



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1041**

**Agenda Date: 6/12/2025**

**Agenda #: 10.**

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Presentation, discussion, and possible action on the SFY 2026 Operating Budget

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1045**

**Agenda Date: 6/12/2025**

**Agenda #: 11.**

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Presentation, discussion, and possible action on the SFY 2026 Housing Finance Division Budget

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

**File #:** 25-022

**Agenda Date:** 6/12/2025

**Agenda #:** 12.

Presentation, discussion, and possible action regarding the Issuance of a Multifamily Housing Governmental Note (The Legacy on Kiest) Series 2025, Resolution No. 25-022, and a Determination Notice of Housing Tax Credits

### **RECOMMENDED ACTION**

**WHEREAS**, the Board adopted an inducement resolution for The Legacy on Kiest at the Board meeting of April 11, 2024;

**WHEREAS**, an application for The Legacy on Kiest requesting 4% Housing Tax Credits, sponsored by DHFC The Legacy on Kiest GP, LLC and the Dallas Housing Finance Corporation, was submitted to the Department on March 5, 2025;

**WHEREAS**, in lieu of a Certification of Reservation, a Carryforward Designation Certificate from the Texas Bond Review Board (BRB) was issued on January 6, 2025, and will expire on December 31, 2027; and

**WHEREAS**, staff recommends approval of the issuance of a Multifamily Housing Governmental Note for The Legacy on Kiest (Series 2025), and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of a Multifamily Housing Governmental Note (The Legacy on Kiest) Series 2025 in the amount of \$30,000,000, Resolution No. 25-022, is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$2,509,813 in 4% Housing Tax Credits for The Legacy on Kiest, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website, is hereby approved in the form presented to this meeting; and

**FURTHER RESOLVED**, that if approved, staff is authorized, empowered, and directed, for and on behalf of the Department to execute such documents, instruments and writings and perform such acts and deeds as may be necessary to effectuate the foregoing.

### **BACKGROUND**

*General Information:* The Multifamily Housing Governmental Note will be issued in accordance with Tex. Gov't Code §2306.353 *et seq.*, which authorizes the Department to issue

governmental notes for its public purposes, as defined therein. Tex. Gov't Code §2306.472 provides that the Department's multifamily housing governmental notes are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

*Development Information:* The Legacy on Kiest is proposed to be located at 2621 Southerland Avenue in Dallas, Dallas County, and involves the new construction of 180 units that will serve the general population. A 2024 Traditional Carryforward designation was received from the Bond Review Board and the designation does not require any restrictions regarding the Area Median Family Income (AMFI), however, the application reflects that a Priority 2 designation has been elected, which requires at least 80% of the units within the development to have rents restricted to 60% of AMFI. The Priority 2 designation allows up to 20% of market-rate units. The application will adhere to the requirements of the priority designation, as it reflects that all the units will be rent- and income-restricted at 60% of AMFI.

*Organizational Structure and Previous Participation:* The Borrower is LDG The Legacy on Kiest, LP, and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered Previously Approved and was deemed acceptable.

*Tax Equity and Fiscal Responsibility Act (TEFRA) Public Hearing/Public Comment:* On March 18, 2022, the IRS released Revenue Procedure 2022-20, which permanently allows TEFRA hearings for qualified activity bonds to be held telephonically. Staff conducted a telephonic hearing for the proposed development on April 24, 2025. Representatives from the Department and the Developer were present, and no public comment was made. A copy of the transcript is included herein. The Department has not received any letters of support or opposition for the development.

### **Summary of Financial Structure**

Under the proposed structure, the Department will issue an unrated, fixed rate tax-exempt note in the principal amount of \$30,000,000, that will be purchased by Community Housing Investment Partners II, LP, as facilitated by R4 Capital Funding, LLC (R4). The interest rate will be fixed at closing and will be the greater of (i) the sum of (A) 1.50%, and (B) the 10-year Treasury Security, published by Thomson Reuters on the date of determination, or (ii) 5.50%, subject to adjustment as described in the Funding Loan Agreement. For purpose of underwriting, a rate of 6.14% was used. The loan will have a 60-month interest only period.

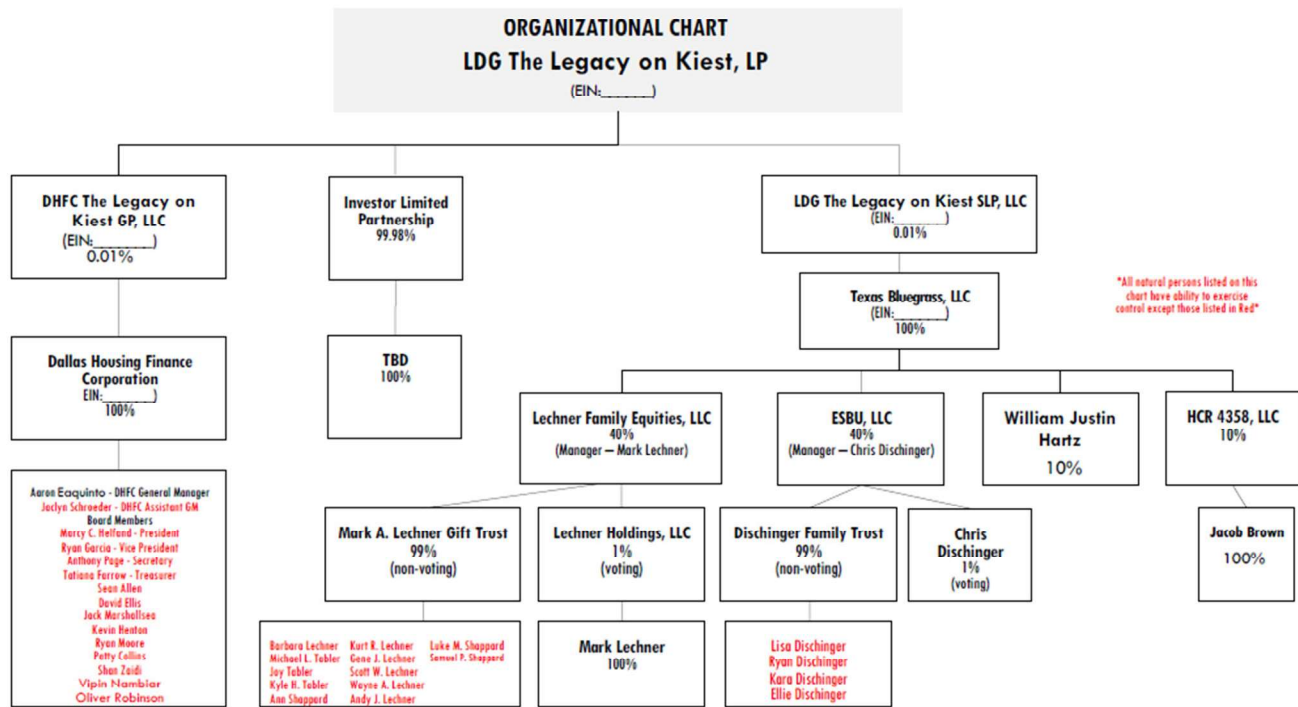
At stabilization, the permanent loan is anticipated to be in the amount of \$25,131,000 with a 16-year term, 40-year amortization, and a maturity date 40 years after closing, approximately July 1, 2065. R4 Capital will also provide a taxable construction loan in the amount of \$8,500,000. The term of the taxable loan will be approximately 60 months and the interest rate will be based upon the three-year Treasury Security as published by Thomson Reuters, plus a spread of 2.50%, estimated at the time of underwriting to be 6.85%.

A loan in the amount of \$1,500,000 from the Dallas Housing Finance Corporation has been

requested. The interest rate is anticipated to be 5.00% with a 30-year term. The loan will be repaid from available cash flow.

In addition, Rickhaus Design, LLC, an affiliate of the applicant, will provide a forgivable loan in the amount of \$1,500,000. The loan will have a 30-year term and interest rate of 6.00%.

Exhibit A



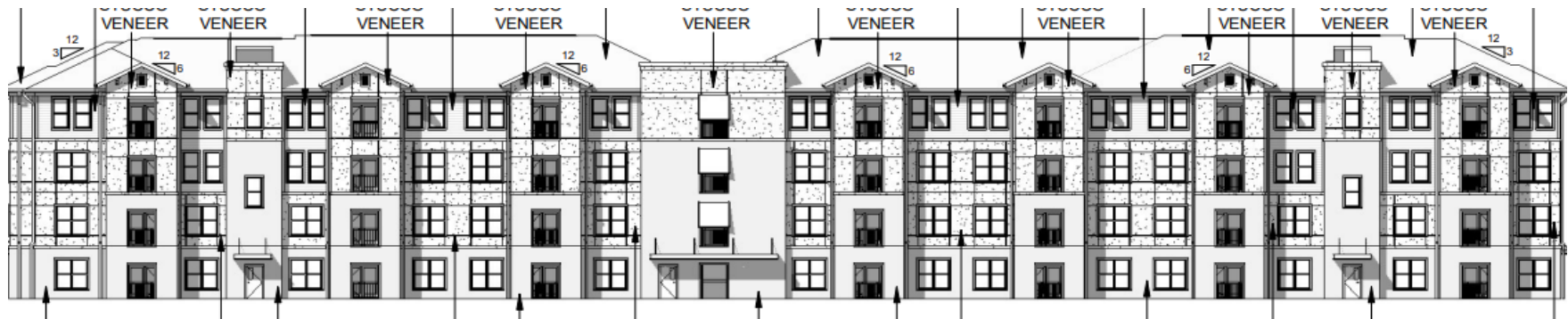
25603 The Legacy on Kiest - Application Summary

PROPERTY IDENTIFICATION	
Application #	25603
Development	The Legacy on Kiest
City / County	Dallas / Dallas
Region/Area	3 / Urban
Population	General
Set-Aside	General
Activity	New Construction

RECOMMENDATION						
TDHCA Program		Request	Recommended			
FHTC (4% Credit)		\$2,509,813	\$2,509,813	\$13,943/Unit	\$0.86	
		Amount	Rate	Amort	Term	Lien
Private Activity Bonds (TDHCA Issuer Only)		\$30,000,000				

KEY PRINCIPALS / SPONSOR		
Developer / Jason Trevino / LDG Development Developer / Justin Hartz / LDG Development		
Related Parties	Contractor - TBD	Seller - No

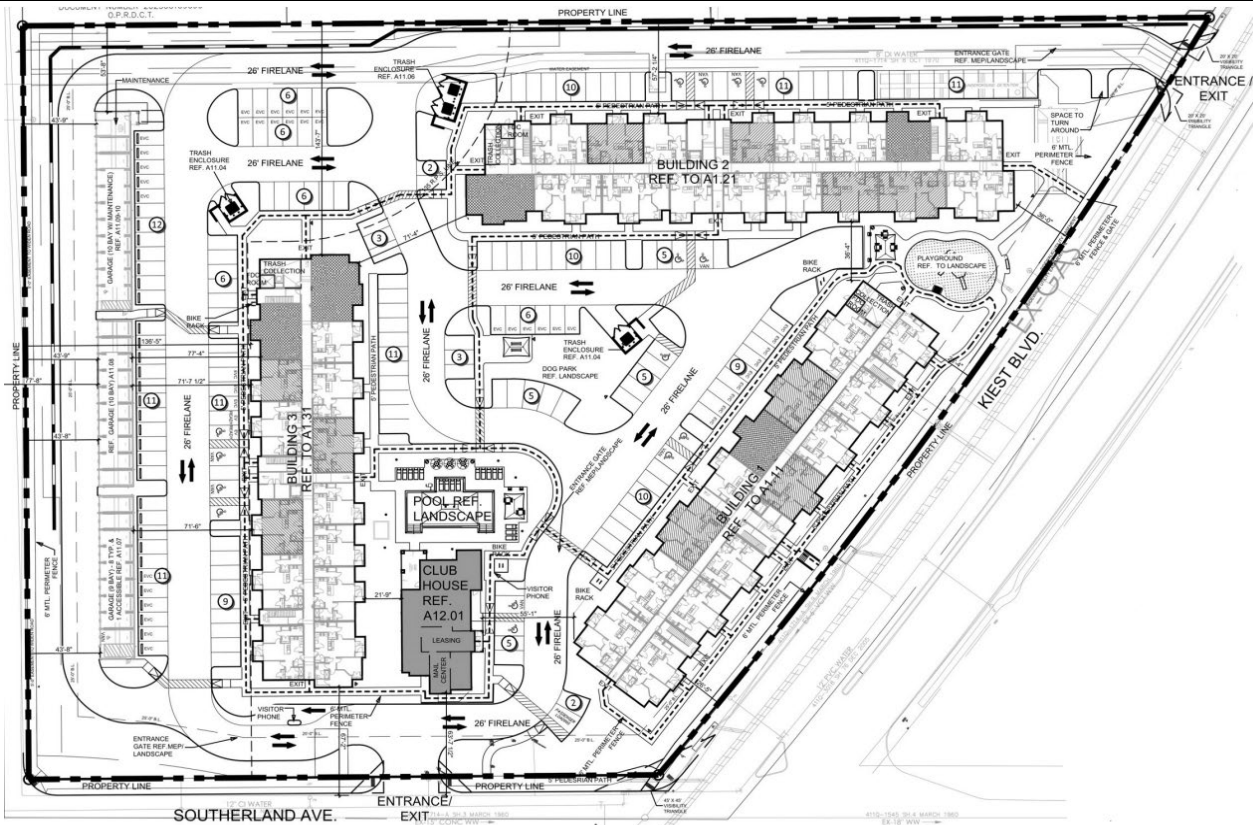
TYPICAL BUILDING ELEVATION/PHOTO



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	40	22%	30%	-	0%
2	88	49%	40%	-	0%
3	52	29%	50%	-	0%
4	-	0%	60%	180	100%
			70%	-	0%
			80%	-	0%
			MR	-	0%
TOTAL	180	100%	TOTAL	180	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		TDHCA's Pro Forma	
Debt Coverage	1.19	Expense Ratio	34.5%
Breakeven Occ.	82.8%	Breakeven Rent	\$1,365
Average Rent	\$1,528	B/E Rent Margin	\$163
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$5,967/unit	Controllable	\$3,715/unit

SITE PLAN



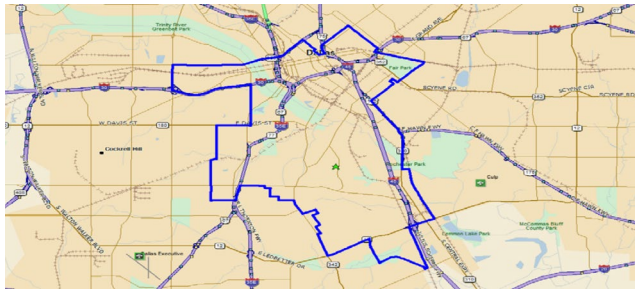
MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			7.4%
Highest Unit Capture Rate	28%	2 BR/60%	88
Dominant Unit Cap. Rate	28%	2 BR/60%	88
Premiums (↑80% Rents)	N/A		
Rent Assisted Units	N/A		

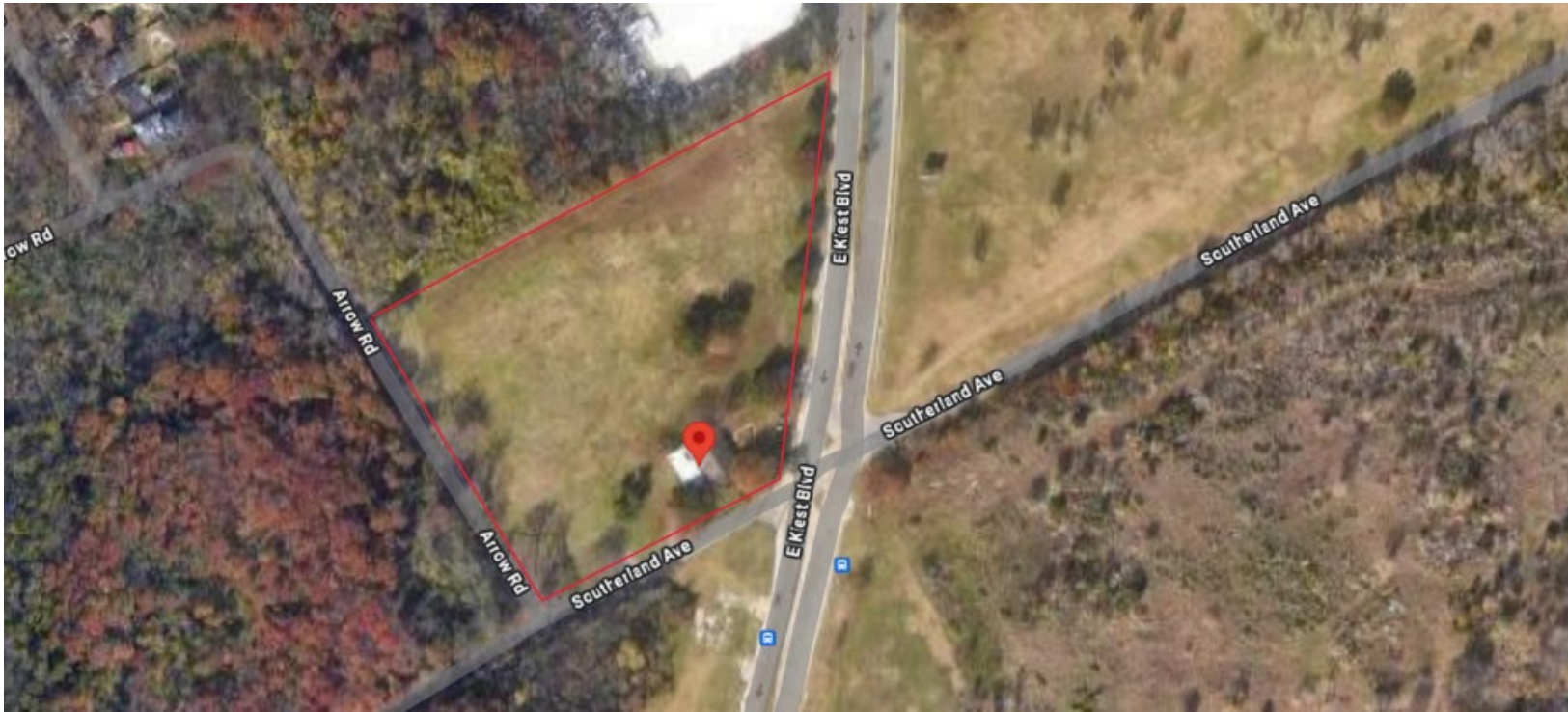
DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	869 SF	Density	30.0/acre
Acquisition		\$12K/unit	\$2,200K
Building Cost	\$157.76/SF	\$137K/unit	\$24,682K
Hard Cost		\$170K/unit	\$30,569K
Total Cost		\$304K/unit	\$54,794K
Developer Fee	\$6,296K	(81% Deferred)	Paid Year: 11
Contractor Fee	\$3,959K	30% Boost	Yes



DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES				
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount			
R4 Capital Funding	16/40	6.14%	\$25,131,000	1.19						R4	\$21,580,079			
											\$5,082,506			
					DHFC Soft Loan					30/0	5.00%	\$1,500,000	1.19	
					Developer Note (Rickhaus Loan)					30/0	6.00%	\$1,500,000	1.19	
TOTAL DEBT (Must Pay)			\$25,131,000		CASH FLOW DEBT / GRANTS				\$3,000,000		TOTAL EQUITY SOURCES	\$26,662,585		
												TOTAL DEBT SOURCES	\$28,131,000	
												TOTAL CAPITALIZATION	\$54,793,585	

CONDITIONS	
*	Receipt and acceptance by Cost Certification: a: Certification that testing for asbestos and lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement b: Certification that testing for lead in drinking water was performed if exisiting plumbing systems will remain, or a certification that existing plumbing systems have been replaced.
Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.	

BOND RESERVATION / ISSUER	
Issuer	TDHCA
Expiration Date	12/31/2027
Bond Amount	\$30,000,000
BRB Priority	Carryforward
% Financed with Tax-Exempt Bonds	58.9%
RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	Providing after school learning center
▫	Low expense ratio
WEAKNESSES/RISKS	
▫	Gross capture rate is on the higher end
AREA MAP	
	

AERIAL PHOTOGRAPH(s)


**Real Estate Analysis Division****Underwriting Report****June 3, 2025****DEVELOPMENT IDENTIFICATION**TDHCA Application #: **25603**Program(s): **TDHCA Bonds/4% HTC****The Legacy on Kiest**Address/Location: 2621 Southerland AveCity: DallasCounty: DallasZip: 75203Population: GeneralProgram Set-Aside: GeneralArea: UrbanActivity: New ConstructionBuilding Type: Garden/TownhomeRegion: 3Low-Income: 40% at 60%Analysis Purpose: New Application - Initial Underwriting**ALLOCATION**

TDHCA Program	REQUEST				RECOMMENDATION						
	Amount	Int. Rate	Amort	Term	Amount	Int. Rate	Amort	Perm. Term	Perm Lien	Const. Term	Const Lien
Private Activity Bonds (TDHCA Issuer Only)	\$30,000,000				\$30,000,000						
FHTC (4% Credit)	\$2,509,813				\$2,509,813						

**CONDITIONS**

\* Receipt and acceptance by Cost Certification:

a: Certification that testing for asbestos and lead-based paint was performed on the existing structures prior to demolition, and if necessary, a certification that any appropriate abatement procedures were implemented.

b: Certification that testing for lead in drinking water was performed if existing plumbing systems will remain, or a certification that existing plumbing systems have been replaced.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

**SET-ASIDES**

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	180

## DEVELOPMENT SUMMARY

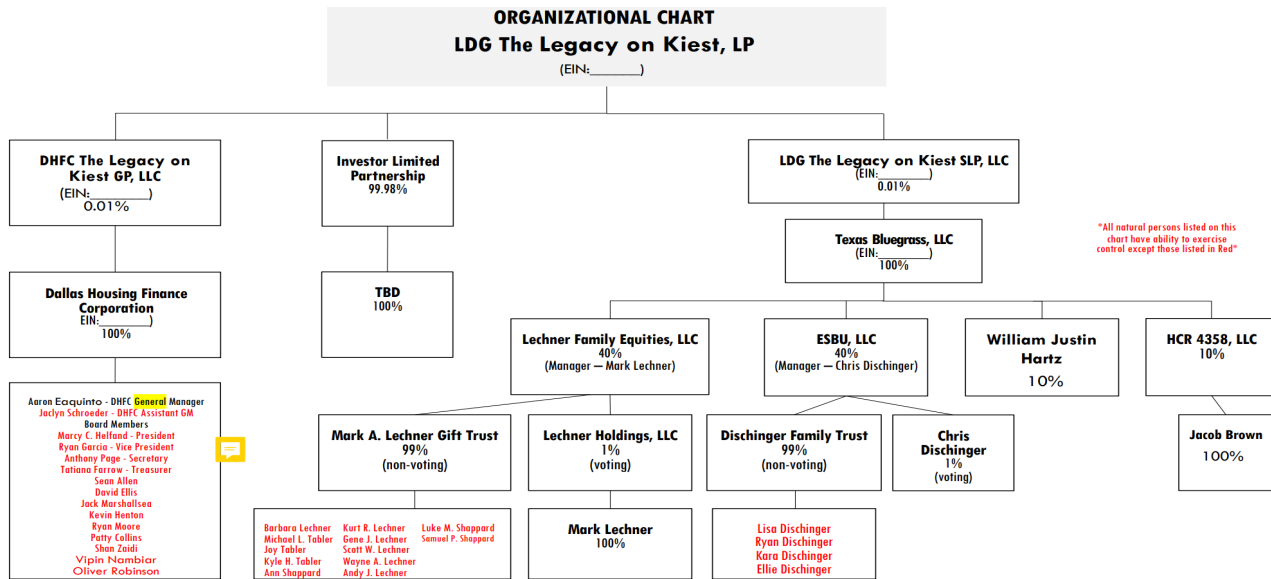
LDG The Legacy on Kiest, LP is making an application for the Housing Tax Credit Program with the Texas Department of Housing and Community Affairs for an apartment complex to be named The Legacy on Kiest located off of Southerland Ave/E. Kiest Blvd., Dallas, TX, Dallas County. This new construction development will be 180 family units on approximately 6 acres. Following the proposed construction, the Property will consist of 40 one-bedroom units, 88 two-bedroom units, and 52 three-bedroom units.

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS		WEAKNESSES/RISKS	
▫	Providing after school learning center	▫	Gross capture rate is on the higher end
	Low expense ratio		

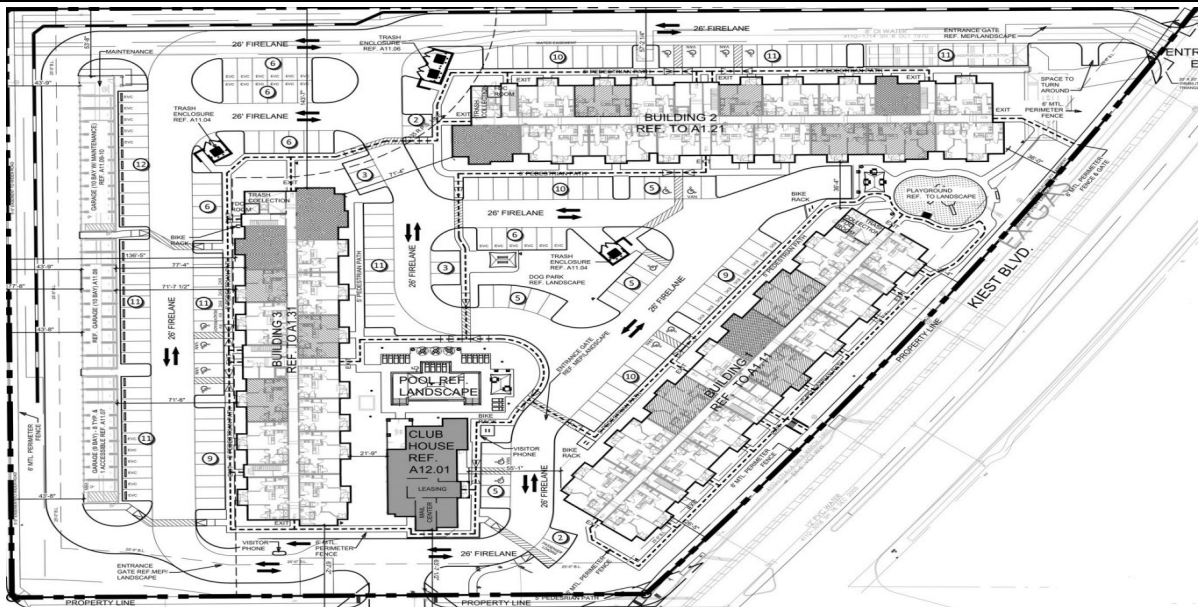
## DEVELOPMENT TEAM

### OWNERSHIP STRUCTURE



## DEVELOPMENT SUMMARY

### SITE PLAN







SITE CONTROL INFO			
<b>Site Acreage:</b>	Development Site: <u>6.01</u> acres	Density: <u>30.0</u> units/acre	
	<b>Site Control:</b> 6.008	<b>Site Plan:</b> 6.008	<b>Appraisal:</b> TBD
		<b>ESA:</b> 6.008	
	<b>Feasibility Report Survey:</b> 6.008	<b>Feasibility Report Engineer's Plan:</b> 6.008	<b>Existing LURA:</b> 0
Control Type:	<u>Purchase Contract</u>		
Development Site:	<u>6.01</u> acres	Cost: <u>\$2,200,000</u>	<u>\$12,222</u> per unit
Seller:	<u>GH Partners II LLC</u>		
Buyer:	<u>MBL Derbycity Development, LLC</u>		
Related-Party Seller/Identity of Interest:	<u>No</u>		
Date of Most Recent Arms Length Settlement Statement:	<u>NA</u>		
Sales Price in Most Recent Arms Length Settlement Statement:	<u>NA</u>		
SITE INFORMATION			
Flood Zone:	<u>Zone X</u>	Scattered Site?	<u>No</u>
Zoning:	<u>MF-2</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>NA</u>	Title Issues?	<u>No</u>
Current Uses of Subject Site:			
<b>Mostly vacant land with unoccupied structure to be demolished</b>			
HIGHLIGHTS of ENVIRONMENTAL REPORTS			
Provider:	<u>Phase Engineering, LLC</u>		Date: <u>2/14/2025</u>
Recognized Environmental Conditions (RECs) and Other Concerns:			
<ul style="list-style-type: none"> <li>▫ Asbestos inspection is recommended prior to the demolition of existing onsite structures</li> <li>▫ Testing for lead in drinking water if existing plumbing systems will remain</li> <li>▫ Lead based paint testing required if any existing buildings remain. Lead-safe practices recommended during demolition activities</li> </ul>			

## MARKET ANALYSIS

Provider: Apartment MarketData, LLC

Date: 11/20/2024

Primary Market Area (PMA): 27 sq. miles 3 mile equivalent radius

AFFORDABLE HOUSING INVENTORY						
Competitive Supply (Proposed, Under Construction, and Unstabilized)						
File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
21608	Fiji Lofts	Yes	New Construction	General	201	174
21004	Skyline at Cedar Crest	Yes	New Construction	General	42	107
22434	Highpoint at Wynnewood	Yes	Reconstruction	General	185	220
24165	West End Lofts	Yes	Adapt. Reuse	General	15	154
Stabilized Affordable Developments in PMA					Total Units	3,250
					Total Developments	22
					Average Occupancy	96%

OVERALL DEMAND ANALYSIS				
		Market Analyst		
		HTC	Assisted	
Total Households in the Primary Market Area		40,227		
Potential Demand from the Primary Market Area		7,675		
10% External Demand		768		
Potential Demand from Other Sources		0		
GROSS DEMAND		8,443		
Subject Affordable Units		180		
Unstabilized Competitive Units		443		
RELEVANT SUPPLY		623		
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE		7.4%		

Population:	General	Market Area:	Urban	Maximum Gross Capture Rate:	10%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND					
	Market Analyst				
AMGI Band	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate
60% AMGI	7,675	768	180	443	7%

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE					
	Market Analyst				
Unit Type	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/60%	1,112	111	40	186	18%
2 BR/60%	1,046	105	88	229	28%
3 BR/60%	447	45	52	28	16%

## OPERATING PRO FORMA

### SUMMARY- AS UNDERWRITTEN (TDHCA Pro Forma)

NOI:	\$2,039,561	Avg. Rent:	\$1,528	Expense Ratio:	34.5%
Debt Service:	\$1,713,947	B/E Rent:	\$1,365	Controllable Expenses:	\$3,715
Net Cash Flow:	\$325,615	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.19	B/E Occupancy:	82.8%	Program Rent Year:	2025

Underwriter using 2025 HTC rents, resulting in a 6.1% (\$190K) difference in EGI. Applicant assuming 2.5% management fee, while Underwriter assumes the standard 5%. Additionally, Underwriter's higher water, sewer, trash estimate is based on comparable properties in the area. As a result, the Underwriter's total expenses are 13.4% (\$145K) higher than the Applicants, and therefore, the TDHCA pro forma will be used.

The 100% property tax exemption is achieved through a ground lease structure between Dallas HFC and the Partnership. First year DCR drops to a 0.97 if the property tax exemption is not received.

## DEVELOPMENT COST EVALUATION

### SUMMARY- AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$366,178/ac	\$12,222/unit	\$2,200,000	Contractor Fee	\$3,959,457
Off-site + Site Work		\$22,917/unit	\$4,125,000	Soft Cost + Financing	\$11,569,712
Building Cost	\$157.76/sf	\$137,121/unit	\$24,681,833	Developer Fee	\$6,295,519
Contingency	6.12%	\$9,789/unit	\$1,762,064	Reserves	\$200,000
<b>Total Development Cost</b>	\$304,409/unit	<b>\$54,793,585</b>		<b>Rehabilitation Cost</b>	<b>N/A</b>

**Qualified for 30% Basis Boost?**

Located in QCT with < 20% HTC units/HH

Contingency:

**Re-allocated \$150,000 in soft cost contingency to contingency.**

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$54,793,585	\$48,265,643	\$2,509,813

## UNDERWRITTEN CAPITALIZATION

### BOND RESERVATION

Issuer	Amount	Reservation Date	Priority
TDHCA	\$30,000,000	1/6/2025	Carryforward
Closing Deadline			
12/31/2027			

**Percent of Cost Financed by Tax-Exempt Bonds**

**58.9%**

### INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
R4 Capital Funding	Perm	\$30,000,000	6.14%	68%
R4 Capital Funding	Series B - Taxable Const Loan	\$8,500,000	6.85%	19%
R4	FHTC	\$5,395,020	\$0.86	12%
		<b>\$43,895,020</b>	<b>Total Sources</b>	

### PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
R4 Capital Funding	\$25,131,000	6.14%	40	16.0	\$25,131,000	6.14%	40	16.0	46%
DHFC Soft Loan	\$1,500,000	5.00%	0	30.0	\$1,500,000	5.00%	0	30.0	3%
Developer Note (Rickhaus Loan)	\$1,500,000	6.00%	0	30.0	\$1,500,000	6.00%	0	30.0	3%
<b>Total</b>	<b>\$28,131,000</b>				<b>\$28,131,000</b>				

	PROPOSED			UNDERWRITTEN			
Equity & Deferred Fees	Amount	Rate	% Def	Amount	Rate	% TC	% Def
R4	\$21,580,079	\$0.86		\$21,580,079	\$0.86	39%	
LDG Multifamily, LLC	\$5,082,506		81%	\$5,082,506		9%	81%
	<b>Total</b>	<b>\$26,662,585</b>		<b>\$26,662,585</b>			
				<b>\$54,793,585</b>	<b>Total Sources</b>		

### Credit Price Sensitivity based on current capital structure

<b>\$1.062</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.811</b>	Minimum Credit Price below which the Development would be characterized as infeasible



## CONCLUSIONS

### Gap Analysis:

Total Development Cost	\$54,793,585
Permanent Sources (debt + non-HTC equity)	\$28,131,000
<b>Gap in Permanent Financing</b>	<b>\$26,662,585</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$21,580,083	\$2,509,813
Needed to Balance Sources & Uses	\$26,662,585	\$3,100,920
Requested by Applicant	\$21,580,079	\$2,509,813

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$21,580,079</b>	<b>\$2,509,813</b>

Bonds	Amount
<b>\$30,000,000</b>	<b>TDHCA</b>

Deferred Developer Fee	\$5,082,506	( 81% deferred)
Repayable in	11 years	

Recommendation:

***Underwriter recommends \$2,509,813 in annual 4% Federal Housing Tax Credits based on the Applicant's request and an allocation of \$30,000,000 in TDHCA bonds.***

Underwriter:	<u>Jake Schmid</u>
Manager of Real Estate Analysis:	<u>Diamond Unique Thompson</u>
Director of Real Estate Analysis:	<u>Jeanna Adams</u>

UNIT MIX/RENT SCHEDULE

The Legacy on Kiest, Dallas, TDHCA Bonds/4% HTC #25603

LOCATION DATA

CITY:	Dallas
COUNTY:	Dallas
Area Median Income	\$117,300
PROGRAM REGION:	3
PROGRAM RENT YEAR:	2025

UNIT DISTRIBUTION

# Beds	# Units	% Total	Assisted	MDL	SHTC	Match
Eff	-	0.0%	0	0	0	0
1	40	22.2%	0	0	0	0
2	88	48.9%	0	0	0	0
3	52	28.9%	0	0	0	0
4	-	0.0%	0	0	0	0
5	-	0.0%	0	0	0	0
TOTAL	180	100.0%	-	-	-	-

PRO FORMA ASSUMPTIONS

Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100.00%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	869 sf

60%	Income	20%	30%	40%	50%	60%	70%	80%	EO / MR	TOTAL
Average	# Units	-	-	-	-	180	-	-	-	180
Income	% Total	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%

UNIT MIX / MONTHLY RENT SCHEDULE

FEDERAL HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS		
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten		Mrkt Analyst
TC 60%	\$1,320	40	1	1	649	\$1,320	\$56	\$1,264	(\$78)	\$1.83	\$1,186	\$47,440	\$50,560	\$1,264	\$1.95	\$0	\$1,332	\$2.05	\$1,332
TC 60%	\$1,584	88	2	2	850	\$1,584	\$67	\$1,517	(\$95)	\$1.67	\$1,422	\$125,136	\$133,496	\$1,517	\$1.78	\$0	\$1,570	\$1.85	\$1,570
TC 60%	\$1,830	52	3	2	1,071	\$1,830	\$79	\$1,751	(\$109)	\$1.53	\$1,642	\$85,384	\$91,052	\$1,751	\$1.63	\$0	\$1,893	\$1.77	\$1,893
TOTALS/AVERAGES:		180			156,452				(\$95)	\$1.65	\$1,433	\$257,960	\$275,108	\$1,528	\$1.76	\$0	\$1,610	\$1.85	\$1,610

ANNUAL POTENTIAL GROSS RENT:

\$3,095,520 \$3,301,296

\*MFDL units float among Unit Types

STABILIZED PRO FORMA

The Legacy on Kiest, Dallas, TDHCA Bonds/4% HTC #25603

STABILIZED FIRST YEAR PRO FORMA													
COMPARABLES				APPLICANT				TDHCA				VARIANCE	
Database	Historicals			% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT					\$1.65	\$1,433	\$3,095,520	\$3,301,296	\$1,528	\$1.76		-6.2%	(\$205,776)
Late, Pet, and Application Fees						\$30.00	\$64,800						
Total Secondary Income						\$30.00		\$64,800	\$30.00			0.0%	\$0
POTENTIAL GROSS INCOME							\$3,160,320	\$3,366,096				-6.1%	(\$205,776)
Vacancy & Collection Loss						7.5% PGI	(237,024)	(252,457)	7.5% PGI			-6.1%	15,433
EFFECTIVE GROSS INCOME							\$2,923,296	\$3,113,639				-6.1%	(\$190,343)

General & Administrative	\$104,269	\$579/Unit	\$86,803	\$482	2.92%	\$0.55	\$475	\$85,500	\$86,803	\$482	\$0.55	2.79%	-1.5%	(1,303)
Management	\$84,702	3.1% EGI	\$77,159	\$429	2.50%	\$0.47	\$406	\$73,082	\$155,682	\$865	\$1.00	5.00%	-53.1%	(82,600)
Payroll & Payroll Tax	\$260,115	\$1,445/Unit	\$311,355	\$1,730	8.31%	\$1.55	\$1,350	\$243,000	\$260,115	\$1,445	\$1.66	8.35%	-6.6%	(17,115)
Repairs & Maintenance	\$145,041	\$806/Unit	\$91,485	\$508	4.62%	\$0.86	\$750	\$135,000	\$117,000	\$650	\$0.75	3.76%	15.4%	18,000
Electric/Gas	\$49,163	\$273/Unit	\$50,336	\$280	2.05%	\$0.38	\$333	\$60,000	\$50,336	\$280	\$0.32	1.62%	19.2%	9,664
Water, Sewer, & Trash	\$154,440	\$858/Unit	\$202,166	\$1,123	2.87%	\$0.54	\$467	\$84,000	\$154,440	\$858	\$0.99	4.96%	-45.6%	(70,440)
Property Insurance	\$121,941	\$0.78 /sf	\$60,392	\$336	4.31%	\$0.81	\$700	\$126,000	\$126,000	\$700	\$0.81	4.05%	0.0%	-
Property Tax (@ 0%) 2.2948	\$203,319	\$1,130/Unit	\$195,349	\$1,085	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements					1.54%	\$0.29	\$250	\$45,000	\$45,000	\$250	\$0.29	1.45%	0.0%	-
Security					0.77%	\$0.14	\$125	\$22,500	\$22,500	\$125	\$0.14	0.72%	0.0%	-
Supportive Services					1.37%	\$0.26	\$222	\$40,000	\$40,000	\$222	\$0.26	1.28%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.25%	\$0.05	\$40	\$7,200	\$7,200	\$40	\$0.05	0.23%	0.0%	-
TDHCA Bond Compliance Fee					0.15%	\$0.03	\$25	\$4,500	\$4,500	\$25	\$0.03	0.14%	0.0%	-
Bond Trustee Fees					0.15%	\$0.03	\$25	\$4,500	\$4,500	\$25	\$0.03	0.14%	0.0%	-
TOTAL EXPENSES					31.82%	\$5.95	\$5,168	\$930,282	\$1,074,077	\$5,967	\$6.87	34.50%	-13.4%	\$ (143,795)
NET OPERATING INCOME ("NOI")					68.18%	\$12.74	\$11,072	\$1,993,014	\$2,039,561	\$11,331	\$13.04	65.50%	-2.3%	\$ (46,547)

CONTROLLABLE EXPENSES		\$3,375/Unit		\$3,715/Unit	
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

The Legacy on Kiest, Dallas, TDHCA Bonds/4% HTC #25603

		DEBT / GRANT SOURCES													
		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE							AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
R4 Capital Funding	0.10%	1.19	1.16	1,718,805	6.14%	40	16.0	\$25,131,000	\$25,131,000	16.0	40.0	6.14%	\$1,713,947	1.19	45.9%
Adjustment to Debt Per §11.302(c)(2)	0.10%									16.0	40.0	6.14%		1.19	0.0%
R4 Capital Funding		1.19	1.16		0.00%	0	0.0	\$0	\$0	0.0	0.0	0.00%		1.19	0.0%
CASH FLOW DEBT / GRANTS															
DHFC Soft Loan		1.19	1.16		5.00%	0	30.0	\$1,500,000	\$1,500,000	30.0	0.0	5.00%		1.19	2.7%
Developer Note (Rickhaus Loan)		1.19	1.16		6.00%	0	30.0	\$1,500,000	\$1,500,000	30.0	0.0	6.00%		1.19	2.7%
				\$1,718,805	TOTAL DEBT / GRANT SOURCES			\$28,131,000	\$28,131,000	TOTAL DEBT SERVICE			\$1,713,947	1.19	51.3%

NET CASH FLOW	\$320,756	\$274,209	TDHCA			NET OPERATING INCOME	\$2,039,561	\$325,615	NET CASH FLOW
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		EQUITY SOURCES									
		APPLICANT'S PROPOSED EQUITY STRUCTURE					AS UNDERWRITTEN EQUITY STRUCTURE				
		DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit
EQUITY / DEFERRED FEES											
R4	LIHTC Equity	39.4%	\$2,509,813	\$0.86	\$21,580,079	\$21,580,079	\$0.86	\$2,509,813	39.4%	13943.40556	Applicant Request
LDG Multifamily, LLC	Deferred Developer Fees	9.3%	(81% Deferred)		\$5,082,506	\$5,082,506	(81% Deferred)		9.3%	Total Developer Fee: \$6,295,519	
Additional (Excess) Funds Req'd		0.0%				\$0			0.0%		
TOTAL EQUITY SOURCES		48.7%			\$26,662,585	\$26,662,585			48.7%		

TOTAL CAPITALIZATION	\$54,793,585	\$54,793,585		15-Yr Cash Flow after Deferred Fee:	\$3,301,315
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		DEVELOPMENT COST / ITEMIZED BASIS											
		APPLICANT COST / BASIS ITEMS				TDHCA COST / BASIS ITEMS				COST VARIANCE			
		Eligible Basis		Total Costs		Total Costs		Eligible Basis					
		Acquisition	New Const. Rehab					New Const. Rehab	Acquisition				
Land Acquisition				\$12,222 / Unit	\$2,200,000	\$2,200,000	\$12,222 / Unit			0.0%	\$0		
Building Acquisition		\$0		\$ / Unit	\$0	\$0	\$ / Unit		\$0	0.0%	\$0		
					\$0	\$0				0.0%	\$0		
Off-Sites				\$ / Unit	\$0	\$0	\$ / Unit			0.0%	\$0		
Site Work			\$3,540,000	\$20,000 / Unit	\$3,600,000	\$3,600,000	\$20,000 / Unit	\$3,540,000		0.0%	\$0		
Site Amenities			\$525,000	\$2,917 / Unit	\$525,000	\$525,000	\$2,917 / Unit	\$525,000		0.0%	\$0		
other construction cost				0		\$0	0			0.0%	\$0		
Structured Parking				0		\$0	\$ / Unit			0.0%	\$0		
Building Cost			\$24,300,000	\$157.76 /sf	\$137,121/Unit	\$24,681,833	\$24,814,604	\$137,859/Unit	\$158.61 /sf	\$24,300,000	-0.5%	(\$132,771)	
Contingency			\$1,762,064	6.21%	6.12%	\$1,762,064	\$1,762,064	6.09%	6.21%	\$1,762,064	0.0%	\$0	
Contractor Fees			\$3,959,457	13.14%	12.95%	\$3,959,457	\$3,959,457	12.90%	13.14%	\$3,959,457	0.0%	\$0	
Voluntary Eligible "Hard Costs" (After 11.9(e)(2))						\$0	0.00%			0.0%	\$0		
Soft Costs		\$0	\$3,933,603	\$24,181 / Unit	\$4,352,603	\$4,352,603	\$24,181 / Unit	\$3,933,603	\$0	0.0%	\$0		
Financing		\$0	\$3,950,000	\$40,095 / Unit	\$7,217,109	\$7,217,109	\$40,095 / Unit	\$3,950,000	\$0	0.0%	\$0		
Developer Fee		\$0	\$6,295,519	15.00%	14.84%	\$6,295,519	\$6,295,519	14.80%	15.00%	\$6,295,519	0.0%	\$0	
Reserves				1 Months	\$200,000	\$200,000	1 Months			0.0%	\$0		
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$48,265,643	\$304,409 / Unit	\$54,793,585	\$54,926,356	\$305,146 / Unit	\$48,265,643	\$0	-0.2%	(\$132,771)		
Acquisition Cost		\$0			\$0								
Contingency			\$0		\$0								
Contractor's Fee			\$0		\$0								
Financing Cost			\$0										
Developer Fee		\$0	(\$0)	15.00%	\$0								
Reserves					\$0								
ADJUSTED BASIS / COST		\$0	\$48,265,643	\$304,409/unit	\$54,793,585	\$54,926,356	\$305,146/unit	\$48,265,643	\$0	-0.2%	(\$132,771)		
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$54,793,585							

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS

The Legacy on Kiest, Dallas, TDHCA Bonds/4% HTC #25603

	CREDIT CALCULATION ON QUALIFIED BASIS			
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
ADJUSTED BASIS	\$0	\$48,265,643	\$0	\$48,265,643
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$48,265,643	\$0	\$48,265,643
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$62,745,335	\$0	\$62,745,335
Applicable Fraction	100.00%	100.00%	100%	100%
TOTAL QUALIFIED BASIS	\$0	\$62,745,335	\$0	\$62,745,335
Applicable Percentage	4.00%	4.00%	4.00%	4.00%
ANNUAL CREDIT ON BASIS	\$0	\$2,509,813	\$0	\$2,509,813
CREDITS ON QUALIFIED BASIS	\$2,509,813		\$2,509,813	

	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
			Credit Price	Variance to Request	
	Annual Credits	Proceeds		Credits	Proceeds
Eligible Basis	\$2,509,813	\$21,580,083	----	----	----
Needed to Fill Gap	\$3,100,920	\$26,662,585	----	----	----
Applicant Request	\$2,509,813	\$21,580,079	\$2,509,813	\$0	\$0

50% Test for Bond Financing for 4% Tax Credits			
Tax-Exempt Bond Amount	\$	30,000,000	
		Applicant	TDHCA
Land Cost	\$	2,200,000	\$2,200,000
Depreciable Bldg Cost **	\$	48,707,476	\$48,840,247
Aggregate Basis for 50% Test	\$	50,907,476	\$51,040,247
Percent Financed by Tax-	58.93%	58.93%	58.78%

\*\*Depreciable building cost includes: Total construction contract, total building acquisition, total developer fee, plus eligible financing and soft costs.

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Garden/Townhome	156,452 SF	\$126.73	19,827,854
Adjustments				
Exterior Wall Finish	3.68%		4.66	\$729,665
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.46%		4.39	686,044
Roof Adjustment(s)			1.15	180,000
Subfloor			0.28	44,198
Floor Cover			5.96	931,672
Breezeways	\$55.01	32,177	11.31	1,770,039
Balconies	\$54.37	4,356	1.51	236,840
Plumbing Fixtures	\$2,130	420	5.72	894,600
Rough-ins	\$790	360	1.82	284,400
Built-In Appliances	\$3,675	180	4.23	661,500
Exterior Stairs	\$4,250	0	0.00	0
Heating/Cooling			4.11	643,018
Storage Space	\$55.01	0	0.00	0
Carports	\$21.40	0	0.00	0
Garages	\$41.00	6,864	1.80	281,424
Common/Support Area	\$139.00	3,062	2.7204398	425,618
Elevators	\$147,600	3	2.83	442,800
Other:			0.00	0
Fire Sprinklers	\$4.60	191,691	5.64	881,779
SUBTOTAL			184.86	28,921,450
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
TOTAL BUILDING COSTS			184.86	\$28,921,450
Plans, specs, survey, bldg permits	3.10%		(5.73)	(\$896,565)
Contractor's OH & Profit	11.10%		(20.52)	(3,210,281)
NET BUILDING COSTS		\$137,859/unit	\$158.61/sf	\$24,814,604

## Long-Term Pro Forma

*The Legacy on Kiest, Dallas, TDHCA Bonds/4% HTC #25603*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$3,113,639	\$3,175,912	\$3,239,430	\$3,304,218	\$3,370,303	\$3,721,087	\$4,108,380	\$4,535,984	\$5,008,093	\$5,529,339	\$6,104,837	\$6,740,233
TOTAL EXPENSES	3.00%	\$1,074,077	\$1,104,743	\$1,136,297	\$1,168,766	\$1,202,177	\$1,384,352	\$1,594,575	\$1,837,211	\$2,117,313	\$2,440,726	\$2,814,211	\$3,245,595
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$2,039,561</b>	<b>\$2,071,169</b>	<b>\$2,103,133</b>	<b>\$2,135,452</b>	<b>\$2,168,125</b>	<b>\$2,336,735</b>	<b>\$2,513,806</b>	<b>\$2,698,773</b>	<b>\$2,890,779</b>	<b>\$3,088,613</b>	<b>\$3,290,626</b>	<b>\$3,494,638</b>
EXPENSE/INCOME RATIO		34.5%	34.8%	35.1%	35.4%	35.7%	37.2%	38.8%	40.5%	42.3%	44.1%	46.1%	48.2%
<b>MUST -PAY DEBT SERVICE</b>													
R4 Capital Funding		\$1,713,947	\$1,713,797	\$1,713,637	\$1,713,468	\$1,713,287	\$1,712,201	\$1,710,725	\$1,708,720	\$1,705,997	\$1,702,298	\$1,697,274	\$1,690,449
Adjustment to Debt Per §11.302(c)(2)													
R4 Capital Funding													
<b>TOTAL DEBT SERVICE</b>		<b>\$1,713,947</b>	<b>\$1,713,797</b>	<b>\$1,713,637</b>	<b>\$1,713,468</b>	<b>\$1,713,287</b>	<b>\$1,712,201</b>	<b>\$1,710,725</b>	<b>\$1,708,720</b>	<b>\$1,705,997</b>	<b>\$1,702,298</b>	<b>\$1,697,274</b>	<b>\$1,690,449</b>
DEBT COVERAGE RATIO		1.19	1.21	1.23	1.25	1.27	1.36	1.47	1.58	1.69	1.81	1.94	2.07
<b>ANNUAL CASH FLOW</b>		<b>\$325,615</b>	<b>\$357,372</b>	<b>\$389,495</b>	<b>\$421,984</b>	<b>\$454,838</b>	<b>\$624,534</b>	<b>\$803,081</b>	<b>\$990,053</b>	<b>\$1,184,783</b>	<b>\$1,386,315</b>	<b>\$1,593,352</b>	<b>\$1,804,189</b>
Deferred Developer Fee Balance		\$4,756,891	\$4,399,519	\$4,010,024	\$3,588,039	\$3,133,201	\$353,524	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$3,301,315</b>	<b>\$7,874,380</b>	<b>\$13,405,898</b>	<b>\$19,931,920</b>	<b>\$27,482,714</b>	<b>\$36,080,863</b>



# Final Transcript

## **TEXAS DEPARTMENT OF HOUSING: Legacy on Kiest Tax Exempt Bond Hearing**

April 24, 2025/9:00 a.m. CDT

### **SPEAKERS**

Liz Cline

### **PRESENTATION**

Liz

Hello. This is Liz Cline with the Texas Department of Housing and Community Affairs. The purpose of this call is to conduct a public hearing with respect to the proposed Legacy on Kiest multifamily development.

To give you an idea as to how we're going to proceed, there's a brief speech that I have to read for purposes of meeting the requirements of the Federal Code with respect to the public hearing. At the conclusion of the speech, I will unmute the lines and if there is anybody that would like to make public comment, that will be your opportunity to do so. I will now begin with a brief speech.

Good morning. My name is Liz Cline. I would like to proceed with the public hearing. Let the record show that it is 9:04 a.m., Thursday, April 24, 2025.

We are conducting a public hearing on behalf of the Texas Department of Housing and Community Affairs with respect to an issue of tax exempt multifamily revenue bonds for a residential rental community. This hearing is required by the Internal Revenue Code. The sole purpose of this hearing is to provide a reasonable opportunity for interested individuals to express their views regarding the development and the proposed bond issue.

No decisions regarding the development will be made at this hearing. The department's board is scheduled to meet to consider the transaction on June 12, 2025. In addition to providing your comments at this hearing, the public is also invited to provide comments directly to the board at any of their meetings.

The bonds will be issued as tax exempt multifamily revenue bonds in the aggregate principal amount not to exceed \$30 million, and taxable bonds, if necessary, in an amount to be determined and issued in one or more series by the Texas Department of Housing and Community Affairs, the issuer.

The proceeds of the bonds will be loaned to LDG, the Legacy on Kiest, LP, or a related person or affiliate entity thereof, to finance a portion of the cost of acquiring and equipping a multifamily rental housing community described as follows: A 180-unit multifamily residential rental development to be located on approximately six acres of land, located at 2621 Southerland Avenue, Dallas, Dallas County, Texas, 75203. The proposed multifamily rental housing community will be initially owned and operated by the borrower or a related person or affiliate thereof.

I would now like to open the floor for public comment. I believe I have all of the lines unmuted, so if any individual would like to give comment with regard to the Legacy on Kiest, now is your opportunity to do so.

Let the record show that there are no attendees. Therefore, the meeting is now adjourned. The time is now 9:07 a.m. Thank you.



## **RESOLUTION NO. 25-022**

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING GOVERNMENTAL NOTE (THE LEGACY ON Kiest) SERIES 2025; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, the Texas Department of Housing and Community Affairs (the "Department") has been duly created and organized pursuant to and in accordance with the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"), for the purpose, among others, of providing a means of financing the costs of residential ownership, development, construction and rehabilitation that will provide decent, safe, and affordable living environments for individuals and families of low, very low and extremely low income (as defined in the Act) and families of moderate income (as described in the Act and determined by the Governing Board of the Department (the "Board") from time to time); and

WHEREAS, the Act authorizes the Department: (a) to make mortgage loans to housing sponsors to provide financing for multifamily residential rental housing in the State of Texas (the "State") intended to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; (b) to issue its revenue bonds (including notes), for the purpose, among others, of obtaining funds to make such loans and provide financing, to establish necessary reserve funds and to pay administrative and other costs incurred in connection with the issuance of such bonds or notes; and (c) to pledge all or any part of the revenues, receipts or resources of the Department, including the revenues and receipts to be received by the Department from such multifamily residential rental development loans, and to mortgage, pledge or grant security interests in such loans or other property of the Department in order to secure the payment of the principal or redemption price of and interest on such bonds or notes; and

WHEREAS, the Board has determined to authorize the issuance of its Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the "Governmental Note") pursuant to and in accordance with the terms of a Funding Loan Agreement (the "Funding Loan Agreement") among the Department, Community Housing Investment Partners II, LP, as initial funding lender (the "Initial Funding Lender") and BOKF, NA, as fiscal agent (the "Fiscal Agent"), for the purpose of providing funds in connection with the financing of the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Governmental Note to fund a mortgage loan to LDG The Legacy on Kiest, LP, a Texas limited partnership (the "Borrower"), in connection with the cost of acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within

the State and required by the Act to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Department; and

WHEREAS, the Board, by resolution adopted on April 11, 2024, declared its intent to issue its revenue bonds or notes to provide financing for the Development; and

WHEREAS, the Borrower has requested and received a reservation of private activity bond allocation from the State of Texas; and

WHEREAS, it is anticipated that the Department and the Borrower will execute and deliver a Borrower Loan Agreement (the "Borrower Loan Agreement") pursuant to which (i) the Department will agree to make a mortgage loan funded with the proceeds of the Governmental Note (the "Loan") to the Borrower to enable the Borrower to finance the acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a Borrower Note (the "Borrower Note") in an original principal amount equal to the original aggregate principal amount of the Governmental Note, and providing for payment of interest on such principal amount equal to the interest on the Governmental Note and to pay other costs described in the Borrower Loan Agreement; and

WHEREAS, it is anticipated that the Borrower Note and the obligations of the Borrower under the Borrower Loan Agreement will be secured by a Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (with Power of Sale) (the "Security Instrument") from the Borrower for the benefit of the Department; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Borrower Loan Agreement, the Borrower Note and the Security Instrument will be assigned to the Fiscal Agent pursuant to an Assignment of Leasehold Deed of Trust Documents and Funding Loan Documents (the "Assignment") from the Department to the Fiscal Agent; and

WHEREAS, with respect to the Governmental Note, the Board has determined that the Department, the Fiscal Agent, DHFC The Legacy on Kiest Landowner, LLC, as fee owner (the "Fee Owner") and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, in order to assure compliance with Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, the Board has determined that the Department, the Fiscal Agent and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Governmental Note, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Governmental Note as exempt from gross income for federal income tax purposes; and

WHEREAS, the Board has further determined that the Initial Funding Lender will purchase the Governmental Note from the Department; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Funding Loan Agreement; and

WHEREAS, the Board has examined proposed forms of (a) the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement, the Assignment and the Tax Exemption Agreement (collectively, the "Governmental Lender Documents") and (b) the Security Instrument and the Borrower Note, all of which are attached to and comprise a part of this Resolution; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Governmental Note, the execution and delivery of the Governmental Lender Documents, the acceptance of the Security Instrument and the Borrower Note and the taking of such other actions as may be necessary or convenient in connection therewith;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS:

#### ARTICLE 1

##### ISSUANCE OF GOVERNMENTAL NOTE; APPROVAL OF DOCUMENTS

Section 1.1 Issuance, Execution and Delivery of the Governmental Note. That the issuance of the Governmental Note is hereby authorized pursuant to the Act, including particularly Section 2306.353 thereof, all under and in accordance with the conditions set forth herein and in the Funding Loan Agreement, and that, upon execution and delivery of the Funding Loan Agreement, the Authorized Representatives of the Department named in this Resolution are each hereby authorized to execute, attest and affix the Department's seal to the Governmental Note and to deliver the Governmental Note to the Attorney General of the State (the "Attorney General") for approval, the Comptroller of Public Accounts of the State for registration and the Fiscal Agent for authentication (to the extent required in the Funding Loan Agreement), and thereafter to deliver the Governmental Note to or upon the order of the Initial Funding Lender.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That (a) the Governmental Note shall bear interest at a fixed rate per annum, which rate shall be determined at least five (5) business days prior to the delivery of the Governmental Note, and shall be equal to the greater of (i) the sum of (A) 1.50%, and (B) the 10-year US Treasury Security published by Thomson Reuters on the date of determination, or (ii) 5.50%, subject to adjustment as described in the Funding Loan Agreement; provided that in no event shall the interest rate on the Governmental Note (including any default interest rate) exceed the maximum interest rate permitted by applicable law; (b) the aggregate principal amount of the Governmental Note shall be \$30,000,000; (c) the final maturity of the Governmental Note shall occur on the first day of the month in which the 40th anniversary of the date of delivery of the Bonds occurs; and (d) the price at which the Governmental Note is sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Funding Loan Agreement. That the form and substance of the Funding Loan Agreement are hereby approved, and that the Authorized Representatives are each hereby authorized to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the parties thereto.

Section 1.4 Approval, Execution and Delivery of the Borrower Loan Agreement. That the form and substance of the Borrower Loan Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Borrower Loan Agreement, and to deliver the Borrower Loan Agreement to the Borrower.

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Regulatory Agreement, and to deliver the Regulatory Agreement to the parties thereto and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

Section 1.6 Approval, Execution and Delivery of the Tax Exemption Agreement. That the form and substance of the Tax Exemption Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Tax Exemption Agreement, and to deliver the Tax Exemption Agreement to the parties thereto.

Section 1.7 Sale of the Governmental Note. That the sale of the Governmental Note to the Initial Funding Lender is hereby authorized and approved.

Section 1.8 Reserved.

Section 1.9 Reserved.

Section 1.10 Acceptance of the Borrower Note and the Security Instrument. That the form and substance of the Borrower Note and the Security Instrument are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note to the order of the Fiscal Agent without recourse.

Section 1.11 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Fiscal Agent.

Section 1.12 Reserved.

Section 1.13 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and

other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.14 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department ("Bond Counsel"), may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.15 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- |           |   |                         |
|-----------|---|-------------------------|
| Exhibit B | - | Funding Loan Agreement  |
| Exhibit C | - | Borrower Loan Agreement |
| Exhibit D | - | Regulatory Agreement    |
| Exhibit E | - | Borrower Note           |
| Exhibit F | - | Security Instrument     |
| Exhibit G | - | Assignment              |
| Exhibit H | - | Tax Exemption Agreement |

Section 1.16 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department's seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Financial Administration of the Department, the Director of Bond Finance of the Department, the Director of Multifamily Bonds of the Department, and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the "Authorized Representatives." Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

Section 2.1 Approval and Ratification of Application to Texas Bond Review Board. That the Board hereby ratifies and approves the submission of the application for approval of state bonds to the Texas Bond Review Board on behalf of the Department in connection with the issuance of the Governmental Note in accordance with Chapter 1231, Texas Government Code.

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by Bond Counsel to the Attorney General, for his

approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Governmental Note.

Section 2.3 Certification of the Minutes and Records. That the Secretary or Assistant Secretary to the Board hereby is authorized to certify and authenticate minutes and other records on behalf of the Department for the Governmental Note and all other Department activities.

Section 2.4 Reserved.

Section 2.5 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Governmental Note and the fees and revenues to be received in connection with the financing of the Development in accordance with the Funding Loan Agreement and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Funding Loan Agreement and the Tax Exemption Agreement.

Section 2.6 Reserved.

Section 2.7 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Governmental Note and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

Section 3.1 Findings of the Board. That in accordance with Section 2306.223 of the Act and after the Department's consideration of the information with respect to the Development and the information with respect to the proposed financing of the Development by the Department, including but not limited to the information submitted by the Borrower, independent studies commissioned by the Department, recommendations of the Department staff and such other information as it deems relevant, the Board hereby finds:

(a) Need for Housing Development.

(i) that the Development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low, very low and extremely low income or families of moderate income can afford,

(ii) that the financing of the Development is a public purpose and will provide a public benefit, and

(iii) that the Development will be undertaken within the authority granted by the Act to the housing finance division and the Borrower.

(b) Findings with Respect to the Borrower.

(i) that the Borrower, by operating the Development in accordance with the requirements of the Borrower Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, will supply well-planned and well-designed housing for individuals or families of low, very low or extremely low income or families of moderate income,

(ii) that the Borrower is financially responsible, and

(iii) that the Borrower is not, and will not enter into a contract for the Development with, a housing developer that (A) is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development; (B) breached a contract with a public agency; or (C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the Department.

(c) Public Purpose and Benefits.

(i) that the Borrower has agreed to operate the Development in accordance with the Borrower Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, which require, among other things, that the Development be occupied by individuals and families of low, very low and extremely low income and families of moderate income, and

(ii) that the issuance of the Governmental Note in connection with the financing of the Development is undertaken within the authority conferred by the Act and will accomplish a valid public purpose and will provide a public benefit by assisting individuals and families of low, very low and extremely low income and families of moderate income in the State to obtain decent, safe, and sanitary housing by financing costs of the Development, thereby helping to maintain a fully adequate supply of sanitary and safe dwelling accommodations at rents that such individuals and families can afford.

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low, very low and extremely low income, (2) persons with special needs, and

(3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

Section 3.3 Sufficiency of Loan Interest Rate. That, in accordance with Section 2306.226 of the Act, the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Borrower Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's costs of operation with respect to the Governmental Note and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Governmental Note.

Section 3.4 No Gain Allowed. That, in accordance with Section 2306.498 of the Act, no member of the Board or employee of the Department may purchase the Governmental Note in the secondary open market for municipal securities.

#### ARTICLE 4

##### GENERAL PROVISIONS

Section 4.1 Limited Obligations. That the Governmental Note and the interest thereon shall be special limited obligations of the Department payable solely from the trust estate created under the Funding Loan Agreement, including the revenues and funds of the Department pledged under the Funding Loan Agreement to secure payment of the Governmental Note, and under no circumstances shall the Governmental Note be payable from any other revenues, funds, assets or income of the Department.

Section 4.2 Non-Governmental Obligations. That the Governmental Note shall not be and does not create or constitute in any way an obligation, a debt or a liability of the State or create or constitute a pledge, giving or lending of the faith or credit or taxing power of the State. The Governmental Note shall contain on its face a statement to the effect that the State is not obligated to pay the principal thereof or interest thereon and that neither the faith or credit nor the taxing power of the State is pledged, given or loaned to such payment.

Section 4.3 Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with Section 2306.032 of the Texas Government Code, regarding meetings of the Governing Board.

PASSED AND APPROVED this 12th day of June, 2025.



## **EXHIBIT A**

### **Description of Development**

Borrower: LDG The Legacy on Kiest, LP, a Texas limited partnership

Development: The Development is a 180-unit affordable, multifamily housing development known as The Legacy on Kiest, located at or near 2621 Southerland Avenue, Dallas, Dallas County, Texas 75203. It consists of three (3) residential apartment buildings. The unit mix will consist of:

40	one-bedroom/one-bath units
88	two-bedroom/two-bath units
52	three-bedroom/two-bath units
<hr/>	
180	Total Units

---

**FUNDING LOAN AGREEMENT**

**by and among**

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

**BOKE, NA**

**and**

**COMMUNITY HOUSING INVESTMENT PARTNERS II, LP**

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

**Relating to:**

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

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## **FUNDING LOAN AGREEMENT**

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

### **W I T N E S S E T H:**

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

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

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

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

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

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

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

## **ARTICLE I DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) All conditions to Completion have been satisfied;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Permitted Encumbrances”** means only:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**State**” means the State of Texas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ARTICLE III**

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

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

**Section 3.2    Principal and Interest Payments.**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV FUNDS AND ACCOUNTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**Section 4.11     Records.**

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

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

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

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

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

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

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

(ii) the Governmental Lender will not knowingly take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE VII THE FISCAL AGENT**

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Section 8.2     Servicing.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

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

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

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

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

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

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

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

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

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

## **ARTICLE X MISCELLANEOUS**

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



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

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

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

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

**To the Governmental Lender:**

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

**To the Fiscal Agent:**

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

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

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

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

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

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

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

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

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

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

**Section 10.11 State Law Verifications.** The Fiscal Agent and Funding Lender make the following representation and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code (the "Government Code"), as heretofore amended, in entering into this Funding Loan Agreement. As used herein, "affiliate" means an entity that controls, is controlled by, or is under common control with the Fiscal Agent or Funding Lender within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Funding Loan Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited by any provision of this Funding Loan Agreement, notwithstanding anything therein to the contrary.

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

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

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

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

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

[Signature Page Follows]

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

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

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

**BOKF, NA**, as Fiscal Agent

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

Name: Biddel Tekeste

Title: Vice President

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

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

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

Name: Kenneth Thompson

Title: Managing Director



## **EXHIBIT A**

### **FORM OF GOVERNMENTAL NOTE**

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

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

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

\$[30,000,000]

Dated Date: [July 1, 2025]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

(SEAL)

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

ATTEST:

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

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

REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

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

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

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

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

(SEAL)

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

**CERTIFICATE OF AUTHENTICATION**

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

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

BOKF, NA, as Fiscal Agent

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

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

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

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

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

Ladies and Gentlemen:

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

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

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

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

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

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



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

6. THE FUNDING LENDER UNDERSTANDS THAT:

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

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

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

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

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

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

FUNDING LENDER:

\_\_\_\_\_

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

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

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

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

## EXHIBIT C

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

BOKF, NA, as Fiscal Agent

Re: The Legacy on Kiest

Fiscal Agent:

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

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

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

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

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

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

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

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

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

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

**Schedule A**

Schedule of Financial Terms

Project: The Legacy on Kiest

Closing Date: [CLOSING DATE]

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

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

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

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**BORROWER LOAN AGREEMENT**

**by and between**

**LDG THE LEGACY ON KEST, LP**

**and**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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

**Relating to:**

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

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The interests of Texas Department of Housing and Community Affairs (the “Governmental Lender”) in this Borrower Loan Agreement (except for its Reserved Rights) have been pledged and assigned to BOKF, NA, as fiscal agent (the “Fiscal Agent”), as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of [July 1], 2025 by and among the Governmental Lender, the Funding Lender named therein and the Fiscal Agent under which the Funding Lender is originating a loan to the Governmental Lender, the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.



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## **BORROWER LOAN AGREEMENT**

This BORROWER LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of [July 1], 2025, by and between TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (together with its successors and assigns, the “Governmental Lender”) and LDG THE LEGACY ON Kiest, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”),

### **WITNESSETH:**

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

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

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the “Funding Loan Agreement”), among the Governmental Lender, BOKF, NA (the “Fiscal Agent”) and Community Housing Investment Partners II, LP (the “Funding Lender”), under which the Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction and equipping of the Project; and;

**WHEREAS**, the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Note, as defined herein; and

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

## **ARTICLE 1**

### **DEFINITIONS**

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Funding Loan Agreement.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and

(vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## ARTICLE 2

### LOAN AND PROVISIONS FOR REPAYMENT

#### Section 2.1 Basic Loan and Repayment Terms.

(a) The Governmental Lender agrees, upon the terms and conditions contained in this Agreement and the Funding Loan Agreement, to lend to the Borrower the proceeds of the Funding Loan received by the Governmental Lender from the Funding Lender. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Funding Loan Agreement. The Borrower’s obligation to repay the Borrower Loan shall be evidenced by the Borrower Note, the form of which is attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Borrower Note and repay the Borrower Loan on each Loan Payment Date as provided in the Borrower Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, to pay all amounts payable with respect to the Governmental Note and the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment, the Fiscal Agent shall collect from the Borrower, and the Borrower shall provide to the Fiscal Agent the foregoing payments by 2:00 p.m., New York City time, on the second (2nd) Business Day prior to each Loan Payment Date.

(c) Each such payment shall be made in immediately available funds to the Fiscal Agent. Whenever any payment on the Borrower Loan shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(d) It is understood and agreed that the Borrower Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Governmental Lender to Fiscal Agent for the benefit of the Funding Lender. The Borrower assents to such assignment.

(e) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Borrower Loan, together with interest thereon to the date of prepayment, but only to the extent set forth in the Borrower Note.

(f) The Controlling Person shall deliver to the Fiscal Agent, the Governmental Lender and the Borrower the Debt Service Schedule on or before the first day of the month preceding the First Principal Payment Date, providing for level principal and interest debt service commencing on the First Principal Payment Date, with respect to the Borrower Note then Outstanding calculated on the basis of the Fixed Rate (as defined in the Borrower Note) and the Amortization Term (with all remaining principal payable on the Maturity Date, if applicable).

Section 2.2     Fees.

(a)     On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to R4 Capital Funding LLC the Origination Fee and to R4 Servicer LLC a Construction Monitoring Fee, together with the fees and expenses of its counsel.

(b)     The Borrower shall pay (as directed by the Controlling Person) two Business Days before each Loan Payment Date, commencing on the First Loan Payment Date and continuing through final completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$1,500 per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Controlling Person may request the Fiscal Agent to disburse such amounts as part of any Advance.

(c)     On the Closing Date, from money on deposit in the Costs of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, an initial financing fee in an amount equal to 0.50% of the initial principal amount of the Funding Loan (\$[150,000]), together with the initial Governmental Lender Administration Fee, initial Governmental Lender Compliance Fee, and all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Governmental Lender Counsel, disclosure counsel and financial advisor to the Governmental Lender) in connection with the Funding Loan and the Borrower Loan and the issuance of the Governmental Note.

(d)     On the Closing Date, from money on deposit in the Costs of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, the initial payment of the Ordinary Fiscal Agent's Fees and Expenses, together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Funding Loan and the Borrower Loan and the issuance of the Governmental Note.

(e)     The Borrower shall pay the Governmental Lender Fees and all expenses of the Governmental Lender, when due and any extraordinary expenses not covered by the Governmental Lender Fees the Governmental Lender may incur in connection with the Funding Loan Documents or the Project from time to time.

(f)     The Borrower shall pay the Ordinary Fiscal Agent's Fees and Expenses and all expenses of the Fiscal Agent, when due from time to time.

(g)     The Borrower shall pay to the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and the Tax Exemption Agreement when due from time to time.

(h)     The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

Section 2.3     Termination and Prepayment.

(a)     Notwithstanding anything to the contrary contained in this Agreement or the other Funding Loan Documents, the Controlling Person's and the Funding Lender's and each Noteowner's rights, interests and remedies hereunder and under the other Funding Loan Documents shall not terminate or expire or be deemed to have been discharged or released until the payment in full of the Borrower Note and the Governmental Note. No such termination, expiration or release shall affect the survival of the

indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release and the resignation or removal of the Fiscal Agent.

(b) The Borrower Loan may be optionally prepaid by the Borrower, and the Governmental Note shall be correspondingly paid pursuant to Section 3.2 of the Funding Loan Agreement, on any Loan Payment Date on or after the First Optional Call Date, upon the payment of the principal amount of the Borrower Note plus interest accrued thereon and optional prepayment premium set forth on the Schedule of Financial Terms, if any, to, but not including, the date of prepayment, as provided in the Borrower Note.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Par Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Borrower Note scheduled to be outstanding from the date of acceleration to, but not including, the First Par Call Date.

(d) In the event of a partial prepayment of the Borrower Loan (other than pursuant to Section 7(c) of the Borrower Note), the mandatory prepayment schedule set forth on the Debt Service Schedule shall be adjusted to provide for level debt service in respect of the Borrower Loan remaining outstanding after such partial prepayment, on the basis of the number of months remaining in the Amortization Term. The Controlling Person shall provide the Funding Lender, Governmental Lender, Fiscal Agent and the Borrower with the Debt Service Schedule reflecting such adjustment promptly following any such partial prepayment. The Controlling Person, with the prior written consent of the Borrower, may deliver a modified Debt Service Schedule from time to time hereafter for any other purpose agreed to by Controlling Person and Borrower. In connection with any such modified Debt Service Schedule, the Controlling Person may, at its election and at Borrower's expense, require a Favorable Opinion of Governmental Lender Counsel.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement, the Borrower Note and the other Funding Loan Documents shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Funding Loan Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Funding Loan Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Governmental Lender or the Funding Lender (or any persons or entities for whom the Funding Lender may be acting) or any other Person, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Borrower Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Funding Loan Documents.

Section 2.5 Indemnification.

(a) ***Indemnification of the Governmental Lender.***

(i) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE GOVERNMENTAL LENDER AND ITS



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

(ii) IT IS THE INTENTION OF THE PARTIES HERETO THAT THE GOVERNMENTAL INDEMNIFIED PARTIES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS BORROWER LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE GOVERNMENTAL INDEMNIFIED PARTIES IN CONNECTION WITH THE ISSUANCE OF THE GOVERNMENTAL NOTE, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THIS BORROWER LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF A GOVERNMENTAL INDEMNIFIED PARTY BY THIS BORROWER LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF A GOVERNMENTAL INDEMNIFIED PARTY BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS BORROWER LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THIS BORROWER LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF A GOVERNMENTAL INDEMNIFIED PARTY SHOULD INCUR ANY SUCH PECUNIARY LIABILITY

WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD THE GOVERNMENTAL INDEMNIFIED PARTY HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT THEREON, AND UPON TIMELY NOTICE FROM A GOVERNMENTAL INDEMNIFIED PARTY THE BORROWER SHALL DEFEND THE GOVERNMENTAL INDEMNIFIED PARTIES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE GOVERNMENTAL INDEMNIFIED PARTIES AND THE BORROWER SHALL PAY THE GOVERNMENTAL INDEMNIFIED PARTY'S EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE GOVERNMENTAL INDEMNIFIED PARTIES; PROVIDED HOWEVER, THAT A GOVERNMENTAL INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

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

In case any action or proceeding is brought against a Governmental Indemnified Party, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the Governmental Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The Governmental Indemnified Party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel.

Notwithstanding anything else in this Borrower Loan Agreement to the contrary, except as otherwise provided in Section 2.5(a)(iii) hereof, the Borrower shall be responsible for the fees, costs and expenses of counsel to a Governmental Indemnified Party and the Fiscal Agent at all times; provided that the Governmental Indemnified Parties maintain control of the selection of its counsel at all times.

The provisions of this Section shall survive the termination of this Borrower Loan Agreement and the repayment of the Governmental Note and the Borrower Loan.

(b) THE BORROWER COVENANTS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE FISCAL AGENT, THE FUNDING LENDER, THE CONTROLLING PERSON, AND EACH OF THEIR RESPECTIVE AFFILIATES AND EACH OF THEIR AND THEIR AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), EXCEPT AS LIMITED BELOW, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING ATTORNEYS' FEES FOR COUNSEL OF EACH OF THE INDEMNIFIED PARTIES' CHOICE) WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY INCUR (OR WHICH MAY

BE CLAIMED AGAINST ANY OF THE INDEMNIFIED PARTIES BY ANY PERSON WHATSOEVER) BY REASON OF OR IN CONNECTION WITH:

(1) THE GOVERNMENTAL NOTE, FUNDING LOAN AGREEMENT, BORROWER LOAN AGREEMENT, REGULATORY AGREEMENT OR TAX EXEMPTION AGREEMENT, OR THE EXECUTION OR AMENDMENT HEREOF OR THEREOF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING THE ISSUANCE, SALE OR RESALE, DEFEASANCE OR PREPAYMENT OF THE GOVERNMENTAL NOTE;

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

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

(4) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT CONTAINED OR INCORPORATED BY REFERENCE IN ANY OFFERING OR REOFFERING MATERIALS PREPARED IN RESPECT OF THE GOVERNMENTAL NOTE, OR ANY SUPPLEMENT OR AMENDMENT THEREOF, OR THE OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT NECESSARY TO MAKE SUCH STATEMENTS IN LIGHT OF THE CIRCUMSTANCES IN WHICH THEY ARE OR WERE MADE NOT MISLEADING;

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

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

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

(8) ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW OR REGULATION INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW OR ANY INSPECTION, REVIEW OR TESTING WITH RESPECT TO CONTAMINATION OR ENVIRONMENTALLY SENSITIVE AREAS;

(9) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY THE GOVERNMENTAL LENDER, THE FISCAL AGENT, THE FUNDING LENDER OR ANY INDEMNIFIED PARTY, RELATED TO REMEDIES UNDER, THIS AGREEMENT, THE FUNDING LOAN AGREEMENT AND THE OTHER FUNDING LOAN DOCUMENTS;

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

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

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

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

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of any Indemnified Party. **The indemnification of the Indemnified Parties as provided in this Agreement shall remain in full force and effect if losses directly or indirectly result from, arise out of, or relate to, or are asserted to have resulted from, arisen out of, or related to, the sole or contributory negligence of the Indemnified Parties.** The obligations of the Borrower under this Section shall survive the termination of this Agreement and the

Funding Loan Agreement and the resignation or removal of the Fiscal Agent. Notwithstanding any other provision of this Agreement or the Funding Loan Agreement to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Fiscal Agent, the Funding Lender or their employees arising from or in connection with any investment of funds made by the Fiscal Agent in good faith as directed by the Borrower, the Controlling Person or the Funding Lender, and (ii) to indemnify and hold the Fiscal Agent, the Funding Lender and their employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof. Amounts payable to the Governmental Lender hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Governmental Lender incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6      Amounts Remaining on Deposit Upon Payment of the Governmental Note.

After payment in full of the principal of, premium, if any, and interest on the Governmental Note (or defeasance of the Governmental Note) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Funding Loan Agreement, all amounts on deposit with the Fiscal Agent or the Funding Lender pursuant to the Funding Loan Agreement, this Agreement or any other Funding Loan Document shall be paid by the Fiscal Agent or Funding Lender, as applicable, to the Borrower.

Section 2.7      Payments to Rebate Fund. The Borrower shall direct payment when due to the Fiscal Agent at the principal corporate office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with the Funding Loan Agreement and the Tax Exemption Agreement.

### ARTICLE 3

#### SECURITY

Section 3.1      Mortgage and Other Funding Loan Documents.

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

Section 3.2      Financing Statements.

The Borrower hereby authorizes the Funding Lender and the Controlling Person, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Governmental Lender's, the Fiscal Agent's and/or the Funding Lender's security interests under this Agreement, the Funding Loan Agreement, the Mortgage and the other Funding Loan Documents. The Fiscal Agent shall have no responsibility to file financing statements or continuation statements other than to file continuation statements for any such financing statements that identify Fiscal Agent as "secured party" or additional secured party, copies of which filed financing statements have been delivered to the Fiscal Agent. The Borrower will pay upon

demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under the Funding Loan Agreement in such public offices as the Controlling Person may designate.

## **ARTICLE 4**

### **REPRESENTATIONS OF GOVERNMENTAL LENDER**

#### **Section 4.1     Representations by the Governmental Lender.**

The Governmental Lender represents and warrants to the Borrower, the Funding Lender and the Noteowners from time to time of the Governmental Note as follows:

(a)     The Governmental Lender is a public and official agency of the State of Texas and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

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

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

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

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

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

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Governmental Lender, threatened against or affecting the Governmental Lender wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Governmental Note, the Funding Loan Agreement or this Agreement or (ii) the exclusion from gross income of interest on the Governmental Note for purposes of federal income taxation.

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

(i) The Governmental Lender has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Governmental Note under the Funding Loan Agreement. The Governmental Note constitutes the only Governmental Note or other obligations of the Governmental Lender in any manner payable from the revenues to be derived from this Agreement, and except for the Governmental Note, no other obligations have been or will be issued on the basis of this Agreement.

(j) To the best knowledge of the Governmental Lender, it is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Governmental Note or the transactions contemplated by this Agreement or the Funding Loan Agreement.

(k) No member of the Governmental Lender, nor any other official or employee of the Governmental Lender, has any interest (financial, employment or other) in the Borrower, in the Project Facilities or in the transactions contemplated hereby, by the other Funding Loan Documents or by the Funding Loan Agreement.

(l) The Governmental Lender used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 4.2 No Liability of Governmental Lender; No Charge Against Governmental Lender's Credit. Any obligation of the Governmental Lender created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Governmental Note, shall not impose or constitute a debt or pecuniary liability upon the Governmental Lender, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the Security and any other moneys derived hereunder and under the Funding Loan Agreement, except (as provided in the Funding Loan Agreement and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Governmental Note or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Governmental Note or for any claim based thereon or upon any obligation, covenant or agreement of the Governmental Lender hereunder against any past, present or future director, trustee, officer, member, employee or agent of the Governmental Lender, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Governmental Note to the Borrower, and the issuance of the Governmental Note.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants to and for the benefit of the Governmental Lender, the Funding Lender, the Controlling Person and the Noteowners from time to time of the Governmental Note as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to do business in the State. The Borrower has furnished to the Governmental Lender, the Funding Lender and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower, the General Partner and the Special Limited Partner have been, are and will be engaged solely in the business of acquiring, constructing, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is DHFC The Legacy on Kiest GP, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Texas and is duly qualified to do business in the State. The General Partner has furnished to the Governmental Lender, the Funding Lender and the Controlling Person true and complete copies of its certificate of formation and operating agreement. The General Partner has and will have no other assets other than its partnership interests in the Borrower. The Special Limited Partner of the Borrower is LDG The Legacy on Kiest SLP, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Texas and is duly qualified to do business in the State. The Special Limited Partner has furnished to the Governmental Lender, the Funding Lender and the Controlling Person true and complete copies of its certificate of formation and operating agreement. The Special Limited Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement, the Taxable Loan Documents, the Subordinate Debt Documents and the other Funding Loan Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, or certificate of limited partnership of the Borrower, the General Partner or the Special Limited Partner, as applicable, or any Legal Requirement applicable to the Borrower, the General Partner or the Special Limited Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or the Special Limited Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower, the General Partner and the Special Limited Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Funding Loan Documents. Except as set forth on Schedule 5 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial



appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement, the Taxable Loan Documents, the Subordinate Debt Documents and the other Funding Loan Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or the Special Limited Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower, the General Partner or the Special Limited Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Special Limited Partner, or the validity or enforceability of this Agreement, the Governmental Note, the Taxable Loan Documents, the Subordinate Debt Documents or the Funding Loan Documents or the construction, operation or ownership of the Project Facilities, or the Federal Tax Status of the Governmental Note or, if specified on the Schedule of Financial Terms as applicable, the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State.

Section 5.6 No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Funding Loan Documents, the Taxable Loan Documents, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Exemption Agreement and the Regulatory Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Governmental Lender's jurisdiction. The Project

Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and, if specified as applicable on the Schedule of Financial Terms, the requirements for exemption from ad valorem real estate taxation under the laws of the State.

Section 5.8     Title to Properties; Liens and Encumbrances. The Borrower has a valid leasehold interest in the real property on which the Project Facilities will be constructed pursuant to the Ground Lease and will be the owner of the Improvements thereon, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9     Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10    Financial Information.

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

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

Section 5.11    ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation ("PBGC") or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower's, the General Partner's or any ERISA Affiliate's property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General

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

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

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor, the General Partner and the Special Limited Partner is and, after giving effect to this Agreement and all other agreements of the

Borrower, the Guarantor, the General Partner and the Special Limited Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

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

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

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

Section 5.18 Reserved.

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

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

the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract and the Prime Subcontract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 3 accurately reflects: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Controlling Person and the Funding Lender with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Controlling Person and the Funding Lender comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for renovation of the Project Facilities.

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

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

Section 5.25 Intentionally omitted.

Section 5.26 Requisition. Each Requisition submitted to the Controlling Person and the Fiscal Agent shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Funding Loan Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

Section 5.27 State Law Verifications. The Borrower makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended. As used herein, "affiliate" means an entity that controls, is controlled by, or is under common control with the Borrower within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations and shall not be liquidated or otherwise limited, notwithstanding anything herein or therein to the contrary.

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

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

## ARTICLE 6

### GENERAL COVENANTS

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

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or a limited liability company, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) except as permitted in Section 6.11(b)(vi), not amend any provision of its certificate of formation or its Partnership Agreement, relating to its purpose, management or operation, without the prior written consent of the Controlling Person, and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause the Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Controlling Person.

Section 6.3 Maintenance of Governmental Authorizations and Tax Abatement. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Closing Date and shall provide copies thereof to the Controlling Person and the Funding Lender upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Funding Loan Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person. The Borrower shall obtain and maintain the Tax Abatement and shall operate the Project Facilities and take such other actions in such a manner as to continue to qualify for the Tax Abatement and to comply with the terms and conditions thereof. The Borrower will promptly furnish copies of all reports and correspondence relating to any potential loss or revocation of the Tax Abatement to the Controlling Person.

Section 6.4 Maintenance of Insurance.

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

same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 12 hereto and such additional insurance as Controlling Person may require from time to time.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Funding Lender as first mortgagee and shall provide for payment to the Funding Lender of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Funding Lender, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Governmental Lender, the Controlling Person and the Funding Lender as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted pursuant to the Mortgage. Upon request of the Funding Lender, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Funding Lender, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Funding Lender shall at all times, upon such request and until the payment in full of the Governmental Note, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Funding Lender, with a copy to the Controlling Person on or before the Closing Date. The Borrower shall deliver to the Governmental Lender and the Funding Lender before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Funding Lender, with a copy to the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 6.5 Compliance with Other Contracts and Funding Loan Documents.** The Borrower will comply with all of its covenants and agreements under the Funding Loan Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Funding Loan Agreement imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Funding Loan Agreement). The Borrower shall comply with all of its covenants under the Taxable Loan Documents and the Subordinate Debt Documents. The Borrower shall comply in all material respects with,

or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6     Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Funding Loan Agreement and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) enforce the Ground Lease; (iii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iv) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (v) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (vi) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vii) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (viii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (ix) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Funding Loan Documents.

Section 6.7     Inspection Rights.

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

(b)     After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c)     The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the



Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person (and the Governmental Lender, as applicable) the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

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

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

(2) a compliance statement signed by an Authorized Person or designee of an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Funding Loan Documents (including the rules set forth in section 142(d) of the Code pertaining to the Federal Tax Status of the Governmental Note), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

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

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year (with a draft of such financial statements delivered within ninety (90) days of the close of such Fiscal Year); and

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

(3) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the

security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(4) notwithstanding the foregoing, if the Closing Date occurred on or after November 15, the Borrower may elect, by submission of a signed audit waiver request to Controlling Person, to include the period from the Closing Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Closing Date occurred.

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

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

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

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

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

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

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

(k) Not later than the Completion Date: (i) a Completion Certificate in the form attached as Schedule 7 hereto, with a copy to the Fiscal Agent; and (ii) an Estimated Use of Proceeds Compliance Certificate in the form set forth in Schedule 8 hereto;

(l) Not later than the Stabilization Date: (i) a Construction Closeout Deliveries Certificate in the form attached as Schedule 9 hereto; (ii) a Final Use of Proceeds Compliance Certificate in the form set forth in Schedule 10 hereto; and (iii) a Stabilization Certificate in the form set forth on Schedule 11 hereto;

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

(n) Contemporaneously with the delivery to the Funding Lender copies of any notices, reports or other information provided to the Funding Lender under the Funding Loan Documents;

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

(p) As soon as possible, notice of any violation of the terms and conditions of the Ground Lease and a copy of any notice it receives from the Ground Lessor under the Ground Lease;

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

(r) Upon receipt thereof, copies of all bills for Governmental Lender Fees or Fiscal Agent Fees and, upon payment, evidence of payment of such fees;

(s) Promptly following filing thereof, all tax returns of the Borrower and, if requested by the Controlling Person, the General Partner; and

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

**Section 6.10 Tax-Exempt Status.** The Borrower covenants that it shall not take any action, or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the Federal Tax Status of the Governmental Note. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Exemption Agreement. The Borrower further covenants that the proceeds of the Funding Loan will be allocated to each building in the Project and the land upon which the buildings are located for purposes of compliance with Section 42(h)(4) of the Code in the same manner for which proceeds are allocated for purposes of the “95%” test. In the event of a conflict between the terms and requirements of this Section 6.10 and the Tax Exemption Agreement, the terms and requirements of the Tax Exemption Agreement shall control.

**Section 6.11 Single Purpose Entities.**

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

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

Section 6.12 Negative Pledge; No Sale.

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

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

Person's sole and absolute discretion; and (ii) complying with the applicable requirements of the Regulatory Agreement.

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

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

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

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

Section 6.14 Environmental Covenants.

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

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

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

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

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

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

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary

or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15 Controlling Person. The Borrower acknowledges and agrees that (i) the Funding Lender has the sole and exclusive right to arrange for servicing of the Borrower Loan and to appoint another Person to serve as its representative hereunder, and under the other Funding Loan Documents; (ii) the Funding Lender has appointed R4 Servicer LLC to serve in the capacity of Controlling Person hereunder and under the other Funding Loan Documents and R4 Servicer LLC, as Controlling Person, shall perform all of the duties expressly given to the Controlling Person or the Funding Lender with respect to the servicing, administration and collection activities under the Funding Loan Documents including, but not limited to those set forth in Section 8.2 of the Funding Loan Agreement; (iii) unless revoked in writing by the Funding Lender or the Controlling Person has resigned, the Borrower shall communicate solely with the Controlling Person with respect to matters arising under or relating to the Funding Loan Documents; and (iv) the Funding Lender retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower. The Controlling Person is hereby granted the full power and authority to conduct the servicing, administration and collection activities for and on behalf of the Funding Lender as contemplated herein and, without limiting the generality of the foregoing, is authorized and empowered to make and accept all communications on behalf of the Funding Lender with Borrower, Guarantor and any of their agents and execute and deliver, on behalf of the Funding Lender, any and all instruments of amendment, modification, satisfaction, cancellation, sale, transfer, release, discharge and all other comparable instruments with respect to the Loan. The Funding Lender hereby constitutes and appoints the Controlling Person as the Funding Lender's true and lawful attorney in fact with the power and authority to perform the foregoing. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Funding Lender.

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

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

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Governmental Lender, the Funding Lender or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Funding Loan Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Funding Lender of the subrogation and security rights in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) for the

benefit of the Noteowners of the Governmental Note contemplated by this Agreement, by the other Funding Loan Documents and by the Funding Loan Agreement. The Borrower shall obtain any approvals required under the Ground Lease, the Taxable Loan Documents and the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the “Management Agreement”). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Governmental Note, all Third Party Costs, all required deposits into the Accounts and all payments due under the Ground Lease. The Borrower shall not replace the Managing Agent for the Project Facilities without the Controlling Person’s prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person’s prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Managing Agent on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days’ notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. The Borrower shall not admit in writing to the Governmental Lender or to any Governmental Authority that interest on the Governmental Note has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Controlling Person and the Funding Lender and permitting the Controlling Person or the Funding Lender, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Governmental Lender, the Funding Lender, the Controlling Person and the Funding Lender.

Section 6.21 Provision of Annual Reports; Reporting of Material Events.

(a) The Borrower shall, not later than 150 days after the end of the Borrower’s fiscal year, commencing within 150 days following the end of the Borrower’s current fiscal year, provide to the MSRB a report (the “Annual Report”) containing financial information and operating data with respect to the Project Facilities for the prior fiscal year including the name, address, number of units, number of units occupied as of the report date, average occupancy of the Project Facilities, revenues, operating expenses, net operating income, debt service on the Borrower Loan and net operating income after debt service. The Annual Report may, but is not required to, include audited financial statements.

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Borrower or any affiliate is an “obligated person” (as defined by Rule 15c2-12(b)(5) adopted by the Securities and Exchange



Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the “Rule”)), which have been filed with the Funding Lender, the MSRB or the Securities and Exchange Commission. The Borrower shall clearly identify each such other document so included by reference.

(c) In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in this section; provided, that the financial statements of the Borrower may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Borrower’s fiscal year changes, it shall give notice of such change in the same manner as for a Material Event this Section.

(d) This Section shall govern the giving of notices of the occurrence of any of the following events (each, a “Material Event”):

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of interest paid on the Governmental Note, or other Listed Events affecting the tax-exempt status of interest paid on the Governmental Note;
- (7) Modifications to rights of any interest in the Funding Loan, if material;
- (8) optional, contingent or unscheduled prepayments of the Borrower Loan or Funding Loan, if material, and tender offers;
- (9) Defeasances;
- (10) release, substitution or sale of property securing repayment of the Borrower Loan or the Funding Loan, if material;
- (11) Rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has

assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;

(13) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional trustee/fiscal agent or paying agent or the change of the name of a trustee/fiscal agent or paying agent, if material;

(15) Incurrence of a financial obligation of the Borrower or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the Borrower or obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the Borrower or obligated person, any of which reflect financial difficulties

(e) Whenever the Borrower obtains knowledge of the occurrence of a Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of such event, determine if such event is in fact a Material Event that would be required by the Rule to be disclosed.

(f) If the Borrower has determined that a Material Event is required to be disclosed then the Borrower shall prepare a written notice describing the Material Event and provide the same to the Funding Lender no more than ten (10) Business Days after the occurrence of the Material Event.

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

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the Special Limited Partner, nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the Special Limited Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the Special Limited Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii)

comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the Special Limited Partner hereby authorizes and consents to the Controlling Person’s taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

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

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

- (i) shall be prepared on the basis of sound accounting practices consistently applied;
- (ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Account and the projected revenues and Expenses of the Project Facilities;
- (iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

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

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

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Funding Lender shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to request the initial disbursement of funds under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 6 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the Ground Lease, the Taxable Loan Documents or the Subordinate Debt Documents without the prior written consent of the Controlling Person.

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

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

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

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

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

Section 6.34 Special Servicing Costs. The Controlling Person, as servicer of the Borrower Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Developer Fee. Borrower will not pay any Developer Fee unless permitted under Section 2 of the Developer Fee Pledge.

Section 6.36 Reserved.

Section 6.37 Extension of the Outside Stabilization Date.

(a) The Borrower may, upon thirty (30) days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(1) there is no uncured Default or Event of Default under the Funding Loan Documents and the Borrower is then in compliance with its obligations under the Borrower Loan Documents;

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

(3) there shall be paid to the Controlling Person, not less than thirty (30) days prior to the initial Outside Stabilization Date, an extension fee equal to 0.25% times the aggregate principal amount of the Borrower Note and the Taxable Construction Loan outstanding at the time such fee is paid; and

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

(b) Reserved.

## **ARTICLE 7**

### **DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following shall constitute an event of default hereunder (“Event of Default”):

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

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

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

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Funding Loan Documents or any other document furnished to the Governmental Lender, the Funding Lender the Controlling Person or the Fiscal Agent pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Funding Loan Documents to which the Borrower, the General Partner, the Special Limited Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner, the Special Limited Partner or

the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner, the Special Limited Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner, the Special Limited Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Funding Loan Documents to which the Borrower, the General Partner, the Special Limited Partner or any Guarantor is a party;

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

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

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

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

(j) The Project Facilities fail to achieve (i) Completion on or before the Completion Date; (ii) Stabilization on or before the Stabilization Date, or (iii) if specified on the Schedule of Financial Terms as applicable, to obtain and maintain the exemption from ad valorem real estate taxation under the laws of the State;

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

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor, the General Partner or the Special Limited Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower, any Guarantor, the General Partner or the Special Limited Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor, the General Partner or the Special Limited Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

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

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

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

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

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

(r) An event of default or termination event pertaining to the Borrower as defined in and pursuant to the Taxable Loan Documents occurs and any applicable notice and/or cure period has expired;



(s) An event of default or termination event pertaining to the Borrower as defined in and pursuant to the Subordinate Debt Documents occurs and any applicable notice and/or cure period has expired; and

(t) The occurrence of a breach of the Ground Lease that constitutes, or would constitute, with the giving of notice or the passage of time, or both, the basis for the Ground Lessor to terminate the Ground Lease.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Funding Lender, or the Controlling Person on behalf of the Funding Lender, may:

(a) Declare the principal of the Governmental Note then outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Borrower Note and under the other Funding Loan Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Funding Lender or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Funding Lender may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Borrower Note or any other note given by it pursuant to the provisions hereof, to pay the Funding Lender upon demand any amount or amounts expended by the Funding Lender or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Funding Lender or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Borrower Note, and shall be considered part of the indebtedness evidenced by the Borrower Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Funding Lender) and use any property of the Borrower associated with the Project Facilities, or any property of the

Borrower in which the Funding Lender has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Funding Lender's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Funding Lender; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Funding Lender and its counsel in connection with the enforcement and performance of this Agreement, the other Funding Loan Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Funding Lender harmless from any act or omission of the Funding Lender (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Funding Loan Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Funding Lender's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

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

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

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Funding Lender (or by the Governmental Lender if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Governmental Lender, the Funding Lender, the Controlling Person or any Noteowner to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Funding Lender is hereby authorized at any time and from time to time without notice to the Borrower, the General Partner or the Special Limited Partner (any such notice being expressly waived by the Borrower, the General Partner and the Special Limited Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held and other indebtedness at any time owing by the Governmental Lender to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Funding Loan Documents or any other agreement or instrument delivered by the Borrower to the Governmental Lender in connection therewith, whether or not the Governmental Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Funding

Lender under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Funding Lender may have.

Section 7.6 Governmental Lender and Borrower to Give Notice of Default. The Governmental Lender and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Funding Lender, the Controlling Person and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Governmental Lender shall not be liable for failing to give such notice.

Section 7.7 Cure by Investor Limited Partner and/or Special Limited Partner. Notwithstanding anything to the contrary contained herein, the Governmental Lender hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner and/or Special Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that neither the Investor Limited Partner nor the Special Limited Partner shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Par Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

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

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

(i) The Governmental Lender and the Funding Lender, prior to the end of such sixty (60) day period, are provided with a Favorable Opinion of Governmental Lender Counsel (which opinion may be requested and obtained by the Controlling Person or the Funding Lender);

(ii) The Controlling Person, the Funding Lender or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and

diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Funding Lender without the Funding Lender's first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Funding Lender (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Funding Lender, subject to the terms of the Funding Loan Agreement, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Funding Loan Documents; (y) thereafter instructs the Funding Lender, pursuant to the terms of the Funding Loan Agreement, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Funding Lender or other designee of the Controlling Person or the Funding Lender obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension of the period within which a Regulatory Agreement Default must be cured shall only be effective to the extent that the Funding Lender shall have been provided a Favorable Opinion of Governmental Lender Counsel; and provided further, that the Funding Lender, upon five (5) Business Days' prior written notice to the Controlling Person and the Funding Lender following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Funding Lender, the Controlling Person and the Funding Lender shall have been provided with a Favorable Opinion of Governmental Lender Counsel.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Funding Lender, nothing in this Section 7.9 shall restrict or in any way limit the right of the Governmental Lender to take any action for specific performance available under the Regulatory Agreement or at law or in equity in order to enforce the terms of the Regulatory Agreement or to enforce Reserved Rights hereunder, so long as the Governmental Lender does not take any action (i) to declare the outstanding balance of the Governmental Note or the Borrower Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8**

### **DEPOSITS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Account. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Fiscal Agent, for deposit into the Replacement Reserve Account, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Account from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement.

Section 8.2 Deposits to Tax and Insurance Escrow Fund. Unless otherwise directed by the Controlling Person, two Business Days before each Loan Payment Date, commencing the First Monthly Tax and Insurance Escrow Payment Date, and continuing each month thereafter, the Borrower shall pay,

or cause to be paid, to the Fiscal Agent an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.3      *Intentionally omitted.*

Section 8.4      Establishment of Operating Reserve Account. The Borrower shall, simultaneously with the Fourth Installment (as defined in the Partnership Agreement of the Borrower) establish and maintain an operating reserve fund (the “Operating Reserve Account”) in the Operating Reserve Amount. Moneys in the Operating Reserve Account may be used by the Borrower only to fund any operating deficits of the Borrower, Expenses, or for any other operating or capital needs approved by the Controlling Person and Investor Limited Partner in writing. During the continuance of an Event of Default or in order to prevent an Event of Default, the Operating Reserve Account shall be applied to by the Borrower, at the direction of the Controlling Person: (i) first to pay current debt service on the Governmental Note; (ii) second to pay other operating deficits of the Project Facilities; and (iii) thereafter to payment of other amounts owed by the Borrower. Borrower additionally covenants and agrees that promptly following the date that the Investor Limited Partner, or an Affiliate of the Investor Limited Partner, is no longer a partner under the Partnership Agreement of the Borrower (the “Operating Reserve Trigger”), the Operating Reserve Account shall be transferred to the Fiscal Agent and held as additional security for the Governmental Note. Notwithstanding any of the foregoing to the contrary and subject to the terms and conditions of the Partnership Agreement, the Borrower may request that the Controlling Person, with the consent of the Investor Limited Partner, reduce the amount of the Operating Reserve Account otherwise then-required to be maintained by twenty percent (20%) annually each year as compared to the previous year commencing in tenth (10th) year following the Stabilization Date. The Controlling Person shall consent to such reduction provided that: (i) the ratio of Stabilized NOI for the then-trailing twelve (12) month period to the principal, interest and fees payable under the Borrower Note and Borrower Loan Agreement over such twelve (12) month period, equals or exceeds 1.25 to 1.0; (ii) no Event of Default or event, which with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and then be continuing under the Funding Loan Documents; (iii) there have been no draws on the Operating Reserve Account during the trailing twelve (12) month period; and (iv) immediately prior to the initial reduction, the amount in the Operating Reserve Account shall be at least equal to the Operating Reserve Amount. In lieu of a cash-funded Operating Reserve Account, with the prior written consent of the Controlling Person, not to be unreasonably withheld, the Borrower may elect to provide an Operating Reserve Account Letter of Credit issued in favor of Investor Limited Partner, provided that after an Operating Reserve Trigger, the Operating Reserve Account Letter of Credit must be made in favor of Fiscal Agent. After an Operating Reserve Trigger, draws upon the Operating Reserve Account Letter of Credit will be made at the direction of the Controlling Person (including upon the request of Borrower for the Controlling Person to direct such draws) to be applied to the payment of Expenses, Capital Expenditures and amounts then due and owing under the Funding Loan Documents. If the financial strength rating of the provider of the Operating Reserve Account Letter of Credit at any time falls below “Aa” by Moody’s or “AA” by S&P or the Operating Reserve Account Letter of Credit is no longer in full force and effect, then the Borrower, within ten (10) days of either such event, shall provide either a replacement Operating Reserve Account Letter of Credit acceptable to the Controlling Person or cash in an amount equal to the amount then-required to be deposited in Operating Reserve Account. “Operating Reserve Account Letter of Credit” means an irrevocable and unconditional letter of credit naming the Fiscal Agent as the beneficiary thereunder which has been approved by the Controlling Person, in writing prior to its execution and delivery, issued by a bank or other financial institution which is acceptable to the Controlling Person, having at all times a long-term credit rating of at least “AA” by S&P and “Aa” by Moody’s, which letter of credit must be in an amount not less than the amount then-required for the Operating Reserve Account and provide for written notice to Investor Limited Partner, Fiscal Agent and Controlling Person at least thirty (30) days prior to be expiration thereof. If not renewed or extended, the Operating Reserve Account Letter of Credit must be drawn in full prior to

such expiration with the proceeds thereof held by Investor Limited Partner or, after an Operating Reserve Trigger, held by the Fiscal Agent.

Section 8.5 Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.12 of the Funding Loan Agreement. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Funding Loan Agreement. The Fiscal Agent will deposit any cash held from time to time in the Accounts in one or more bank accounts with an institution or institutions of the Fiscal Agent or Funding Lender's choosing. The Fiscal Agent shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Funding Loan Documents. Neither the Fiscal Agent nor the Funding Lender shall be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Funding Loan Agreement. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.6 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Governmental Lender, and grants the Governmental Lender a security interest in, as additional collateral security for the Borrower's obligations to the Governmental Lender hereunder (and the Borrower acknowledges and agrees that the Governmental Lender shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Governmental Lender hereby directs the Fiscal Agent to hold all moneys in the Accounts from time to time as assignee of the Governmental Lender. For the avoidance of doubt, prior to an Operating Reserve Trigger, the Governmental Lender shall not have a security interest in the Operating Reserve Account.

Section 8.7 Liability of Funding Lender. In performing any of its duties hereunder, the Funding Lender shall not incur any liability to anyone for any damages, losses or expenses, except for its negligence, bad faith or willful misconduct; and the Funding Lender shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

Section 8.8 Liability of Fiscal Agent. In performing any of its duties hereunder, the Fiscal Agent shall not incur any liability to anyone for any damages, losses or expenses, except for its negligence, bad faith or willful misconduct, and the Fiscal Agent shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## ARTICLE 9

### CONSTRUCTION AND FUNDING OF ADVANCES

Section 9.1 Construction of Project Facilities; Completion and Stabilization. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days' following the Closing Date, and shall achieve Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date and Stabilization on or before the Stabilization Date. At the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole

discretion and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion and the Stabilization Date may be extended as provided in Section 6.37 herein.

Section 9.2      Making The Advances.

(a)      At such time as the Borrower requests a disbursement of funds on deposit in the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b)      Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Fiscal Agent to deposit the proceeds of each Requisition into such account.

Section 9.3      Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Funding Lender may make, or direct the Fiscal Agent to make, any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.4      Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in (i) not less than ninety-five percent (95%) of all disbursements of proceeds of the Governmental Note having been used to pay or reimburse the Borrower for Qualified Project Costs, (ii) not more than two percent (2%) of the proceeds of the Governmental Note having been applied to payments of Costs of Issuance, and (iii) less than twenty-five (25%) of the proceeds of the Governmental Note having been applied to payments for the land.

Section 9.5      Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Funding Lender are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Funding Lender for such costs.

Section 9.6      Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds shall be approved unless all Work done at the date the

Requisition for such advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7     Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person or the Funding Lender from withholding disbursement of any further portion of the contingency reserve.

Section 9.8     Stored Materials; Removal of Materials.

(a)     The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person’s receiving satisfactory evidence that:

(1)     such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

(2)     such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

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

Section 9.9     Cost Overruns and Savings.

(a)     If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$50,000 or more, the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

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



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

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

#### Section 9.10 Right to Retain the Engineering Consultant.

(a) The Funding Lender, or the Controlling Person on behalf of the Funding Lender, shall have the right to retain, and at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Except to the extent of any gross negligence or willful misconduct, none of the Controlling Person, Funding Lender nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner, the Special Limited Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

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

Section 9.12 Initial Advances. The right of the Borrower to request the initial disbursement of proceeds of the Funding Loan on the Closing Date shall be subject to the satisfaction of the conditions precedent listed on Part A of Schedule 6 attached hereto.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds shall be subject to the satisfaction of the conditions listed on Part B of Schedule 6 attached hereto.

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

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

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

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

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

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

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

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

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

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

## ARTICLE 10

### MISCELLANEOUS

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed to the appropriate party at the addresses set forth in Section 10.4 of the Funding Loan Agreement. Any of such notice parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in Section 10.04 of the Funding Loan Agreement. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Funding Lender. Each of the Controlling Person and the Fiscal Agent is an express third party beneficiary of this Agreement with full rights of enforcement hereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Governmental Lender intend that no person other than the parties hereto, the Funding Lender, the Controlling Person, the Fiscal Agent and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Governmental Note, the delivery of this Agreement and the payment of any amounts under the Funding Loan Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Closing Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Governmental Lender, the Fiscal Agent, the Controlling Person and the Funding Lender in connection with the preparation, execution, delivery and administration of this Agreement, the other Funding Loan Documents and any other documents that may be delivered in connection with this Agreement or the other Funding Loan Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the

Controlling Person, and the reasonable fees and expenses of counsel for the Funding Lender and the Controlling Person with respect thereto and with respect to advising the Funding Lender and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Funding Loan Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Funding Lender) in connection with the enforcement of this Agreement, the other Funding Loan Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Governmental Lender in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Funding Lender include interest in excess of such a maximum amount, the Funding Lender shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Funding Loan Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Funding Loan Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the parties with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Funding Loan Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Funding Loan Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Funding Lender to serve legal process in any other manner permitted

by applicable Legal Requirements. **THE BORROWER HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER FUNDING LOAN DOCUMENTS OR OTHERWISE IN CONNECTION HERewith.**

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

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

Section 10.12 Sale of Governmental Note and Secondary Market Transaction.

(a) At the Controlling Person or Funding Lender's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Funding Lender customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Funding Lender in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Governmental Note or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Note (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Governmental Lender shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Governmental Note, shall be paid by the Controlling Person or Funding Lender, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Governmental Lender shall, so long as the Borrower Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Governmental Note, and with respect to the Project Facilities, the Borrower, the Managing Agent, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Funding Lender, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, the Borrower, Guarantor, Managing Agent, Contractor and other third parties in connection with the Governmental Note, as may be reasonably requested from time to time by the Controlling Person or Funding Lender or the rating agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Controlling Person or Funding Lender pursuant to this paragraph (i) and the other information provided pursuant to this Agreement and the other Funding Loan Documents used in connection with a Secondary Market Transaction being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Funding Lender and the rating agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower, General

Partner, Guarantor, Managing Agent, Contractor or other third parties and the Funding Loan Documents reasonably acceptable to the Controlling Person or Funding Lender, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a “bringdown” of the representations and warranties contained in the Funding Loan Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and

(iii) execute such amendments to the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Funding Loan Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the rating agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Controlling Person and Funding Lender in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Managing Agent, cause it to provide, information reasonably requested by the Controlling Person or the Funding Lender pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Funding Lender pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Funding Lender, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Fiscal Agent, the Controlling Person, the Funding Lender, the Governmental Lender and trustee, sponsor, guarantor and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and controlling persons (the “Underwriter Group”) for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Funding Lender, the Fiscal Agent, the

Governmental Lender, its members, and the Underwriter Group for any liabilities to which the Funding Lender, the Controlling Person, the Governmental Lender, the Fiscal Agent or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Funding Lender, the Fiscal Agent, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Funding Lender, the Fiscal Agent or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior written consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### Section 10.13 Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Funding Loan Documents, the Governmental Lender agrees that, in connection with the exercise of any rights or remedies available to the Governmental Lender under this Agreement or any of the other Funding Loan Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Governmental Lender shall look solely

to the enforcement of the lien and security interests created by this Agreement and the other Funding Loan Documents and to the collateral and other security held by the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender).

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Governmental Lender, the Funding Lender, the Controlling Person or the Noteowners as a result of the occurrence of any of the following events:

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

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

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

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

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

(vi) the occurrence of any of the following transfers:

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

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

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

(D) Borrower executes a Lease that does not meet the requirements set forth in the Funding Loan Documents;



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

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

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, the Special Limited Partner, the Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, hinders, enjoins or otherwise interferes with or frustrates the efforts of Funding Lender to exercise any rights and remedies available to Funding Lender provided herein or in the other Funding Loan Documents.

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

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

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

(iii) the Borrower, the General Partner or the Special Limited Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower, the General Partner or the Special Limited Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

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

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

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

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership,

insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

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

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

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

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

(ii) the costs of any audit under Section 6.8 of this Agreement;

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

(iv) Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

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

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

Section 10.14 Publicity. The Borrower hereby authorizes the Controlling Person or the Funding Lender and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web

pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Funding Lender also may discuss at a high level the types of services and solutions the Controlling Person or the Funding Lender has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Funding Lender shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person.

Section 10.15 Determinations by the Funding Lender and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Funding Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Controlling Person or the Funding Lender (or its designated representative) at its sole and absolute discretion. The Funding Lender may by separate instrument delegate, assign, transfer and set over unto the Controlling Person any or all of the rights, remedies, duties and obligations of the Funding Lender under the Funding Loan Agreement, this Agreement and the other Funding Loan Documents, in which event the Controlling Person shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Funding Loan Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Funding Lender, to enforce each of the remedies provided to the Funding Lender hereunder or under the other Funding Loan Documents.

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

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IN WITNESS WHEREOF, the Governmental Lender and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

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

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

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

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

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

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

**EXHIBIT A**  
**FORM OF BORROWER NOTE**

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

\$[30,000,000]

[CLOSING DATE]

FOR VALUE RECEIVED, LDG THE LEGACY ON Kiest, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “Borrower”), by this promissory note (the “Note” or “Borrower Note”) hereby promises to pay to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Governmental Lender”) the principal sum of [THIRTY MILLION] and no/100 Dollars (\$[30,000,000]), together with interest on the drawn and unpaid principal amount hereof, from the Closing Date (as defined in the Funding Loan Agreement referenced below) until paid in full, at a rate per annum, and acceleration premium, if any, as set forth herein.

1. **Defined Terms.** As used in this Note, the following terms shall have the following definitions:

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

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

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

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

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

“**Fixed Rate**” shall mean the fixed rate set forth on the Schedule of Financial Terms and computed on the basis of a 360-day year comprised of twelve 30-day months.

“**Funding Loan Agreement**” shall mean that certain Funding Loan Agreement dated as of [July 1], 2025 by and among Texas Department of Housing and Community Affairs, as the “Governmental Lender”, BOKF, NA, as the “Fiscal Agent”, and Community Housing Investment Partners II, LP, as the “Funding Lender”.

“**Loan Payment Date**” has the meaning set forth in the Funding Loan Agreement.

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

“**Maximum Lawful Rate**” has the meaning set forth in the Funding Loan Agreement.

“**Stabilization Date**” has the meaning set forth in the Funding Loan Agreement.

“**Surplus Funding Loan Proceeds**” means all drawn but unexpended moneys and any unliquidated investments with respect thereto remaining upon final Completion and delivery of the

Construction Closeout Deliveries and after payment in full of the Project Costs, except for Funding Loan proceeds retained to pay for Project Costs not then due and payable.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to Fiscal Agent, or, if there is no Fiscal Agent, to the Funding Lender, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Funding Lender or Controlling Person shall supply by written notice to the Borrower from time to time on the date that is two Business Days before any other date that any payment of interest, premium, if any, principal or other amount is required to be made hereunder.

3. **Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of this Note or the date fixed for prepayment of any Borrower Note shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall 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 fixed for prepayment, and, in the case of such payment, no interest shall accrue for the period from and after such date.

4. **Interest Rate.** Interest shall accrue on the drawn and unpaid principal of this Note from, and including, the Closing Date, until the Maturity Date, at the Fixed Rate. Notwithstanding any other provision of this Note to the contrary, interest shall not exceed the Maximum Lawful Rate.

5. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Loan Payment Date and continuing on each Loan Payment Date thereafter until and including the First Principal Payment Date, Borrower shall pay monthly payments of interest only, at the Interest Rate, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second (2nd) Business Day prior to each Loan Payment Date.

(c) Commencing on the First Principal Payment Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth on the Debt Service Schedule to the Borrower Loan Agreement, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second (2nd) Business Day prior to each Loan Payment Date.

(d) Any accrued interest remaining past due may, at Funding Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest that has not become part of the unpaid principal balance.

(e) Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due hereunder.

(f) Any regularly scheduled monthly installment of principal and interest that is received by Funding Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(g) Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(h) Borrower acknowledges that the calculation of all interest payments shall be made by the Funding Lender and Controlling Person and shall be final and conclusive, absent manifest error.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable hereunder, if any, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of Funding Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayments.**

(a) In connection with any prepayment (*i.e.*, any receipt by Funding Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 5 of this Note, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided in Section 9 of this Note and Section 2.3 of the Borrower Loan Agreement and/or the Schedule of Financial Terms. EXCEPT AS OTHERWISE PERMITTED HEREIN, NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED.

(b) *Optional Prepayment of Borrower Note.*

(i) The Borrower Note is subject to optional prepayment in whole but not in part, by the Borrower upon not less than forty-five (45) days written notice to the Funding Lender, the Controlling Person, the Governmental Lender and the Fiscal Agent (which notice shall be unconditional and irrevocable) on any Loan Payment Date occurring on or after the First Optional Call Date, at a prepayment price as set forth on the Schedule of Financial Terms, plus accrued interest thereon to, but not including, the prepayment date.

(ii) The Borrower Note is subject to optional prepayment in part on any Loan Payment Date specified by the Borrower and consented to by the Controlling Person following Completion but not later than the Stabilization Date in an amount which will not reduce, in the aggregate, the Borrower Loan to less than the Minimum Permanent Loan Amount at a prepayment price equal to 100% of the principal amount being prepaid without premium or penalty plus interest accrued thereon to, but not including, the prepayment date.

(c) *Mandatory Prepayment of Borrower Note.*

(i) The Borrower Note is subject to mandatory prepayment in part upon the written direction of the Controlling Person from, and to the extent of, any Surplus Funding Loan Proceeds, on any Loan Payment Date after Completion of the Project Facilities and delivery of the Construction Closeout Deliveries, but in no event later than the Stabilization



Date, at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

(ii) The Borrower Note is subject to mandatory prepayment in whole or in part upon the written direction of the Controlling Person on any Loan Payment Date to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Tax and Insurance Escrow Fund and are not to be used to repair or restore the Project Facilities at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

(iii) The Borrower Note is subject to mandatory prepayment in part on any Loan Payment Date at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date upon the written direction of, and in the amount as specified by, the Controlling Person equal to the greater of: (i) the amount necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of Stabilization,” on the Stabilization Date; or (ii) the amount necessary to reduce, in the aggregate, the Borrower Loan to not more than the Maximum Permanent Loan Amount.

(iv) The Borrower Note is subject to extraordinary mandatory prepayment in whole or in part on any Loan Payment Date at the direction of the Controlling Person at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date following receipt by the Funding Lender of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(A) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(B) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months);

(C) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Borrower Loan Agreement or the Funding Loan Documents, in the judgment of the Controlling Person shall have become void or unenforceable or impossible

of performance in accordance with the intent and purpose of the parties as expressed therein;

(D) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Note that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(E) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Borrower Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

(F) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

(G) the Borrower Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Borrower Loan Agreement.

(v) The Borrower Note is subject to mandatory prepayment in whole at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, on the first Loan Payment Date for which notice of prepayment can be given in accordance with the Funding Loan Agreement within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory prepayment on account of a Determination of Taxability of less than all the Governmental Note would result, in the Favorable Opinion of Governmental Lender Counsel, in the interest on the Governmental Note outstanding following such mandatory prepayment being excludable from the gross income of the Noteowners of such Governmental Note outstanding, then the Borrower Note is subject to mandatory prepayment upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such prepayment must be in an Authorized Denomination.

(vi) The Borrower Note is subject to mandatory prepayment in whole on any Loan Payment Date specified by the Controlling Person on or after the First Put Date, if the Controlling Person directs prepayment by providing notice to the Borrower, the Funding Lender, the Fiscal Agent and the Governmental Lender at least one hundred eighty (180) days prior to the Loan Payment Date specified in such notice on which the Borrower Note is to be prepaid at a prepayment price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the prepayment date.

8. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 10.13 of the Borrower Loan Agreement, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project Facilities or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project Facilities or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project Facilities, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the legal organization or status of the Funding Lender, Governmental Lender or Fiscal Agent, or any default of hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Funding Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

- (a) any lack of validity or enforceability of any Borrower Loan Document or any of the Funding Loan Documents;
- (b) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Funding Loan Documents;
- (c) the existence of any claim, set-off, defense or other rights which Borrower, General Partner or Guarantor may have at any time against Funding Lender (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Funding Loan Documents or any transaction contemplated thereby or any unrelated transaction;
- (d) any breach of contract or other dispute between Borrower, General Partner or Guarantor, and Funding Lender;
- (e) any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Funding Lender with respect to same); or
- (f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Funding Loan Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

9. **Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Borrower Note is not paid when due, there shall be payable on the amount not timely paid,

interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Borrower Note or the Borrower's obligations under the Borrower Loan Agreement following an Event of Default on or before the First Par Call Date, any tender of payment of any amount necessary to pay the Borrower Note in full shall include the acceleration premium set forth in Section 2.3(c) of the Borrower Loan Agreement.

10. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Funding Lender, Governmental Lender or Fiscal Agent as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of this Section 10, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

11. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

12. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

13. **Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Funding Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower's assets in any court of any other jurisdiction.

14. **Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Funding Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable the Funding Lender to exercise and enforce its rights and remedies under this Note.

15. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

16. **Controlling Person.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Funding Loan Documents: (a) from time to time, Funding Lender may appoint a controlling person to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives written notice from Funding Lender to the contrary, any action or right which shall or may be taken or

exercised by Funding Lender may be taken or exercised by such controlling person with the same force and effect.

17. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY BORROWER KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

18. **Time of the Essence.** Time is of the essence with respect to this Note.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Note or caused this Note to be duly executed and delivered by its authorized representative as of the date first set forth above.

**LDG THE LEGACY ON KIEST, LP**, a Texas limited partnership

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

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

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

#### **ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Fiscal Agent under the Funding Loan Agreement referred to in the within mentioned Agreement, as security for such Governmental Note issued under such Funding Loan Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Borrower Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

Dated: \_\_\_\_\_, 2025

**EXHIBIT B**  
**FORM OF WRITTEN REQUISITION**  
**OF THE BORROWER**

BORROWER: LDG The Legacy on Kiest, LP

PROJECT: The Legacy on Kiest

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

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

TO: BOKF, NA, as Fiscal Agent  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attention: Corporate Trust Department

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

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

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

**Requisition - Contents and Attachments**

- ☐ Borrower's Request for Payment
- ☐ Borrower's Representations and Warranties
- ☐ Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- ☐ Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- ☐ Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- ☐ Pending Change Order and Change Order Log (dated)
- ☐ Vendor Payee List or equivalent
- ☐ Requisitions and Invoices Supporting Application
- ☐ Contractor's Requisition Certificate
- ☐ Architect's Requisition Certificate
- ☐ Lien Waivers, Conditional for the current Hard cost pay request

- ☐ Lien Waivers, Unconditional for payment thru the prior period pay request
- ☐ Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- ☐ Current Project Schedule
- ☐ Other Documents as Requested by the Funding Lender or Controlling Person

### **Representations and Warranties**

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Borrower Loan Agreement dated as of [July 1], 2025 (the “Agreement”), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Funding Loan Agreement dated as of [July 1], 2025, with respect to the Governmental Note.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Fiscal Agent under previously approved requisitions have been paid to the Contractor and, to the Borrower’s best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Fiscal Agent under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Funding Lender in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Funding Loan Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Funding Loan Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Encumbrances and those being contested by the Borrower in accordance with the terms of the Funding Loan Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Funding Loan Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds (including investment proceeds) of the Governmental Note have been applied to the payment of Qualified Project Costs.



11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Borrower Loan Agreement.

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

**LDG THE LEGACY ON KIEST, LP**, a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Person

Approved:

R4 SERVICER LLC, as Controlling Person

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

Dated: \_\_\_\_\_, 202\_\_

**Contractor's Application for Payment**

Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)  
Architect, Contractor, Owner Change Order (Executed AIA G-710(s) added to G-702)  
Pending Change Order and Change Order Log (dated)

## **Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: Community Housing Investment Partners II, LP ("Funding Lender")  
R4 Servicer LLC ("Controlling Person")

FROM: [ ] ("Contractor")

RE: Construction of The Legacy on Kiest (the "Project Facilities") by LDG The Legacy on Kiest, LP ("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Borrower Loan proceeds and other amounts by the Fiscal Agent and/or the Funding Lender to assist in funding construction of the Improvements and knowing that the Funding Lender and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_\_\_, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 202\_\_\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_\_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 202\_\_\_\_, is \$\_\_\_\_\_; and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none] \_\_\_\_\_
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_\_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.
5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 202\_\_\_\_ plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

DHFC THE LEGACY ON Kiest GENERAL  
CONTRACTOR, LLC

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

### Architect's Requisition Certificate

Application for Payment No. \_\_\_\_\_

TO: Community Housing Investment Partners II, LP ("Funding Lender")  
R4 Servicer LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Architect")

RE: Construction of The Legacy on Kiest (the "Project Facilities") by LDG The Legacy on Kiest, LP ("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Borrower Loan proceeds and other amounts by the Fiscal Agent and/or the Funding Lender to assist in funding construction of the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows: substantially in accordance with the approved, as amended and approved, plans and specifications. [non-compliant with the approved plans and specifications]. [other – describe here]
2. We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_
4. We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from DHFC The Legacy on Kiest General Contractor, LLC ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
5. All permits, licenses, approvals and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:

6. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
7. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
8. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
9. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

[ARCHITECT]

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

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

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



**Borrower's Request for Payment**

[attach spreadsheets in form provided by R4 Capital]

**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between LDG The Legacy on Kiest, LP ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in The Legacy on Kiest.

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

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

Resident or Residents:  
(all Residents must sign here)

Lessor:

\_\_\_\_\_  
Resident's Signature

LDG The Legacy on Kiest, LP

\_\_\_\_\_  
Resident's Name

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

\_\_\_\_\_  
Resident's Unit No.

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

**EXHIBIT D-1**

**CERTIFICATE OF AUTHORIZED PERSONS**

BORROWER: LDG The Legacy on Kiest, LP

PROJECT: The Legacy on Kiest

DATE: [\_\_\_\_\_]

TO: BOKF, NA, as “Fiscal Agent”  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attention: Corporate Trust Department

Community Housing Investment Partners II, LP, as “Funding Lender”  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as “Controlling Person”  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

LDG The Legacy on Kiest, LP hereby certifies and designates, on behalf of itself and its general partner, any one of the following individuals as an “Authorized Person” as defined in that certain Funding Loan Agreement dated as of [July 1], 2025 by and among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs (the “Funding Loan Agreement”). Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement

<u>Name</u>	<u>Title</u>	<u>Signature</u>
[Aaron Eaquinto]	[General Manager]	_____
[SLP REPRESENTATIVE]	[_____]	_____

This certificate and designation may be modified at any time by Borrower upon written notice to the Funding Lender, the Fiscal Agent and the Controlling Person as described in the definition of “Authorized Person”; however, the Funding Lender, the Fiscal Agent and the Controlling Person may continue to rely on this certificate and designation until it shall have received any such written notice from Borrower.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

Executed this \_\_\_\_ day of \_\_\_\_, 2025

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

**EXHIBIT D-2**

**FORM OF AUTHORIZED PERSONS CHANGE CERTIFICATE**

BORROWER: LDG The Legacy on Kiest, LP

PROJECT: The Legacy on Kiest

DATE: \_\_\_\_\_

TO: BOKF, NA, as “Fiscal Agent”  
1401 McKinney, Suite 1000  
Houston, Texas 77010  
Attention: Corporate Trust Department

Community Housing Investment Partners II, LP, as “Funding Lender”  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as “Controlling Person”  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

LDG The Legacy on Kiest, LP hereby revokes any prior certificate and designation of “Authorized Person” and hereby certifies and designates, on behalf of itself and its general partner, any one of the following individuals as an “Authorized Person” as defined in that certain Funding Loan Agreement dated as of [July 1], 2025 by and among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs (the “Funding Loan Agreement”). Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement

<u>Name</u>	<u>Title</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____

This certificate and designation may be modified at any time by Borrower upon written notice to the Funding Lender, the Fiscal Agent and the Controlling Person as described in the definition of “Authorized Person”; however, the Funding Lender, the Fiscal Agent and the Controlling Person may continue to rely on this certificate and designation until it shall have received any such written notice from Borrower.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

[TO COME]



**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

1. Funding Loan Documents
2. Borrower Loan Documents
3. Taxable Loan Documents
4. Subordinate Debt Documents

**SCHEDULE 3**  
**DEVELOPMENT BUDGET**

[continues next page]

[DEVELOPMENT BUDGET TO COME]

**SCHEDULE 4**  
**PLANS AND SPECIFICATIONS**

[continues next page]

[PLANS AND SPECIFICATIONS TO COME]

**SCHEDULE 5**  
**PERMITS AND APPROVALS NOT YET OBTAINED**

**[TO COME.]**

## SCHEDULE 6 CONDITIONS TO ADVANCES

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

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

2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Developer Fee Pledge, the General Partner Pledge and the Special Limited Partner Pledge shall be effective to create in the Fiscal Agent or Funding Lender, as applicable, a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

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

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

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

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

(d) Evidence of Sufficiency of Funds. Evidence that the proceeds of the Funding Loan, the Taxable Construction Loan and the Subordinate Debt,, together with Required Equity Funds delivered on the Closing Date or to be delivered after the Closing Date pursuant to the Funding Loan Agreement and the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to complete the

Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

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

- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
- (b) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
- (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
- (d) the obtaining of all approvals, permits and licenses or evidence that no such permits or licenses are required, which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

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

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

8. Survey and Taxes. A Survey of the land upon which the Project Facilities are (or will be) located (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Closing Date.

9. Deposit of Funds. The initial installment of Required Equity Funds and any other source of funds required for closing shall have been delivered to the satisfaction of the Controlling Person.

10. Requisition. If any portion of the initial Advance shall be for hard costs of construction, a completed Requisition and together with the approval of the Engineering Consultant.

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



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

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

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

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

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

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

18. Representations and Warranties. The representations and warranties made by the Obligors in the Funding Loan Documents, the General Partner Pledge, the Developer Fee Pledge, the Special Limited Partner Pledge or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance.

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

20. Reserved.

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.
2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Funding Loan Documents, the Taxable Loan Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Funding Loan Documents and the Taxable Loan Documents).
4. No Damage. If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A completed Requisition in the form set forth on Exhibit B to this Agreement, accompanied by the certificates, applications, invoices and other materials required thereby together with approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the Advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Funding Loan proceeds and other available funds specified in the Development Budget are adequate to complete construction of the Improvements in accordance with the Plans and Specifications; and
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Company, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any proceeds of the Funding Loan disbursed from the Capitalized Interest Account of the Project Fund;
6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Insurance Company or the Controlling Person;
7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;

8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person.
9. Mechanics' Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.
10. Lien Waivers. No sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, materialmen or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.
11. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Fiscal Agent.
12. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person's obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant's certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.
13. Loan Rebalancing. The Controlling Person shall not be obligated to authorize any further advances until the requirements of Section 6.32 of this Agreement have been satisfied.
14. Material Change Orders. No Material Change Order shall have been made without the written approval of the Controlling Person.

**SCHEDULE 7**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

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

Re: The Legacy on Kiest (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to Community Housing Investment Partners II, LP, as Funding Lender (the "Funding Lender"), and R4 Servicer LLC as Controlling Person, acting on behalf of the Funding Lender of the Governmental Note issued in connection with the Project Facilities (the "Controlling Person") that "Completion" of the Project Facilities (as defined in the Funding Loan Agreement dated as of [July 1], 2025 (the "Funding Loan Agreement") by and among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs (the "Governmental Lender")) has been attained as of the date hereof and all conditions relating thereto as set forth in the Borrower Loan Agreement dated as of [July 1], 2025 between the undersigned and the Governmental Lender (the "Borrower Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement or the Borrower Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial completion as required by clause (i) of the definition of "Completion" contained in the Funding Loan Agreement;
2. Attached hereto are true copies of all Governmental Actions as required by clause (ii) of the definition of "Completion" contained in the Funding Loan Agreement;
3. The requirements of clause (iii) and clause (iv) of the definition of "Completion" in the Funding Loan Agreement are true and correct as of the date hereof except for the following:  
[ ] [Not Applicable]

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

Accepted and agreed to by:

R4 SERVICER LLC, as Controlling Person

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

Effective Date: \_\_\_\_\_

## **Schedule of Attachments to Completion Certificate**

Punchlist Items

Governmental Actions

**SCHEDULE 8**  
**FORM OF ESTIMATED USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

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

Re: The Legacy on Kiest (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to Community Housing Investment Partners II, LP, as the Funding Lender (the “Funding Lender”) and R4 Servicer LLC, as Controlling Person (the “Controlling Person”) that;

- (i) no less than 95% of the net proceeds of the Funding Loan has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.
- (ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Funding Loan for purposes of Section 42(h)(4).

Attached hereto is a schedule of expected expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Funding Loan expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Funding Loan Agreement dated as of [July 1], 2025 among the Funding Lender, the Fiscal Agent and the Governmental Lender.

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

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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



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

[Attach Schedule]

## SCHEDULE 9

### FORM OF CONSTRUCTION CLOSEOUT DELIVERIES CERTIFICATE

\_\_\_\_\_, 202\_\_

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

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

Re: The Legacy on Kiest (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to Community Housing Investment Partners II, LP, as the Funding Lender (the “Funding Lender”) and R4 Servicer LLC, as Controlling Person (the “Controlling Person”) that that each of the “Construction Closeout Deliveries” (as defined in the Funding Loan Agreement dated as of [July 1], 2025 (the “Funding Loan Agreement”)) by and among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs (the “Governmental Lender”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Borrower Loan Agreement dated as of [July 1], 2025 between the undersigned and the Governmental Lender (the “Borrower Loan Agreement”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement or the Borrower Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect’s certificate in the form attached hereto as Exhibit A as required by clause (iii) of the definition of “Construction Closeout Deliveries” contained in the Funding Loan Agreement.
2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the “Permits”) as referenced in clause (ii) of the definition of “Completion” contained in the Funding Loan Agreement. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.

3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (i) of the definition of "Completion" contained in the Funding Loan Agreement. The undersigned has completed all Punchlist Items.

4. Attached are lien waivers required by clause (vi) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender), subject only to Permitted Encumbrances, as required by clause (viii) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

6. Attached hereto is an as-built ALTA/NSPS Survey, certified to the Funding Lender, Fiscal Agent and the Controlling Person and meeting the requirements of clause (ix) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

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

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Borrower Loan Agreement.

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

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

Accepted and agreed to by:

R4 SERVICER LLC, as Controlling Person

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

Effective Date: \_\_\_\_\_, 202\_\_

## **Schedule of Attachments to Construction Closeout Deliveries Certificate**

Architect's Completion Certificate

Occupancy Permits

Lien Waivers

Endorsement to Title Policy

As-Built Survey

Insurance Certificates

Evidence of Payment of Impositions

Evidence of Satisfaction of Environmental Completion Conditions

## EXHIBIT A

### Form of Architect's Certificate

#### ARCHITECT'S COMPLETION CERTIFICATE

The undersigned, an architect duly licensed and registered in the State of Texas has prepared final working plans and detailed specifications (the “**Plans and Specifications**”) for LDG The Legacy on Kiest, LP (the “**Borrower**”) in connection with the construction of improvements on certain real property located in Dallas, Texas, such improvements or project being known as The Legacy on Kiest (the “**Improvements**”).

The undersigned hereby certifies to Community Housing Investment Partners II, LP and R4 Servicer LLC that to the best of our knowledge, information and belief: (i) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (ii) a [temporary] certificate of occupancy has been issued for the Project[, provided however that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof], and (iii) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

[Architect]

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

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

**SCHEDULE 10**  
**FORM OF FINAL USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 202\_\_

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

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

Re: The Legacy on Kiest (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to Community Housing Investment Partners II, LP, as the Funding Lender (the “Funding Lender”) and R4 Servicer LLC, as Controlling Person (the “Controlling Person”) that:

- (i) no less than 95% of the proceeds of the Funding Loan has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.
- (ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Funding Loan for purposes of Section 42(h)(4).

Attached hereto is the Cost Certification evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Funding Loan expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Funding Loan Agreement dated as of [July 1], 2025 among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs.

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

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

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

Cost Certification



**SCHEDULE 11**  
**FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 202\_\_

Community Housing Investment Partners II, LP, as Funding Lender  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, New York 10017  
Attention: Tara Nussbaum

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble and Shannon Chase

Re: The Legacy on Kiest (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to Community Housing Investment Partners II, LP, as the Funding Lender (the "Funding Lender") and R4 Servicer LLC, as Controlling Person (the "Controlling Person") that the date of Stabilization was \_\_\_\_\_, 202\_\_ and:

The undersigned hereby represents and warrants that:

1. At least \_\_\_\_\_% of the residential units included in the Improvements have been \_\_\_\_\_% occupied by credit-worthy qualified tenants meeting the requirements of the Funding Loan Documents and Borrower Loan Documents in each of the prior \_\_\_\_\_ (\_\_\_\_) consecutive months.
2. The ratio of Stabilized NOI in each of the prior \_\_\_\_\_ (\_\_\_\_) consecutive months to maximum principal, interest, Governmental Lender Fees and Fiscal Agent Fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Borrower Note is \_\_\_\_\_ to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the Funding Loan Documents, the Borrower Loan Documents, the Taxable Loan Documents, the General Partner Pledge, the Special Limited Partner Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Regulatory Agreement.
5. The Borrower Note has been repaid in part in amount not less than the amount required pursuant to Section 7(c)(iii) of the Borrower Note.
6. The Taxable Construction Loan has been repaid in full.
7. Stabilization [has/has not] occurred.
8. Attached hereto is a copy of the Stabilization test showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement dated as of [July 1], 2025 among the Funding Lender, the Fiscal Agent and Texas Department of Housing and Community Affairs.

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

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

By: City of Dallas Housing Finance Corporation, its sole member

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

Accepted and agreed to by:

R4 SERVICER LLC, as Controlling Person

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


Effective Date: \_\_\_\_\_, 202\_\_

## **Stabilization Spreadsheet**

**SCHEDULE 12**  
**INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverages required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

[continues next page]

 <b>R4 CAPITAL FUNDING</b>	<b>R4 Capital Funding LLC</b> <b>Tax Exempt Bond Investment Standards</b>	<b>v4.4 March 2022</b>
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## EXHIBIT 3A – INSURANCE REQUIREMENTS

**For transactions containing both**


***R4 Capital Funding LLC***

***debt &***

***R4 Capital LLC equity***

**GENERAL INSURANCE REQUIREMENTS**

1. R4 Capital LLC, the Limited Partner, and R4 Capital Funding LLC, the Lender, and/or the Fiscal Agent, their successors and/or assigns, collectively are to be known as “R4”.
2. Attached are Construction Period and Permanent Phase insurance requirements outlining the **minimum** types and amounts of insurance that are satisfactory to R4.
3. The required insurance coverage may be provided by one or more individual policies, one or more Blanket Insurance policies, a Master Insurance Program, or any combination of these. Coverage may also be added to a policy through endorsements or riders. Regardless of the form, each policy, endorsement, or rider must show the complete address of the Property.
4. All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.
5. All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days’ notice in before cancellation for non-payment of premium or non- renewal and a minimum of thirty (30) days’ notice before cancellation for all other reasons.
6. All insurance policies shall apply on a **Primary and Non-Contributory** basis to coverage carried by the Additional Insureds, whether included in the standard policy form or by specific endorsement.
7. All insurance policies shall contain a **Waiver of Subrogation** in favor of the Additional Insureds, hereunder to waive the rights of the Named Insured’s insurers’ rights of recovery, whether included in the standard policy form or by specific endorsement, and where allowable by law (**NOTE** – also applies to the Employers Liability portion of the Workers Compensation / Employers Liability coverage).
8. Insurance certificates reflecting the coverages outlined herein are to be submitted to R4 within fourteen  
(14) days prior to closing and thereafter at least five (5) days prior to expiration, including any and all project specific amendments deemed necessary and required by R4.
  - a. The evidence of insurance is to reference compliance with all the requirements listed in this document.
  - b. Complete copies of the required policies are to be provided upon request.
  - c. Certificates (Acord 25 for Liability and Acord 27 or 28 for Builder’s Risk/Property) are to identify the Named Insureds, Additional Insureds, and Loss Payees as outlined herein and shall reference the complete and accurate Property address in the “description of operations” of the insurance certificate.
  - d. Certificate / Additional Interest Holder:

	<b>R4 Capital Funding LLC</b> <b>Tax Exempt Bond Investment Standards</b>	<b>v4.4 March 2022</b>
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**For Equity –**

“Limited Partner Entity” (to be provided by R4)

R4 Capital LLC

155 Federal Street, Suite 1602

Boston, MA 02110

**For Debt –**

“Fiscal Agent or Trustee Entity” (to be provided by R4)

R4 Capital Funding LLC

R4 Servicer LLC

155 Federal Street, Suite 1602

Boston, MA 02110

e. **Mortgagee Clause (applies to R4CF debt only):**

**For Debt** - All property and casualty insurance policies shall contain a standard non-contributory mortgagee clause showing the interest of the Fiscal Agent or Trustee as first mortgagee and shall provide for payment to the Fiscal Agent or Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder.

9. R4 reserves the right to amend these requirements at any time as deemed appropriate.


10. R4 may require:

- a. **For Equity** – Additional coverages or higher limits of insurance or against other hazards for which insurance is reasonably obtainable and which, at the time, are commonly insured against in the case of similar properties conducting similar activities within the geographic area of the Property, whether such additional insurance requirements are otherwise described or contemplated herein.
- b. **For Debt** - additional insurance coverages to meet Freddie Mac Multifamily Insurance Requirements whether such additional insurance requirements are otherwise described or contemplated herein. If, at any time, R4 is not in receipt of written evidence satisfactory to R4 that all insurance policies are in full force and effect, within fourteen (14) days after R4 has requested same or if the Partnership fails to maintain the insurance required hereunder, after notice is given to the Partnership, R4 shall have the right, but shall not be obligated, to take such action as R4 deems necessary to protect their interest in the Property, including the obtaining of such insurance coverage as R4 in its reasonable discretion deems appropriate. All premiums incurred by R4 in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Partnership to R4 within ten (10) days of demand.

11. **For Debt** – all the Permanent Phase Partnership insurance requirements are intended to meet the minimums of Freddie Mac Multifamily Insurance Requirements including coverage for any “special hazards” (i.e., swimming pools, garages, exercise rooms, restaurants, drug stores, etc.).

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## **CONSTRUCTION PHASE REQUIREMENTS**

## INSURANCE REQUIREMENTS DURING CONSTRUCTION

### PERIOD FOR


### PARTNERSHIP

#### 1. **Builders' Risk**

- a) **Policy Form:** Coverage to be provided on an “All Risk” or “Special Form” basis using a completed value non- reporting Builder’s Risk form to insure damage to project/property under construction, including existing structures, for 100% of the replacement cost of the construction value (including contingency), 12 months Business Interruption (loss of rents), and Soft Costs (see section 1.i below).
- b) **Named Insured:** Partnership
- c) **Loss Payee:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity)
- d) **Mortgagee:** “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt).
- e) **Terrorism Insurance:** Required for all projects with a replacement cost equal to or greater than \$20 million, and/or if located in a high-risk area. For projects with a replacement cost under \$20 million and not in a high- risk location, terrorism coverage is not mandatory.
- f) **Blanket Insurance Coverage:** Any of the insurance coverages required hereunder may be provided by a “blanket” insurance policy affording protection to multiple locations owned, operated by, or affiliated with the Insureds or Additional Insureds, provided, however, that:
  - (i) Any such “blanket” policy shall make available to the Project on a “per–location” basis no less than the limits of protection, terms and conditions required hereunder as though the insurance were provided on a standalone basis; and
  - (ii) R4 determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient considering the other risks and properties insured under the blanket policy. A copy of the most recent Schedule of Values or confirmation of values under construction is required.
- g) **Deductible:** The maximum deductible for “All Other Perils” allowable under the Builder’s Risk is:

#### **For Project Specific Builder’s Risk Policies:**

Total Project Value	Maximum Per Occurrence Deductible
>\$10M	\$50,000

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	≥ \$10M		\$75,000

**For a policy providing Blanket Insurance Limits:**

One percent of the aggregate Replacement Cost of the covered properties, to a maximum per occurrence deductible of \$250,000.

Waivers may be available at the sole discretion of R4 on a case-by-case basis.



- h) **Property to be Covered:** Real and personal property to be insured hereunder shall include property owned by contractors during construction and intended for permanent installation in the project, site work and general contractor's fees, excavation, underground pipes, conduits, and foundations.
- i) **Perils:** Perils insured against shall be at least as broad as those included in Insurance Services Organization ("ISO") Special Form (CP 10 30 10 00), or its equivalent and shall also include coverage for the following perils:
- (i) Resulting loss or damage to work which is not faulty, arising from faulty workmanship/materials and faulty design, and
  - (ii) Collapse of any sort.
- j) **Soft Costs:** Coverage shall be provided for consequential losses which arise because of damage to the project by an insured peril, commonly referred to as "soft costs" or "delayed start up" coverage, including but not limited to the following:
- (i) Additional costs resulting from the renegotiation of leases and other similar extra expenses incurred following interruption of the Project, including relocation expenses,
  - (ii) Additional realty taxes and other assessments actually incurred for the period the construction has been extended beyond the projected completion date,
  - (iii) Additional advertising and promotional expenses including lease up and marketing which become necessary because of the delay,
  - (iv) Additional interest on money borrowed to finance construction or repair,
  - (v) Additional architect, engineering, consulting, legal and accounting fees,
  - (vi) Additional insurance premiums, and
  - (vii) Extra costs incurred to continue construction and meet contract dates.
  - (viii) "Increased Time to Rebuild" during the period when the policy's period of recovery has been extended because of requirements to bring the project into compliance with current building laws and codes.
- k) **Water Damage:** Coverage is to be provided for property damage and loss of income caused by rising waters, surface water and back-up of sewers and drains and seepage of underground water mains.
- l) **Localized Perils:** A Property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption, and avalanche, must have one or more insurance policies in place to cover these perils. Sinkholes are particularly common in Florida. Mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois, and Colorado.

Coverage must no less than the estimated Replacement Cost of the buildings affected by the localized peril, with deductibles no greater than those stated in section 1.g above.

- m) **Flood:** Flood insurance is required for any building\* that is part of the project that is fully or partially located in a Special Flood Hazard Area (SFHA) Zone A or V, as defined by the Federal Emergency Management Agency (FEMA).

For each building that is fully or partially located in a SFHA, R4 requires flood insurance equal to at least the following:

- (v) The RCV of the first two floors of the building above grade, plus
- (vi) The RCV of any floors below grade, plus
- (vii) 12 months of business income/rental value associated with the building, and
- (viii) The insurable value of owned contents or business personal property within the building.

\*R4 does not require flood insurance for low-value, non-residential structures located in a SFHA. Such structures include maintenance buildings, storage sheds, pool houses, carports, laundry buildings, and gatehouses.

Coverage may be provided by the Builder's Risk insurer by endorsing the policy to include Flood as a covered peril, **or** by a National Flood Insurance Plan ("NFIP") policy in the amount equal to the lesser of the full insurable value or \$500,000 per building with a deductible not to exceed \$10,000 per building, with excess coverage provided for the difference (if any) between the maximum limit provided by NFIP policy(ies) and the full insurable value under the Builder's Risk/Property policy **or** a Difference in Conditions policy for the completed value of the project.


The following are the maximum deductibles allowed for flood insurance policies:

**Building**

- \$50,000 per building for a Project/Property with 10 buildings or less located in SFHAs
- \$500,000 per occurrence for a Project/Property with more than 10 buildings located in SFHAs

**Business Income/Rental Value**

- 15 days waiting period when expressed as a time-element deductible
- \$100,000 per occurrence when expressed as a monetary deductible

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### **NFIP**

- When NFIP policies are used as part of the coverage, the maximum deductible available under the NFIP for the type of building being insured is acceptable.

If the deductible for Flood under the Builder's Risk policy is equal to or exceeds \$500,000 per building per occurrence, R4 may require NFIP or DIC coverage to be placed as primary coverage.

If in the future any FEMA map changes occur, the follow will apply:

(iii) No change in the flood map, the Property remains in an SFHA

If all or any of the buildings that are part of the Property were previously in an SFHA and remain in an SFHA, Flood insurance must remain in force.

(iv) Change in the flood map, the Property is now in an SFHA

If all or any of the buildings that were not previously in an SFHA are now in an SFHA, R4 requires the Property to be covered by the required amount of Flood insurance no later than 120 days after the effective date of the FEMA NFIP map change. Flood insurance may be obtained from NFIP and/or a private insurance company meeting R4 requirements.

Documentation required for coverage discontinuation

R4 will not require flood insurance coverage for a Property that is no longer in an SFHA upon receipt of any one of the following:


- (iv) Letter of Map Amendment (LOMA) from FEMA excluding the insurable improvements or the entire Property from the SFHA, or
- (v) Letter of Map Revision (LOMR) from FEMA removing the community's SFHA designation, or
- (vi) Letter of Determination Review (LODR) concluding that the insurable improvements are not in the SFHA

R4 may require flood insurance for buildings located outside of a SFHA Zone A or V, if it determines that flood insurance is warranted, such as for buildings with a history of prior flooding, in proximity to a high hazard source of flooding, or subject to risk of storm surge flooding.

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- n) **Earthquake Insurance:** A Level 1 due diligence seismic risk assessment for damageability, performed by a qualified engineer conforming to current ASTM standards, will be required for all Projects in seismic zones 3 and 4 and for any Projects located in the states of California, Oregon, and Washington. The study shall determine the Probable Maximum Loss (“PML”) assuming a 475-year return period event and 50 percent probability of non-exceedance, which shall be defined as the Scenario Expected Loss (“SEL”). R4 will decline investments in properties with an SEL of 30% or greater, using the above stated standard.
- Coverage must be obtained at 100% of the replacement cost, with a maximum deductible of 5%, for Projects in seismic zones 3 or 4 with PML results ranging from 20% through 29.99%. In addition, the General Partner will need to demonstrate that measures have been taken to mitigate potential loss to the Project both during the construction and the operational phases.
- o) **Coinurance** is to be waived, or the policy shall contain an agreed amount endorsement acceptable to R4.
- p) **Ordinance or Law insurance:** Coverage is to be provided for:
- (i) Demolition
  - (ii) Increased Cost of Construction
  - (iii) Contingent Coverage for the Operation of Building Laws insuring the value of the undamaged portion of the premises (completed value).
- Ordinance and Law Coverage must include an “Increased Time to Rebuild” endorsement that extends business income and extra expense coverage to provide additional time to restore operations when delayed due to enforcement of building or zoning laws.
- q) **Debris Removal:** Insurance is to be covered for a limit of 10% of the value of the property loss.
- r) **Hail, windstorm, or hurricane:** Coverage to apply subject to a maximum 5% deductible. Time element coverage is to be provided for a period of 12 months.
- s) **Boiler and machinery:** Coverage to apply to damage or loss arising from testing of central heating, ventilation, and cooling system (HVAC), and other portions of the Property, if the damage is the result of an explosion of steam boilers.
- t) **Unscheduled location coverage:** For temporary, offsite storage of building materials, fixtures, machinery & equipment, and appliances awaiting installation.
- u) **Transit:** Coverage for property that will be installed at the property, up to the replacement cost value for any one conveyance.
- v) **Personal Property of Others:** Coverage to be provided for property which the insured maybe liable.
- w) **Mold:** Coverage is to be provided for mold resulting from a covered cause of loss.
- x) **Time Element** coverage is to be extended to include:
- (i) Utilities Interruption covering all utilities including water, sewer, steam, and telecommunications and must include overhead transmission lines
  - (ii) Civil Authority




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- (iii) Ingress/Egress loss caused by inability to access insured property due to a covered loss at surrounding properties
- y) **Permission to Occupy:** If any of the units will be turned over and occupied prior to completion, policy shall include a Permission for Partial Occupancy Endorsement.

## 2. Commercial General Liability (“CGL”) Insurance.

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates. A copy of the policy declarations page showing the Partnership as “Named Insured”, or policy endorsement showing the Partnership as “Additional Named Insured”, must be provided.
- c) **Additional Insureds:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt).
- d) **Limits:**
  - \$2,000,000 general aggregate per project
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent.
- f) **Deductible:** \$25,000 maximum per occurrence.
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded.
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations under ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities.
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury, or property damage liability

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**3. Vehicle Liability Insurance (if an automobile is used by the Partnership at the subject property)**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates.
- c) **Additional Insureds:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt). Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 combined single limit per accident
- e) Insurance shall include coverage for owned, leased, hired, and non-owned vehicles used in the course of employment for the Named Insured.

**4. Umbrella/Excess Liability Insurance**

- a) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) Coverage must be no less broad than the underlying Commercial General Liability policy required above. If coverage is not follow-form, differences must be identified.
- d) **Limits:**

Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3M per occurrence & aggregate

Mid-rise Apartment Building (4-10 stories):

\$5M per occurrence & aggregate

High-rise Apartment Building (11-20 stories):


\$10M per occurrence & aggregate

+ 20 stories


\$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis.*

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f) **Environmental/Pollution Liability Insurance** \*

*\*Required if R4 determines there are significant conditions located at the project site as outlined in the project Phase I/II reports.*

- a) **Named Insured:** Partnership and its respective employees, agents, subsidiaries, and affiliates
- b) **Additional Insureds:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per claim and annual aggregate
- e) **Coverage:** Coverage provided for third party bodily injury and property damage, and cleanup costs for unknown conditions on site.

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## **INSURANCE REQUIREMENTS DURING CONSTRUCTION**

### **PERIOD FOR**

### **GENERAL CONTRACTOR<sup>1</sup>**

#### **1. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limits:**
  - \$2,000,000 general aggregate per project
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) **Terrorism Insurance:** Certified (TRIA) and non-certified is only required for projects that exceed \$20,000,000 in total development costs.
- f) **Aggregate:** If the policy covers multiple locations or projects/activities, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent.
- g) **Deductible:** \$25,000 maximum per occurrence.
- h) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded.
- i) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations per ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- j) **Construction-Related Activities:** Coverage shall not limit liability arising from

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construction related activities.

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<sup>1</sup> Coverage requirements must be met by each prime contractor having a direct contract with the Partnership.





**k) Unacceptable Exclusions:**

- (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent
- (ii) Residential work exclusions or limitations, or subcontractor warranty provisions
- (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury, or property damage liability

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limit:** \$1,000,000 combined single limit per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

**3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** General Contractor
- b) **Certificate Holder:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

**c) Limits:**

Worker’s Compensation:

Per Statute

Employers Liability:


\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

*If the employer is domiciled in the states of North Dakota, Ohio, Wyoming, or Washington (commonly known as “Monopolistic Workers Compensation” states), proof of Worker*

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*Compensation coverage through the State Fund must be provided, and proof of Stop Gap Employer's Liability must be provided. Stop Gap Employer's Liability must be scheduled under the required Umbrella/Excess Liability coverage in section 4 below.*

#### **4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) Coverage must be no less broad than the underlying CGL, Auto Liability and Employers Liability policies required above. If coverage is not follow-form, differences must be identified.
- d) **Limits:**  
Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:  
 \$3 Million Per Occurrence/\$3M Annual Aggregate.

Mid-rise Apartment Building (4-10 stories):

\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):


\$10 Million Per Occurrence/\$10M Annual Aggregate

+ 20 stories

\$25M Per Occurrence/\$25M Annual Aggregate

#### **5. Contractor’s Environmental Pollution Liability\***

- a) **Named Insured:** General Contractor and all sub-contractors for pollution exposures.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction, and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to apply to all bodily injury, property damage and environmental liability as well as cleanup cost for pollution conditions both on and migrating from the worksite.
- f) Coverage must be maintained for a minimum period of three years post remediation completion.
- g) **Improper Supervision:** of subcontractors is to be covered.

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*\* This insurance is required when the General Contractor or its Subcontractor is responsible for remediation.*



## **INSURANCE REQUIREMENTS DURING CONSTRUCTION**

### **PERIOD FOR**

#### **ARCHITECTS, ENGINEERS, CONSTRUCTION MANAGERS, PROJECT MANAGERS OR CONSULTANTS**

##### **1. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limits:**
  - \$2,000,000 general aggregate per project
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) General Liability coverage form must not exclude Third Party Bodily Injury/Property Damage under the Products/Completed operations hazard from the rendering or failure to render professional service.
- f) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent.
- g) **Deductible:** \$25,000 maximum per occurrence
- h) **Additional Interests’ coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for architects, engineers, or surveyors and for construction managers, project managers or consultants. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities.

**j) Unacceptable Exclusions:**

- (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent
- (ii) Residential work exclusions or limitations, or subcontractor warranty provisions
- (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury, or property damage liability

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limit:** \$1,000,000 combined single limit per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insure

**3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant
- b) **Certificate Holder:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

**c) Limits:**Worker’s Compensation:

Per Statute


Employers Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

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*If the employer is domiciled in the states of North Dakota, Ohio, Wyoming, or Washington (commonly known as “Monopolistic Workers Compensation” states), proof of Worker Compensation coverage through the State Fund must be provided, and proof of Stop Gap Employer’s Liability must be provided. Stop Gap Employer’s Liability must be scheduled under the required Umbrella/Excess Liability coverage in section 4 below.*

#### **4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) Coverage must be no less broad than the underlying CGL, Auto Liability and Employers Liability policies required above. If coverage is not follow-form, differences must be identified.

**d) Limits:**

Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3 Million Per Occurrence/\$3M Annual Aggregate.

Mid-rise Apartment Building (4-10 stories):

\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):

\$10 Million Per Occurrence/\$10M Annual Aggregate

+ 20 stories


\$25M Per Occurrence/\$25M Annual Aggregate

*Aggregates are to apply on a per project basis*

#### **5. Professional Liability/Errors & Omissions**

- a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- b) **Certificate Holder:** Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Limit:** \$1,000,000 per claim or 10% of construction contract, whichever is greater
- d) **Form:** Claims made
- e) **Policy Description of Work:** If work is different than the primary licensing or certificate (i.e., architect performing engineering work, etc. then policy description of “scope of work” must be provided).



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- f) Coverage must be maintained for a minimum period of three years post construction completion.

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## **INSURANCE REQUIREMENTS DURING CONSTRUCTION**

### **PERIOD FOR**

### **ENVIRONMENTAL REMEDIATION CONTRACTORS AND/OR CONSULTANTS**


#### **1. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

#### **d) Limits:**

- \$2,000,000 general aggregate per project
- \$2,000,000 products-completed operations aggregate
- \$1,000,000 per occurrence bodily injury and property damage liability
- \$1,000,000 personal injury and advertising injury liability
- \$50,000 fire damage (per fire) to rented property
- \$5,000 medical payments

- e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy using ISO Endorsement CG 25 03, or its equivalent.
- f) **Deductible:** \$25,000 maximum per occurrence
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded.
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations per ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent

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- (ii) Residential work exclusions or limitations, or subcontractor warranty provisions
- (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury, or property damage liability

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto Form CA 00 01, or its equivalent
- b) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limit:** \$1,000,000 combined single limit per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

**3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** Environmental Remediation Contractors or Consultants
- b) **Certificate Holder:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Limits:**

Worker’s Compensation:

Per Statute

Employers Liability:


\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

*If the employer is domiciled in the states of North Dakota, Ohio, Wyoming, or Washington (commonly known as “Monopolistic Workers Compensation” states, proof of Worker Compensation coverage through the State Fund must be provided, and proof of Stop Gap Employer’s Liability must be provided. Stop Gap Employer’s Liability must be scheduled under the required Umbrella/Excess Liability coverage in section 4 below.*

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**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Environmental Remediation Contractors or Consultants and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CFDebt)
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.

**d) Limits:**

Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3 Million Per Occurrence/\$3M Annual Aggregate.

Mid-rise Apartment Building (4-10 stories):

\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):

\$10 Million Per Occurrence/\$10M Annual Aggregate


+ 20 stories

\$25M Per Occurrence/\$25M Annual Aggregate

*Aggregates are to apply on a per project basis.*


**5. Contractor’s Environmental Pollution Liability**

- a) **Named Insured:** Environmental Remediation Contractor and/or Consultant for pollution exposures.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CFDebt)
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction, and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to apply to all bodily injury, property damage and environmental liability as well as cleanup cost

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for pollution conditions both on and migrating from the worksite.

- f) Coverage must be maintained for a minimum period of three years post remediation completion.
- g) Improper Supervision of subcontractors is to be covered.


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**6. Professional/Errors & Omissions Liability (If contractor is consulting as well as remediating).**

- a) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries, and affiliates.
- b) **Certificate Holder:** “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee” (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Limit:** \$1,000,000 per claim or 10% of construction contract, whichever is greater
- d) **Form:** Claims made
- e) **Scope of Work:** If work is different than the primary licensing or certificate (i.e., architect performing engineering work, etc. then policy description of “scope of work” must be provided).
- f) Coverage must be maintained for a minimum period of three years post work completion.

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## PERMANENT POST CONSTRUCTION REQUIREMENTS

**PERMANENT INSURANCE****REQUIREMENTS FOR****PARTNERSHIP****1. Property Insurance.**

The Partnership is to insure damage to property on the following minimum terms, coverage extensions and conditions:

a) **Policy Form:** All Risk

b) **Named Insured:** Partnership

**c) Loss Payee:**

**For Equity** – “Limited Partner, ISAOA” and R4 Capital LLC

**For Debt** – Fiscal Agent or Trustee (mortgagee with first priority mortgage lien) with a standard mortgagee or mortgage holder’s clause and loss payable clause in favor of, and in a form, acceptable to R4.

**d) Limits:**

(i) Building(s) (real property) is/are to be insured for 100% of Replacement Cost Value (“RCV”) including an Inflation Guard endorsement (if available).

(ii) Contents (personal property) is to be insured for full Replacement Cost

(iii) Business Interruption / Loss of Rents / Extra Expense – See section 1. v.


e) **Terrorism/TRIA:** Required for all projects with a replacement cost equal to or greater than \$20 million, and/or if located in a high-risk area. For projects with a replacement cost under \$20 million and not in a high- risk location, terrorism coverage is not mandatory.

f) **Perils:** Perils insured against shall be at least as broad as those included in Insurance Services Organization (“ISO”) Special Form (CP 10 30 10 00), or its equivalent.

g) **Blanket Insurance Coverage:** Any of the insurance coverages required hereunder may be provided by a “blanket” insurance policy affording protection to multiple locations owned, operated by, or affiliated with the Insureds or Additional Insureds, provided, however, that:

(i) Any such “blanket” policy’s All Risk limit must at all times be no less than the greater of the largest Total Insured Value (“TIV”) for any individual property covered by the blanket insurance policy limit or 10% of the aggregate TIV of the entire portfolio covered by the blanket insurance policy limit. The blanket policy shall make available to the Project on a “per-location” basis no less than the limit of protection, terms and conditions required hereunder as though the insurance were provided on a standalone basis; and

(ii) Additional requirements may apply for Windstorm, Flood, Earthquake, Ordinance or Law, Pollution and/or Boiler and Machinery coverages if also provided under a blanket

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insurance policy.

- (iii) R4 determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient considering the other risks and the geographical spread of risk for the properties insured under the blanket policy. A copy of the most recent Schedule of Values or confirmation of values is required.

- h) **Deductible:** The maximum deductible per occurrence (other than National Flood Insurance Program (NFIP), windstorm and earthquake insurance) for property damage (All-Risk) insurance is:

<u><b>Total Project Value</b></u>	<u><b>Maximum Per Occurrence Deductible</b></u>
< \$10M	\$50,000
≥ \$10M	\$75,000

For a policy providing Blanket Insurance Limits:

One percent of the aggregate Replacement Cost of the covered properties, to a maximum deductible of \$250,000.

*Waivers may be available at the sole discretion of R4 on a case-by-case basis.*

- i) **Hail, Windstorm or Named Storm:** Coverage to apply subject to a maximum 5% deductible. Time element coverage is to be provided for a period of 12 months.
- j) **Wind Insurance:** If the All-Risk Property insurance policy excludes coverage for loss arising out of windstorm, a separate wind policy is acceptable. Coverage must insure the project at the full replacement cost and include business income and extra expense and loss of rents coverage (12 months). Additional requirements may apply if coverage is provided through a State Pool.
- k) **Boiler and machinery:** Coverage shall apply to all mechanical and electrical equipment, or any other objects typically insured under a boiler and machinery insurance policy, against direct physical damage, time element and extra expense. If coverage is provided under a separate boiler & machinery policy, a Joint Loss Agreement is required.
- l) **Transit:** Coverage for property in transit.
- m) **Personal Property of Others:** Coverage to be provided for property which the insured may be liable.
- n) **Mold:** Coverage is to be provided resulting from a covered cause of loss.
- o) **Water Damage:** Coverage is to be provided for property damage caused by back-up of sewers and drains and seepage of underground water mains.

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- a) **Flood:** Flood insurance is required for any building\* that is part of the project that is fully or partially located in a Special Flood Hazard Area (SFHA) Zone A or V, as defined by the Federal Emergency Management Agency (FEMA).

For each building that is fully or partially located in a SFHA, R4 requires flood insurance equal to at least the following:

- (ix) The RCV of the first two floors of the building above grade, plus
- (x) The RCV of any floors below grade, plus
- (xi) 12 months of business income/rental value associated with the building, and
- (xii) The insurable value of owned contents or business personal property within the building.

\*R4 does not require flood insurance for low-value, non-residential structures located in a SFHA. Such structures include maintenance buildings, storage sheds, pool houses, carports, laundry buildings, and gatehouses.

Coverage may be provided by the Builder's Risk insurer by endorsing the policy to include Flood as a covered peril, or by a National Flood Insurance Plan ("NFIP") policy in the amount equal to the lesser of the full insurable value or \$500,000 per building with a deductible not to exceed \$10,000 per building, with excess coverage provided for the difference (if any) between the maximum limit provided by NFIP policy(ies) and the full insurable value under the Builder's Risk/Property policy or a Difference in Conditions policy for the completed value of the project.


The following are the maximum deductibles allowed for flood insurance policies:

**Building**

- \$50,000 per building for a Project/Property with 10 buildings or less located in SFHAs
- \$500,000 per occurrence for a Project/Property with more than 10 buildings located in SFHAs

**Business Income/Rental Value**

- 15 days waiting period when expressed as a time-element deductible
- \$100,000 per occurrence when expressed as a monetary deductible

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**NFIP**

- When NFIP policies are used as part of the coverage, the maximum deductible available under the NFIP for the type of building being insured is acceptable.

If the deductible for Flood under the Builder's Risk policy is equal to or exceeds \$500,000 per building per occurrence, R4 may require NFIP or DIC coverage to be placed as primary coverage.

If in the future any FEMA map changes occur, the follow will apply:

- (v) No change in the flood map, the Property remains in an SFHA  
If all or any of the buildings that are part of the Property were previously in an SFHA and remain in an SFHA, Flood insurance must remain in force.
- (vi) Change in the flood map, the Property is now in an SFHA  
If all or any of the buildings that were not previously in an SFHA are now in an SFHA, R4 requires the Property to be covered by the required amount of Flood insurance no later than 120 days after the effective date of the FEMA NFIP map change. Flood insurance may be obtained from NFIP and/or a private insurance company meeting R4 requirements.


Documentation required for coverage discontinuation

R4 will not require flood insurance coverage for a Property that is no longer in an SFHA upon receipt of any one of the following:

- (vii) Letter of Map Amendment (LOMA) from FEMA excluding the insurable improvements or the entire Property from the SFHA, or
- (viii) Letter of Map Revision (LOMR) from FEMA removing the community's SFHA designation, or
- (ix) Letter of Determination Review (LODR) concluding that the insurable improvements are not in the SFHA

R4 may require flood insurance for buildings located outside of a SFHA Zone A or V, if it determines that flood insurance is warranted, such as for buildings with a history of prior flooding, in proximity to a high hazard source of flooding, or subject to risk of storm surge flooding.

- p) **Earthquake Insurance:** A Level 1 due diligence seismic risk assessment for damageability, performed by a qualified engineer conforming to current ASTM standards, will be required for all Projects in seismic zones 3 and 4 and for any Projects located in the states of California, Oregon, Washington. The study shall determine the Probable Maximum Loss ("PML") assuming a 475-year return period event and 50 percent probability of non-exceedance, which shall be defined as the Scenario Expected Loss ("SEL"). R4 will decline investments in properties with an SEL of 30% or greater, using the above stated standard.

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Coverage must be obtained at 100% of the replacement cost, with a maximum deductible of 5%, for Projects in seismic zones 3 or 4 with PML results ranging from 20% through 29.99%. In addition, the General Partner will need to demonstrate that measures have been taken to mitigate potential loss to the Project both during the construction and the operational phases. **For Debt only** – subject to Freddie Mac requirements.

- q) **Coinurance** is to be waived, or the policy shall contain an agreed amount endorsement acceptable to R4.



- r) **Ordinance or Law** insurance consisting of coverage for:
  - (v) Demolition (10% of full replacement cost)
  - (vi) Increased Cost of Construction (10% of full replacement cost)
  - (vii) Contingent Coverage for the Operation of Building Laws insuring the value of the undamaged portion of the premises (full replacement cost)
  - (viii) "Increased Time to Rebuild" during the period when the policy's period of recovery has been extended because of requirements to bring the project into compliance with current building laws and codes.
- s) **Debris Removal** insurance is to be covered for a limit of 10% of the value of the property loss.
- t) **Pollution Clean-up and Removal** Coverage is to be provided under the property policy subject to a sublimit of no less than \$100,000.
- u) **Business Interruption / Loss of Rents / Extra Expense** insurance covering all income earned by the Partnership for the project, including rental income for a period of 12 months (for Debt – loans in excess of \$50MM require coverage limit of 18 months) (Time Element coverages) and extended period of indemnity endorsement for 90 days.
- v) **Time Element** coverage is to be extended to include:
  - (iv) Utilities Interruption covering all utilities including water, sewer, steam, and telecommunications and must include overhead transmission lines
  - (v) Civil Authority
  - (vi) Ingress/Egress loss caused by inability to access insured property due to a covered loss at surrounding properties
- w) **Localized Perils:** A Property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption, and avalanche, must have one or more insurance policies in place to cover these perils. Sinkholes are particularly common in Florida. Mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois, and Colorado.

Coverage must no less than the estimated Replacement Cost of the buildings affected by the localized peril, with deductibles no greater than those stated in section 1.h) above.

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## 2. **Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates. *A copy of the policy declarations page showing the Partnership as “Named Insured”, or policy endorsement showing the Partnership as “Additional Named Insured” must be provided.*
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
  - d) **Limits:**
    - \$2,000,000 general aggregate per location
    - \$2,000,000 products-completed operations aggregate
    - \$1,000,000 per occurrence bodily injury and property damage liability
    - \$1,000,000 personal injury and advertising injury liability
    - \$50,000 fire damage (per fire) to rented property
    - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per location aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 04, or its equivalent.
- f) **Deductible:** \$25,000 maximum per occurrence
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded.
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities.
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury, or property damage liability

**3. Vehicle Liability Insurance (if an automobile is used by the Partnership at the subject property)**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates..
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limit:** \$1,000,000 combined single limit per accident

**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) Coverage must be no less broad than the underlying CGL, Auto Liability and Employers Liability policies required above. If coverage is not follow-form, differences must be identified.

**d) Limits:**

Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3 Million Per Occurrence/\$3M Annual Aggregate.

Mid-rise Apartment Building (4-10 stories):

\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):


\$10 Million Per Occurrence/\$10M Annual Aggregate

+ 20 stories

\$25M Per Occurrence/\$25M Annual Aggregate

Aggregates are to apply on a per location basis

**NOTE:** Additional limits may apply in situations where R4 is providing debt to multiple projects.

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## 5. **Environmental/Pollution Liability Insurance** \*

*\*Required if R4 determines there are significant conditions located at the property site as outlined in the project Phase I/II reports.*

- a) **Named Insured:** Partnership, and its respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per claim and annual aggregate
- e) **Coverage:** Coverage provided for third party bodily injury and property damage, and cleanup costs for unknown conditions on site.

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**PERMANENT INSURANCE REQUIREMENTS****(Including “in-place”****rehab) FOR****PROPERTY MANAGERS****1. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
  - d) **Limits:**
    - \$2,000,000 general aggregate per location
    - \$2,000,000 products-completed operations aggregate
    - \$1,000,000 per occurrence bodily injury and property damage liability
    - \$1,000,000 personal injury and advertising injury liability
    - \$50,000 fire damage (per fire) to rented property
    - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per location aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 04, or its equivalent.
- f) **Deductible:** \$25,000 maximum per occurrence
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded.
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. If coverage is written on any other forms, copies must be attached.

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC

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(for R4CFDebt)

- d) **Limit:** \$1,000,000 combined single limit per accident
- e) **Form:** ISO Business Auto form CA 00 01, or its equivalent
- f) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

### **3. Workers' Compensation and Employer's Liability Insurance.**

- a) **Named Insured:** Property Manager
- b) **Certificate Holder:** "Limited Partner, ISAOA" and R4 Capital LLC (for R4 Equity) and "Fiscal Agent or Trustee" (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

**c) Limits:**

Worker's Compensation:

Per Statute

Employers Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

*If the employer is domiciled in the states of North Dakota, Ohio, Wyoming, or Washington (commonly known as "Monopolistic Workers Compensation" states), proof of Worker Compensation coverage through the State Fund must be provided, and proof of Stop Gap Employer's Liability must be provided. Stop Gap Employer's Liability must be scheduled under the required Umbrella/Excess Liability coverage in section 4 below.*

### **4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** "Partnership", "General Partner", "Limited Partner, ISAOA" and R4 Capital LLC (for R4 Equity) and "Fiscal Agent or Trustee", R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not follow-form, differences must be identified.

**d) Limits:**

Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3 Million Per Occurrence/\$3M Annual Aggregate.

Mid-rise Apartment Building (4-10 stories):

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\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):


\$10 Million Per Occurrence/\$10M Annual Aggregate

+ 20 stories

\$25M Per Occurrence/\$25M Annual Aggregate

*Aggregates are to apply on a per location basis*



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**5. Fidelity Bond (including in-place rehabs and properties in permanent insurance phase)**

- a) **Named Insured:** Property Manager
- b) **Joint Loss Payee:** Partnership
- c) **Coverage:** is to be provided for loss of General Partner's and Limited Partner's money and securities resulting from dishonesty of Named Insured's employees.
- d) **Limit:** Amount equal to six months' gross rental income for the specific property undermanagement.

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**PERMANENT INSURANCE REQUIREMENTS  
(Including “in-place” rehabs)**


**SERVICES PROVIDERS OF SUPPORTIVE LIVING FACILITIES**

**1. Commercial General Liability (“CGL”) Insurance.**


- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries, and affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- d) **Limits:**
  - \$2,000,000 general aggregate per project
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per Project aggregate limit is required and must be endorsed onto the policy, using a designated location endorsement, ISO CG 25 04, or its equivalent.
- f) **Deductible:** \$25,000 maximum per occurrence
- g) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. If coverage is written on any other forms, copies must be attached.

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

	<b>R4 Capital Funding LLC</b> <b>Tax Exempt Bond Investment Standards</b>	<b>v4.4 March 2022</b>
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- f) **Limit:** \$1,000,000 combined single limit per accident
- c) **Form:** ISO Business Auto form CA 00 01, or its equivalent
- d) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

	<b>R4 Capital Funding LLC</b> <b>Tax Exempt Bond Investment Standards</b>	<b>v4.4 March 2022</b>
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### 3. **Workers' Compensation and Employer's Liability Insurance.**

- a) **Named Insured:** Services Provider
- b) **Certificate Holder:** "Limited Partner, ISAOA" and R4 Capital LLC (for R4 Equity) and "Fiscal Agent or Trustee" (as designated by R4CF), R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)

#### c) **Limits:**

##### Worker's Compensation:

Per Statute

##### Employers Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

*If the employer is domiciled in the states of North Dakota, Ohio, Wyoming, or Washington (commonly known as "Monopolistic Workers Compensation" states), proof of Worker Compensation coverage through the State Fund must be provided, and proof of Stop Gap Employer's Liability must be provided. Stop Gap Employer's Liability must be scheduled under the required Umbrella/Excess Liability coverage in section 4 below.*

### 4. **Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** "Partnership", "General Partner", "Limited Partner, ISAOA" and R4 Capital LLC (for R4 Equity) and "Fiscal Agent or Trustee", R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) Coverage must be no less broad than the underlying CGL, Auto Liability and Employers Liability policies required above. If coverage is not follow form, differences must be identified.

#### d) **Limits:**

##### Garden Apts. 1-3 stories, Single Floor, & other non-elevator buildings:

\$3 Million Per Occurrence/\$3M Annual Aggregate.



**R4 CAPITAL  
FUNDING**

**R4 Capital Funding LLC  
Tax Exempt Bond Investment Standards**

**v4.4 March 2022**

Mid-rise Apartment Building (4-10 stories):

\$5 Million Per Occurrence/\$5M Annual Aggregate.

High-rise Apartment Building (11-20 stories):

\$10 Million Per Occurrence/\$10M Annual Aggregate

+ 20 stories

\$25M Per Occurrence/\$25M Annual Aggregate

*Aggregates are to apply on a per project basis*

	<b>R4 Capital Funding LLC Tax Exempt Bond Investment Standards</b>	<b>v4.4 March 2022</b>
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**5. Professional Liability/Errors & Omissions**

- a) **Named Insured:** Services Provider (or Consultant) and their respective employees, agents, subsidiaries, and affiliates.
- b) **Additional Insureds:** “Partnership”, “General Partner”, “Limited Partner, ISAOA” and R4 Capital LLC (for R4 Equity) and “Fiscal Agent or Trustee”, R4 Capital Funding LLC and R4 Servicer LLC (for R4CF Debt)
- c) **Limit:** \$1,000,000 per claim and annual aggregate
- d) **Form:** Claims made
- e) **Policy Description of Work:** If work is different than the delivery of social and / or human services and / or the entity’s license / certification (i.e., social or service workers performing typical human services work, etc. then policy description of “scope of work” must be provided)
- f) Coverage must be maintained for a minimum period of three years post contract completion.

**6. Fidelity Bond – required for all entities that handle partnership funds (including in-place rehabs and properties in permanent insurance phase).**

- a) **Named Insured:** Services Provider
- b) **Joint Loss Payee:** Partnership
- c) **Coverage:** is to be provided for loss of General Partner’s and Limited Partner’s money and securities resulting from dishonesty of Named Insured’s employees. In addition, coverage is to be provided for theft of resident’s property and facility property.
- d) **Limit:** Regarding money and securities, the amount is equal to six months’ gross rents and for theft of resident’s property and facility’s property, the amount is a minimum of \$100,000.

*Balance of this page left blank intentionally.*

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*Confidential Information of R4 Capital  
Funding LLC*

S12-60

**SCHEDULE 13**  
**EVIDENCE OF APPROVAL OF TAX ABATEMENT**

[Not applicable.]



REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

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

BOKF, NA,  
a national banking association,  
as Fiscal Agent,

DHFC THE LEGACY ON Kiest LANDOWNER, LLC,  
a Texas limited liability company,  
as Fee Owner

and

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

Dated as of [July 1], 2025

Relating to

[\$30,000,000]  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Note  
(The Legacy on Kiest)  
Series 2025

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement” or this “Regulatory Agreement”) dated as of [July 1], 2025, is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Governmental Lender” or “Department”), a public and official agency of the State of Texas (the “State”), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as fiscal agent under the hereinafter defined Funding Loan Agreement (together with any successor fiscal agent under the Funding Loan Agreement described below and their respective successors and assigns, the “Fiscal Agent”), the **DHFC THE LEGACY ON KIEST LANDOWNER, LLC**, a Texas limited liability company (together with its permitted successors and assigns, the “Fee Owner”) and **LDG THE LEGACY ON KIEST, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”).

### RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Governmental Lender is authorized to issue the Governmental Note (as hereinafter defined) and to use the proceeds thereof to provide monies to aid in financing the acquisition, construction and equipping of residential rental property for dwelling units in the State; and

WHEREAS, the Borrower has requested the assistance of the Governmental Lender in connection with the financing of a multifamily residential rental housing development to be located on the real property described in Exhibit A hereto (as defined herein, the “Development Site”) and described in Exhibit B-1 hereto (as defined herein, the “Development Facilities” and, together with the Development Site, the “Development”), and, as a condition to such assistance, the Borrower has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Fee Owner owns fee simple title to the real property described in Exhibit A hereto and the Borrower owns a leasehold estate pursuant to the Ground Lease (as hereinafter defined), and the Fee Owner has agreed to enter into this Regulatory Agreement as the Fee Owner and will receive significant benefits under the Ground Lease; and

WHEREAS, the Governmental Lender has determined to provide funds in connection with the financing of the Development by issuing its Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the “Governmental Note”) in the aggregate principal amount of \$[30,000,000], and loaning the proceeds of such Governmental Note to the Borrower, upon the terms and conditions set forth in the Borrower Loan Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Governmental Note to be excludable from gross income for federal income tax purposes under the Code (as defined herein), and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping, use and operation of the Development and in order to ensure that the Development will be acquired, constructed, equipped, used and operated in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Funding Loan Agreement, in the Borrower Loan Agreement or in the Tax Exemption Agreement (each as defined herein), unless the context in which they are used clearly requires otherwise:

**“Act”** means Chapter 2306, Texas Government Code, as amended from time to time.

**“Agreement”** or **“Regulatory Agreement”** means this Regulatory and Land Use Restriction Agreement, as it may be amended, modified, supplemented or restated from time to time.

**“Annual Income”** means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by section 142(d) of the Code.

**“Available Unit”** means a Unit (except for any Unit reserved for a resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and that is appointed by the Governmental Lender, and initially means Bracewell LLP.

**“Borrower Loan Agreement”** means the Borrower Loan Agreement of even date herewith between the Governmental Lender and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Funding Loan Agreement.

**“Closing Date”** means the date upon which the Governmental Note is issued and delivered in exchange for the proceeds representing the purchase price of the Governmental Note paid by the original purchasers thereof.

**“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 and successor Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

**“Compliance Monitoring Rules”** means the rules published by the Governmental Lender in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

**“Development”** means the Development Facilities and the Development Site.

**“Development Amenities”** means the amenities for which the Development was awarded points by the Governmental Lender, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

**“Development Facilities”** means the multifamily housing structures and related buildings and other improvements to be constructed on the Development Site by the Borrower as more fully set forth in Exhibit B-1 hereto, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

**“Development Site”** means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

**“Eligible Tenants”** means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Governmental Lender under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

**“Equity Investor”** means R4 LKTX Acquisition LLC, a Delaware limited liability company, and its successors or assigns.

**“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, under existing law, such action or omission does not adversely affect the Federal Tax Status of the Governmental Note (subject to the inclusion of any customary exceptions acceptable to the recipient(s) thereof).

**“Federal Tax Status”** means, as to the Governmental Note, the status under existing law of the interest on the Governmental Note as excludable from gross income for federal income tax purposes (subject to any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Governmental Note).

**“Fee Owner”** means the DHFC The Legacy on Kiest Landowner, LLC, a Texas limited liability company, and its permitted successors and assigns.

**“Funding Lender”** means Community Housing Investment Partners II, LP, and its successors and assigns.

**“Funding Loan Agreement”** means the Funding Loan Agreement of even date herewith among the Governmental Lender, the Funding Lender and the Fiscal Agent, relating to the issuance of the Governmental Note, as it may be amended, modified, supplemented or restated from time to time, and any Funding Loan Agreement supplemental thereto.

**“Ground Lease”** means the Ground Lease between the Fee Owner, as landlord, and the Borrower, as tenant, dated as of [the date hereof].

**“Housing Act”** means the United States Housing Act of 1937, as amended, or a successor thereto.

**“HUD”** means the United States Department of Housing and Urban Development or its successors.

**“Loan”** means the loan of the proceeds of the Governmental Note made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement, and as evidenced by the Borrower Note.

**“Loan Documents”** means the Security Instrument, the Borrower Note, the Borrower Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Loan.

**“Low-Income Tenant”** means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

**“Low-Income Unit”** means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

**“Multifamily Tax Subsidy Program Income Limit”** (or successor term) means the income limits provided by HUD pursuant to section 142(d) of the Code.

**“Note”** has the meaning set forth in the Funding Loan Agreement.

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

**“Persons with Special Needs”** means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Governmental Lender as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Governmental Lender.

**“Qualified Project Period”** means, with respect to the Development, the period beginning on the first day on which 10 percent of the Units are occupied and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

**“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.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Reserve”** means the account required to be established by the Replacement Reserve Agreement.

**“Replacement Reserve Agreement”** has the meaning given to such term in the Funding Loan Agreement.

**“Security Instrument”** means the Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (with Power of Sale) from the Borrower, as the grantor, in favor of Governmental Lender, as the beneficiary, and assigned to the Fiscal Agent, as the same may be supplemented, amended or modified.

**“Set Aside”** means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

**“State Conversion Date”** means the date of the first amortization payment on the Borrower Note.

**“State Reserve Period”** means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the Borrower suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

**“State Restrictive Period”** means, with respect to the Development, the period beginning on the first day on which the Borrower takes legal possession of the Development and ending on the latest of (a) the date that is 30 years after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

**“Tax Exemption Agreement”** means the Tax Exemption Certificate and Agreement of even date herewith among the Governmental Lender, the Fiscal Agent and the Borrower, as in effect on the Closing Date and as it may thereafter be amended, modified, supplemented or restated, from time to time, in accordance with its terms.

**“Tenant Income Certification”** means a certification form available on the Governmental Lender’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

**“Unit Status Report”** means the certified residential rental housing program compliance report with respect to the Development to be filed by the Borrower with the Governmental Lender electronically through the filing system available on the Governmental Lender’s website in the form available on the Governmental Lender’s website at the time of submission of the report or in such other form as the Governmental Lender may reasonably prescribe in writing to the Borrower pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1A. Acquisition, Construction and Equipping of the Development. The Borrower hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Governmental Lender or the Fiscal Agent or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct.

(b) The Borrower will submit to the Governmental Lender and the Fiscal Agent evidence of construction completion as required in the Borrower Loan Agreement, and attached as Schedule 7 thereto, within 30 days of completion. The Borrower will also submit a request for final construction inspection to the Governmental Lender, in the format prescribed by the Governmental Lender as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Borrower further agrees to cause the architect of record to submit a certification that the Development was built in compliance with all applicable laws and the engineer of record (if applicable) must submit a certification that the Development was built in compliance with design requirements.

(c) The Borrower will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Governmental Note to be applied in a manner consistent with the requirements of the Funding Loan Agreement, the Borrower Loan Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Development.

(d) The Borrower is a qualified "housing sponsor" as defined in the Act.

Section 2. Tax-Exempt Status of the Governmental Note. The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the Federal Tax Status of the Governmental Note. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees:

(a) That the Development will be owned, managed and operated as a "qualified residential rental project" within the meaning of section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower covenants and agrees, continuously during the Qualified Project Period, as follows:



(i) that the Development will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Borrower Loan Agreement) at all times during the longer of (A) the remaining term of the Governmental Note or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that the Development will meet the Set Aside. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant's Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Governmental Lender's website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Borrower will obtain, complete and maintain annual Tenant Income Certifications in accordance with section 142(d)(3)(A) of the Code. The Borrower will obtain such additional information as may be required in the future by section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Governmental Lender's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Governmental Lender, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Governmental Lender's website at the time of such submission to the Governmental Lender (via the electronic filing system available on the Governmental Lender's website) in accordance with Section 4(e) hereof.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Governmental Lender, the Fiscal Agent, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the

Development and to inspect and photocopy the books and records of the Borrower pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Borrower will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That the Borrower will provide to the Fiscal Agent and the Governmental Lender a certificate in the form attached hereto as Exhibit E certifying (i) within 90 days thereof, the date on which 10% of the Units are occupied; and (ii) within 90 days thereof, the date on which 50% of the Units are occupied.

(d) That the Borrower will prepare and submit to the Governmental Lender and the Fiscal Agent, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Regulatory Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Governmental Lender and the Fiscal Agent may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Governmental Note.

Section 3. Modification of Tax and Other Restrictive Covenants. The Borrower, the Fiscal Agent, the Fee Owner and the Governmental Lender hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower, are required by the terms thereof to be applied to, and impose requirements upon, the ownership or operation of the Development that are more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements to be effective for the duration of such more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Borrower Loan Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Governmental Lender and the Fiscal Agent, in connection with compliance with the requirements of this Section will be paid by the Borrower and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Governmental Lender and the Borrower hereby recognize and declare their understanding and intent that the Development is to be owned, managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Governmental Lender until the expiration of the State Restrictive Period.

To the same end, the Borrower hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Governmental Lender to the Borrower from time to time that (i) such lease is subordinate to the Security Instrument and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of this Regulatory Agreement and the Borrower Loan Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Fee Owner, the Fiscal Agent and the Governmental Lender, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Governmental Lender (via the electronic filing system available on the Governmental Lender’s website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Governmental Lender with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Governmental Lender’s website at the time of submission or in such other form as the Governmental Lender may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Governmental Lender or the Fiscal Agent to inspect the books and records of the Borrower pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Governmental Lender’s requirements;

(g) that the Borrower is qualified to be a “housing sponsor” as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Governmental Lender’s website) the Annual Owner’s Compliance Report to the Governmental Lender in the form available on the Governmental Lender’s website at the time of submission by April 30 of each year, commencing April 30, 2027;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C in the manner provided in such Exhibit, or from any additional supportive services added to the Governmental Lender’s rules at any future date that are of similar value to the service it is intending to replace as agreed to in writing by the Governmental Lender. The Borrower must maintain documentation satisfactory to the Governmental Lender of social services provided and such documentation will be reviewed during monitoring reviews beginning with the first monitoring review and must be submitted to the Governmental Lender upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code and other Governmental Lender rules regarding affirmative marketing and written policies and procedures, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD’s National Standards for the Physical Inspection of Real Estate and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Governmental Lender must first provide notice of any default or breach to the Borrower, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Governmental Lender’s debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower’s participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Governmental Lender with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;

(n) to ensure that Units intended to satisfy the Set Aside under Section 2(a)(ix) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development;

(o) to ensure that the Development conforms to the federal Fair Housing Act; and

(p) to pay to the Governmental Lender the Governmental Lender Compliance Fee (as defined in the Funding Loan Agreement).

Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the Replacement Reserve required by and created pursuant to the Replacement Reserve Agreement or a similar account for the longer of: (a) the period of time required pursuant to the Replacement Reserve Agreement, or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Borrower hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. Reserved.

Section 6. Persons With Special Needs. The Borrower represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Governmental Lender has issued the Governmental Note to provide funds to make the Loan to finance the Development, all for the purpose, among others, of inducing the Borrower to acquire, construct, equip and operate the Development. In consideration of the issuance of the Governmental Note by the Governmental Lender and in consideration of the Borrower entering into the Ground Lease, the Borrower and the Fee Owner have entered into this Regulatory Agreement and have agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all Persons interested in the legality and validity of the Governmental Note, and in the excludability of interest on the Governmental Note from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Borrower, the Fee Owner, the Governmental Lender and the Fiscal Agent may conclusively rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Governmental Lender and the Fiscal Agent may rely upon (i) statements and certifications by the Borrower and the Fee Owner; (ii) audits of the books and records of the Borrower and the Fee Owner pertaining to the Development; and (iii) with respect to the Fiscal Agent, any other information provided to the Fiscal Agent, pursuant to this Regulatory Agreement. In addition, the Governmental Lender, the Borrower, the Fee Owner and the Fiscal Agent may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender, the Borrower, the Fee Owner or the Fiscal Agent hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower or the Fee Owner exists under this Regulatory Agreement, the Fiscal Agent is not required to conduct any investigation into or review of the operations or records of the Borrower or the Fee Owner and may rely on any written report, notice or certificate or other information delivered to the Fiscal Agent, as required by this Regulatory Agreement, by any Person retained to review the Borrower's or the Fee Owner's compliance with this Regulatory Agreement or by the Borrower, the Fee Owner or the Governmental Lender with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Dallas County. The Borrower hereby represents that the Development is located entirely within Dallas County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) Each of the Borrower and the Fee Owner covenants and agrees not to sell, transfer or otherwise dispose of the Development (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Governmental Lender,

(ii) complying with any applicable provisions of this Regulatory Agreement, the Borrower Loan Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Governmental Lender. Such consent of the Governmental Lender will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Governmental Lender: (A) there is delivered to the Fiscal Agent and the Governmental Lender a written opinion of independent legal counsel reasonably satisfactory to the Fiscal Agent and the Governmental Lender, addressed to the Fiscal Agent and the Governmental Lender, concluding that the proposed purchaser or transferee has duly assumed all of the rights and obligations of the Borrower or the Fee Owner, as applicable, under this Regulatory Agreement, the Borrower Loan Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by such proposed purchaser or transferee in connection therewith has been duly authorized, executed and delivered by such proposed purchaser or transferee and is a valid and enforceable obligation of such proposed purchaser or transferee, subject to customary qualifications, (B) the Governmental Lender receives a Favorable Opinion of Bond Counsel, with a copy to the Fiscal Agent and the Borrower, which opinion will be furnished at the expense of the Borrower or the proposed purchaser or transferee, (C) the Governmental Lender receives a transfer fee equal to \$1,000, (D) the proposed purchaser or transferee executes any document requested by the Governmental Lender with respect to assuming the obligations of the Borrower or the Fee Owner under this Regulatory Agreement, the Borrower Loan Agreement, the Tax Exemption Agreement and the other Loan Documents, (E) the Governmental Lender has performed a previous participation review on the proposed purchaser or transferee or any affiliated party, the results of which are satisfactory to the Governmental Lender in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section 1.301, Texas Administrative Code, and the Governmental Lender does not further have any reason to believe the proposed purchaser or transferee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or transferee relating to the Development, including but not limited to this Regulatory Agreement, the Borrower Loan Agreement, the Tax Exemption Agreement, the Security Instrument and other Loan Documents, (F) the proposed purchaser or transferee has met the requirements in Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code, and (G) the Borrower or proposed purchaser or transferee have paid any and all fees or expenses of Bond Counsel incurred in association with its review and drafting of documents relating to the transfer. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers (except in the case of a change in ownership resulting from a deed in lieu of foreclosure, advance notice, which notice must include information regarding the applicable rent/income requirements post such deed in lieu of foreclosure, must be provided to both the Department and to the tenants at least 30 days prior to finalizing the transfer), but such provisions apply to any transfer subsequent to such involuntary transfers. Notwithstanding anything to the contrary contained herein, the following shall be permitted and shall not require the prior written approval of Governmental Lender or Fiscal Agent, provided that written notice thereof has been provided to the Governmental Lender: (a) the transfer by the Equity Investor of its non-Controlling interest in the Borrower in accordance with the terms of the Borrower's Organizational Documents, (b) the removal of the general partner or the special limited partner of the Borrower in accordance with the Organizational Documents and the temporary replacement thereof with the Equity Investor or any of its affiliates, (c) the transfer of ownership interests in the Equity Investor, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of the Equity Investor in the Borrower to the Borrower's general partner or any of its affiliates, and (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above. For the purposes of the preceding sentence, "Control" or "Controlling" has the meaning given to such

term in Title 10, Part 1, Subchapter A, Section 11.1, Texas Administrative Code. Each of the Borrower and the Fee Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower or the Fee Owner, as applicable, of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower or the Fee Owner so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Borrower Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower and the Fee Owner as set forth in the Borrower Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement or any other Loan Document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Borrower or the Fee Owner from its respective obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Borrower or the Fee Owner, as applicable, of further liability for obligations under this Regulatory Agreement arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Borrower will not change its general partner by transfer, sale or otherwise without the prior written consent of the Governmental Lender, in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406, Texas Administrative Code. A change in the Borrower's general partner includes any transfer of any controlling ownership interest in the general partner other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Governmental Note, discharge of the Loan, termination of the Borrower Loan Agreement and defeasance or termination of the Funding Loan Agreement and the resignation or removal of the Fiscal Agent; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Governmental Lender or the Fiscal Agent, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Governmental Lender or the Fiscal Agent from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Governmental Note is retired in full or amounts received as a consequence of such event are used to provide a "qualified residential rental project" that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer



of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Governmental Lender and the Fiscal Agent incurred in connection with the termination of this Regulatory Agreement will be paid by the Borrower and its successors in interest.

Section 12. Covenants to Run With the Land. The Borrower and the Fee Owner hereby subject the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Borrower's and the Fee Owner's successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Development is rendered less valuable thereby. The Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Governmental Note was issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Fiscal Agent and Governmental Lender. If the Borrower or the Fee Owner defaults in the performance or observance of any covenant, agreement or obligation of the Borrower or the Fee Owner, as applicable, set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower or the Fee Owner for a period of 60 days after written notice thereof has been given by the Governmental Lender or the Fiscal Agent to the Borrower, the Fee Owner and the Equity Investor at the Notice Addresses set forth in the Funding Loan Agreement, then the Fiscal Agent, acting on its own behalf or on behalf of the Governmental Lender and after being indemnified as provided in the Funding Loan Agreement and in the Borrower Loan Agreement, will declare an "Event of Default" to have occurred hereunder; provided, however, that, if the default stated in the notice is of such

a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Borrower or the Fee Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Borrower or the Fee Owner delivers to the Governmental Lender and the Fiscal Agent a Favorable Opinion of Bond Counsel. The Governmental Lender hereby agrees that any cure of any Event of Default hereunder made or tendered by the Equity Investor shall be deemed to be cure by the Borrower, and shall be accepted or rejected by the Governmental Lender on the same basis as if made or tendered by the Borrower.

During the existence of an Event of Default hereunder, the Fiscal Agent or the Governmental Lender, each subject to being indemnified as provided in the Funding Loan Agreement and in the Borrower Loan Agreement with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower or the Fee Owner, as applicable, to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Governmental Lender or the Fiscal Agent hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Borrower or the Fee Owner, as applicable, pertaining to the Development during regular business hours following reasonable prior written notice; and
- (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Borrower or the Fee Owner hereunder.

Each of the Borrower and the Fee Owner hereby agrees that specific enforcement of the Borrower's and the Fee Owner's agreements contained herein is the only means by which the Governmental Lender and the Fiscal Agent may obtain the benefits of such agreements made by the Borrower and the Fee Owner herein, and each of the Borrower and the Fee Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower or the Fee Owner hereunder. In addition, if the Governmental Lender succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower or the Fee Owner contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Governmental Lender will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Fiscal Agent, the Fee Owner and the Borrower (provided that the failure to notify will not adversely affect the Governmental Lender's or the Fiscal Agent's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Funding Loan Agreement, by the holder of the Governmental Note.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) During the existence of an Event of Default hereunder with respect to Sections 4(i) and 4(j) hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Borrower to perform its obligations and covenants under Sections 4(i) and 4(j) hereof.

(b) If the Governmental Lender, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Borrower under Sections 4(i) and 4(j) hereof, such party has the right to recover attorney's fees directly from the Borrower, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Borrower hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Fiscal Agent. The Fiscal Agent will act only as specifically provided herein, in the Funding Loan Agreement and in the Tax Exemption Agreement. Subject to the right of the Fiscal Agent to be indemnified as provided herein, in the Funding Loan Agreement and in the Borrower Loan Agreement, the Fiscal Agent agrees to act as the agent of and on behalf of the Governmental Lender when requested in writing by the Governmental Lender to do so, and any act required to be performed by the Governmental Lender as herein provided will be deemed taken if such act is performed by the Fiscal Agent. The Fiscal Agent is entering into this Regulatory Agreement solely in its capacity as Fiscal Agent under the Funding Loan Agreement, and the duties, powers, rights, protections and obligations of the Fiscal Agent in acting hereunder will be subject to the provisions of the Funding Loan Agreement and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Funding Loan Agreement and the Tax Exemption Agreement are intended to survive the retirement of the Governmental Note, discharge of the Loan, termination of the Borrower Loan Agreement, defeasance or termination of the Funding Loan Agreement and the Tax Exemption Agreement, and resignation or removal of the Fiscal Agent.

Subject to the Fiscal Agent's rights under the Funding Loan Agreement, the Fiscal Agent will, at the direction of the Governmental Lender, take reasonable actions to enforce compliance by the Borrower and the Fee Owner with the terms of this Regulatory Agreement. The Fiscal Agent may conclusively rely on certificates, reports or other information delivered to the Fiscal Agent, in accordance with this Regulatory Agreement, without independent investigation and the Fiscal Agent's responsibility to review and monitor compliance hereunder will not extend beyond the Fiscal Agent's receipt of the certificates, reports, and other documents required to be submitted to the Fiscal Agent pursuant to this Regulatory Agreement, and the Fiscal Agent shall have no further duty to investigate if the same reflect compliance.

The Fiscal Agent may resign or be removed only as provided in Sections 7.4 or 7.5, respectively, of the Funding Loan Agreement. Such resignation or removal will not be effective until a successor Fiscal Agent satisfying the requirements of the Funding Loan Agreement is appointed and has accepted its appointment. The Fiscal Agent's right to indemnification provided in the Borrower Loan Agreement will survive the resignation or removal of the Fiscal Agent and the termination of this Regulatory Agreement.

Upon discharge of the Funding Loan Agreement, the Borrower will pay to the Fiscal Agent a fee, in an amount mutually agreed upon by the Borrower and the Fiscal Agent at the time of such discharge, for the performance of the Fiscal Agent's duties under this Regulatory Agreement through the date upon which the Governmental Note is to be paid in full. After the date upon which the Governmental Note has been paid in full, the Fiscal Agent shall no longer have any duties or responsibilities under this Regulatory

Agreement and all references to the Fiscal Agent in this Regulatory Agreement shall be deemed references to the Governmental Lender.

Section 18. Recording and Filing. The Borrower will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Dallas County, Texas and in such other places as the Governmental Lender may reasonably request. A file-stamped copy of this Regulatory Agreement, and prior to the date upon which the Governmental Note has been paid in full all amendments and supplements thereto will be delivered to the Fiscal Agent. The Borrower will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Funding Loan Agreement and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Borrower will continue to pay to the Governmental Lender and the Fiscal Agent all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Governmental Lender and the Fiscal Agent by the Borrower pursuant to the Borrower Loan Agreement and the Tax Exemption Agreement including, without limitation, reasonable compensation for any services rendered by the Governmental Lender and the Fiscal Agent under this Regulatory Agreement and reimbursement for all expenses reasonably incurred in connection therewith.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Fiscal Agent's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Borrower Loan Agreement, the Funding Loan Agreement and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto (except that after discharge of the Funding Loan Agreement, consent of the Fiscal Agent will not be required), or their successors in title, and duly recorded in the real property records of Dallas County, Texas, and only upon receipt of a Favorable Opinion of Bond Counsel by the Governmental Lender, and prior to the discharge of the Funding Loan Agreement, the Fiscal Agent.

Section 22. Notices. Any notice required to be given hereunder to the Governmental Lender, the Fiscal Agent, the Borrower, the Fee Owner and the Equity Investor will be given in the manner and at the notice addresses or via electronic means as set forth in the Funding Loan Agreement.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Governmental Lender. To the extent allowed by law, the Governmental Lender hereby authorizes the Borrower to take on behalf of the Governmental Lender all actions required or permitted to be taken by it hereunder, or under the Funding Loan Agreement, the Borrower Loan Agreement and the Tax Exemption Agreement and to make on behalf of the Governmental Lender all elections and determinations required or permitted to be made by the Governmental Lender hereunder or under the Funding Loan Agreement, the Borrower Loan Agreement and the Tax Exemption Agreement. In addition, the Governmental Lender hereby authorizes the Borrower to exercise, on behalf

of the Governmental Lender, any election with respect to the Governmental Note pursuant to the Code or the Regulations, and the Governmental Lender agrees to cooperate with the Borrower and execute any form of statement required by the Code or the Regulations to perfect any such election.

Section 26. Compliance with Texas Government Code. The representations in Section 10.11 of the Funding Loan Agreement (with respect to the Fiscal Agent) and in Section 5.27 of the Borrower Loan Agreement (with respect to the Borrower) are expressly incorporated by reference into this Regulatory Agreement.

IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent, the Fee Owner and the Borrower have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

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

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS    §

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2025 by James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

My Commission expires: \_\_\_\_\_

(PERSONALIZED SEAL)

Governmental Lender Signature Page to Regulatory Agreement

**BOKF, NA,**  
as Fiscal Agent

By: \_\_\_\_\_  
Name: Biddel Tekeste  
Title: Vice President

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS   §

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2025 by Biddel Tekeste, a Vice President of BOKF, NA, a national banking association, on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

My Commission expires: \_\_\_\_\_

(PERSONALIZED SEAL)

Fiscal Agent Signature Page to Regulatory Agreement

**DHFC THE LEGACY ON Kiest LANDOWNER,  
LLC,**  
a Texas limited liability company,  
as Fee Owner

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

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                     §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2025 by Aaron Eaquinto, General Manager of the City of Dallas Housing Finance Corporation, a Texas housing finance corporation, the sole member of DHFC The Legacy on Kiest Landowner, LLC, a Texas limited liability company, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

My Commission expires: \_\_\_\_\_

(PERSONALIZED SEAL)

Fee Owner Signature Page to Regulatory Agreement



**LDG THE LEGACY ON KIEST, LP**, a Texas limited partnership

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

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

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
                                      §  
COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by Aaron Eaquinto, General Manager of the City of Dallas Housing Finance Corporation, a Texas housing finance corporation, the sole member of DHFC The Legacy on Kiest GP, LLC, a Texas limited liability company, the general partner of LDG The Legacy on Kiest, LP, a Texas limited partnership, on behalf of said entities.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public's Signature

My Commission expires: \_\_\_\_\_

(PERSONALIZED SEAL)

Borrower Signature Page to Regulatory Agreement

EXHIBIT A

PROPERTY DESCRIPTION

[TO COME]

## EXHIBIT B-1

### DESCRIPTION OF DEVELOPMENT

Borrower: LDG The Legacy on Kiest, LP, a Texas limited partnership

Development: The Development is a 180-unit affordable, multifamily housing development to be known as The Legacy on Kiest, located at or near 2621 Southerland Avenue, Dallas, Dallas County, Texas 75203. It will consist of three (3) residential apartment buildings. The unit mix will consist of:

40	one-bedroom/one-bath units
88	two-bedroom/two-bath units
52	three-bedroom/two-bath units
<hr/>	
180	Total Units

## EXHIBIT B-2

### DEVELOPMENT AMENITIES

Development Common Amenities must include fourteen (14) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of amenities from each section. The Borrower may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Borrower.

(i) Community Space for Resident Supportive Services includes:

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) - (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and owner and architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) - (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification.

(-1-) The agreement must be between the Borrower and an educational provider.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes

to withdraw from the location. This provision will not limit the Borrower's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Borrower must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Borrower, the Borrower must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Borrower, the Borrower will not be considered to be in violation of its commitment to the Department. If the Borrower is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (4 points).

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets or cabinetry (2 points).

(IV) Service provider office in addition to leasing offices (1 point).

(ii) Safety amenities include:

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point).

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point).

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points).

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point).

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

(iii) Health/Fitness/Play amenities include:

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point).

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point).

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points).

(IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this subparagraph is not selected.

(V) Two Children's Playscapes Equipped for five to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (IV) of this subparagraph is not selected.

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; ping pong table; or similar equipment in a dedicated location accessible to all residents to play such games (1 point).

(VII) Swimming pool (5 points).

(VIII) Splash pad/water feature play area (3 points).

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Pickleball, Soccer, or Baseball Field) (2 points).

(iv) Design / Landscaping amenities include:

- (I) Full perimeter fencing that contains the parking areas and all amenities (excludes guest or general public parking areas) (2 points).
- (II) Enclosed community sun porch or covered community porch/patio (1 point).
- (III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points).
- (IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points).
- (V) Porte-cochere (1 point).
- (VI) Lighted pathways along all accessible routes (1 point).
- (VII) a resident-run community garden with annual soil preparation and mulch provided by the Borrower and access to water (which may be subject to local water usage restrictions) (1 point).

(v) Community Resources include:

- (I) Community laundry room with at least one washer and dryer for every 40 Units (2 points).
- (II) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills).
- (III) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points).
- (IV) Furnished Community room (2 points).
- (V) Library with an accessible sitting area (separate from the community room) (1 point).
- (VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points).
- (VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points).
- (VIII) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points).
- (IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the clubhouse or community building (1 point).
- (X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points).

(XI) Bicycle parking that allows for, at a minimum, one bicycle for every five Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point).

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points).

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point).

(XIV) Community car vacuum station (1 point).

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per 25 units (1 point).

Unit, Development Construction and Energy and Water Efficiency Features. The Development must include at least nine (9) points selected from the following list. At least two (2) points must be selected from clause (iii) Energy and Water Efficiency Features. The development must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

(i) Unit Features include:

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);



- (XI) 48-inch upper kitchen cabinets (1 point);
- (XII) Kitchen island (0.5 points);
- (XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point).
- (XIV) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XV) Double vanity in at least one bathroom (0.5 point); and
- (XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features include:

- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (II) Thirty year roof (0.5 point);
- (III) Greater than 30% stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (IV) Electric Vehicle Charging Station (0.5 points);
- (V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and
- (VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) - (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) Leadership in Energy and Environmental Design (LEED). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features include:

- (I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);
- (II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);
- (III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);
- (IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);
- (V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);
- (VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);
- (VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1 point);
- (VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and
- (IX) A rainwater harvesting/collection system or locally approved greywater collection system (0.5 points).
- (X) Wi-Fi enabled, Energy Star or equivalently rated “smart” thermostats installed in all units (1 point); and
- (XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income unit (2 points).

## EXHIBIT C

### TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of services from each section. The Borrower may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the Governmental Lender's rules in subsequent years provide different services than those listed below, the Borrower may be allowed to select services listed therein upon written consent from the Governmental Lender, and any services selected must be of similar value to the service the Borrower is intending to replace. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Borrower.

(A) Transportation Supportive Services include:

- (i) shuttle, at least three days a week, to a grocery store and pharmacy or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

(B) Children Supportive Services include:

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of §11.101(b)(5)(C)(i)(I). (Half of the points required under §11.101(b)(7)); and
- (ii) Twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

(C) Adult Supportive Services include:

- (i) Four hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a common area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points);and

(vi) participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

(D) Health Supportive Services include:

(i) food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional (1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

(E) Community Supportive Services include:

(i) partnership with local law enforcement or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific service coordination services offered by a qualified owner or developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points); and

(ix) provision, by either the Borrower or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

EXHIBIT D  
RESERVED

EXHIBIT E



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

[www.tdhca.texas.gov](http://www.tdhca.texas.gov)

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
Leo Vasquez, *Chair*  
Kenny Marchant, *Vice Chair*  
Anna Maria Farias, *Member*  
Cindy Conroy, *Member*  
Holland Harper, *Member*  
Ajay Thomas, *Member*

**Multi Family Mortgage Revenue Bond  
Qualified Project Period**

The Texas Department of Housing and Community Affairs require the information in Sections A and B below to compute the Qualified Project Period for Mortgage Revenue Bond properties. Please complete the form as the appropriate dates are identified. Upload this form in TDHCA's Compliance Monitoring Tracking System (CMTS) to the attention of Charles Stites immediately after the property reaches the 50% Occupancy Date.

Section A

Property Name	
Address	
Contact Name	
Contact Phone #	

Section B

Initial Bond Closing Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

IM-#10692014.4

E-1



## **BORROWER NOTE**

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

[\$30,000,000]

[CLOSING DATE]

FOR VALUE RECEIVED, LDG THE LEGACY ON Kiest, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “Borrower”), by this promissory note (the “Note” or “Borrower Note”) hereby promises to pay to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Governmental Lender”) the principal sum of [THIRTY MILLION] and no/100 Dollars (\$[30,000,000]), together with interest on the drawn and unpaid principal amount hereof, from the Closing Date (as defined in the Funding Loan Agreement referenced below) until paid in full, at a rate per annum, and acceleration premium, if any, as set forth herein.

**Defined Terms.** As used in this Note, the following terms shall have the following definitions:

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

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

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

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

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

“**Fixed Rate**” shall mean the fixed rate set forth on the Schedule of Financial Terms and computed on the basis of a 360-day year comprised of twelve 30-day months.

“**Funding Loan Agreement**” shall mean that certain Funding Loan Agreement dated as of [July 1], 2025 by and among Texas Department of Housing and Community Affairs, as the “Governmental Lender”, BOKF, NA, as the “Fiscal Agent”, and Community Housing Investment Partners II, LP, as the “Funding Lender”.

“**Loan Payment Date**” has the meaning set forth in the Funding Loan Agreement.

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

“**Maximum Lawful Rate**” has the meaning set forth in the Funding Loan Agreement.

“**Stabilization Date**” has the meaning set forth in the Funding Loan Agreement.

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



All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

**Method of Payment.** All payments due under this Note shall be payable to Fiscal Agent, or, if there is no Fiscal Agent, to the Funding Lender, or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Funding Lender or Controlling Person shall supply by written notice to the Borrower from time to time on the date that is two Business Days before any other date that any payment of interest, premium, if any, principal or other amount is required to be made hereunder.

**Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of this Note or the date fixed for prepayment of any Borrower Note shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall 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 fixed for prepayment, and, in the case of such payment, no interest shall accrue for the period from and after such date.

**Interest Rate.** Interest shall accrue on the drawn and unpaid principal of this Note from, and including, the Closing Date, until the Maturity Date, at the Fixed Rate. Notwithstanding any other provision of this Note to the contrary, interest shall not exceed the Maximum Lawful Rate.

**Payment of Principal and Interest.** Principal and interest shall be paid as follows:

Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. Borrower shall make its payments under this Note in immediately available funds.

Commencing on the First Loan Payment Date and continuing on each Loan Payment Date thereafter until and including the First Principal Payment Date, Borrower shall pay monthly payments of interest only, at the Interest Rate, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second (2nd) Business Day prior to each Loan Payment Date.

Commencing on the First Principal Payment Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth on the Debt Service Schedule to the Borrower Loan Agreement, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second (2nd) Business Day prior to each Loan Payment Date.

Any accrued interest remaining past due may, at Funding Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest that has not become part of the unpaid principal balance.

Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due hereunder.

Any regularly scheduled monthly installment of principal and interest that is received by Funding Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

Borrower acknowledges that the calculation of all interest payments shall be made by the Funding Lender and Controlling Person and shall be final and conclusive, absent manifest error.

**Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable hereunder, if any, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of Funding Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

**Prepayments.**

(a) In connection with any prepayment (*i.e.*, any receipt by Funding Lender of principal, other than principal required to be paid in monthly installments pursuant to Section 5 of this Note, prior to the Maturity Date) made under this Note, whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided in Section 9 of this Note and Section 2.3 of the Borrower Loan Agreement and/or the Schedule of Financial Terms. EXCEPT AS OTHERWISE PERMITTED HEREIN, NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED.

*Optional Prepayment of Borrower Note.*

The Borrower Note is subject to optional prepayment in whole but not in part, by the Borrower upon not less than forty-five (45) days written notice to the Funding Lender, the Controlling Person, the Governmental Lender and the Fiscal Agent (which notice shall be unconditional and irrevocable) on any Loan Payment Date occurring on or after the First Optional Call Date, at a prepayment price as set forth on the Schedule of Financial Terms, plus accrued interest thereon to, but not including, the prepayment date.

The Borrower Note is subject to optional prepayment in part on any Loan Payment Date specified by the Borrower and consented to by the Controlling Person following Completion but not later than the Stabilization Date in an amount which will not reduce, in the aggregate, the Borrower Loan to less than the Minimum Permanent Loan Amount at a prepayment price equal to 100% of the principal amount being prepaid without premium or penalty plus interest accrued thereon to, but not including, the prepayment date.

*Mandatory Prepayment of Borrower Note.*

The Borrower Note is subject to mandatory prepayment in part upon the written direction of the Controlling Person from, and to the extent of, any Surplus Funding Loan Proceeds, on any Loan Payment Date after Completion of the Project Facilities and delivery of the Construction Closeout Deliveries, but in no event later than the Stabilization Date, at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

The Borrower Note is subject to mandatory prepayment in whole or in part upon the written direction of the Controlling Person on any Loan Payment Date to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Tax and Insurance Escrow Fund and are not to be used to repair or restore

the Project Facilities at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

The Borrower Note is subject to mandatory prepayment in part on any Loan Payment Date at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date upon the written direction of, and in the amount as specified by, the Controlling Person equal to the greater of: (i) the amount necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of Stabilization,” on the Stabilization Date; or (ii) the amount necessary to reduce, in the aggregate, the Borrower Loan to not more than the Maximum Permanent Loan Amount.

The Borrower Note is subject to extraordinary mandatory prepayment in whole or in part on any Loan Payment Date at the direction of the Controlling Person at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date following receipt by the Funding Lender of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months);

as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Borrower Loan Agreement or the Funding Loan Documents, in the judgment of the Controlling Person shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Note that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Borrower Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Controlling Person, render the continued operation of the Project Facilities uneconomical;

legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

the Borrower Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Borrower Loan Agreement.

The Borrower Note is subject to mandatory prepayment in whole at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, on the first Loan Payment Date for which notice of prepayment can be given in accordance with the Funding Loan Agreement within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory prepayment on account of a Determination of Taxability of less than all the Governmental Note would result, in the Favorable Opinion of Governmental Lender Counsel, in the interest on the Governmental Note outstanding following such mandatory prepayment being excludable from the gross income of the Noteowners of such Governmental Note outstanding, then the Borrower Note is subject to mandatory prepayment upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such prepayment must be in an Authorized Denomination.

The Borrower Note is subject to mandatory prepayment in whole on any Loan Payment Date specified by the Controlling Person on or after the First Put Date, if the Controlling Person directs prepayment by providing notice to the Borrower, the Funding Lender, the Fiscal Agent and the Governmental Lender at least one hundred eighty (180) days prior to the Loan Payment Date specified in such notice on which the Borrower Note is to be prepaid at a prepayment price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the prepayment date.

**Obligations of the Borrower Absolute and Unconditional.** Subject to Section 10.13 of the Borrower Loan Agreement, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project Facilities or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project Facilities or any part thereof, any failure of consideration or

frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project Facilities, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the legal organization or status of the Funding Lender, Governmental Lender or Fiscal Agent, or any default of hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Funding Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

(b) any lack of validity or enforceability of any Borrower Loan Document or any of the Funding Loan Documents;

(c) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Funding Loan Documents;

the existence of any claim, set-off, defense or other rights which Borrower, General Partner or Guarantor may have at any time against Funding Lender (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Funding Loan Documents or any transaction contemplated thereby or any unrelated transaction;

any breach of contract or other dispute between Borrower, General Partner or Guarantor, and Funding Lender;

any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Funding Lender with respect to same); or

any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Funding Loan Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

**Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Borrower Note is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Borrower Note or the Borrower's obligations under the Borrower Loan Agreement following an Event of Default on or before the First Par Call Date, any tender of payment of any amount necessary to pay the Borrower Note in full shall include the acceleration premium set forth in Section 2.3(c) of the Borrower Loan Agreement.

**Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Funding Lender, Governmental Lender or Fiscal Agent as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in

any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of this Section 10, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

**Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

**Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Consent to Jurisdiction and Venue.** Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Funding Lender's right to bring any suit, action or proceeding relating to matters arising under this Note against Borrower or any of Borrower's assets in any court of any other jurisdiction.

**Further Assurances.** Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that Funding Lender may reasonably request, in order to protect any right or interest granted by this Note or to enable the Funding Lender to exercise and enforce its rights and remedies under this Note.

**Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

**Controlling Person.** Borrower hereby acknowledges and agrees that, pursuant to the terms of the Funding Loan Documents: (a) from time to time, Funding Lender may appoint a controlling person to collect payments, escrows and deposits, to give and to receive notices under this Note or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives written notice from Funding Lender to the contrary, any action or right which shall or may be taken or exercised by Funding Lender may be taken or exercised by such controlling person with the same force and effect.

**Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, BORROWER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN BY BORROWER KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Time of the Essence.** Time is of the essence with respect to this Note.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Note or caused this Note to be duly executed and delivered by its authorized representative as of the date first set forth above.

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

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

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

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

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Fiscal Agent under the Funding Loan Agreement referred to in the within mentioned Agreement, as security for such Governmental Note issued under such Funding Loan Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Borrower Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

Dated: \_\_\_\_\_, 2025

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**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY  
AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

**From**

**LDG THE LEGACY ON KIEST, LP,  
the Grantor,**

**to**

**COURTNEY WOJTON, ESQ.,  
the Deed of Trust Trustee**

**for the benefit of**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
the Beneficiary**

**Dated as of July 1, 2025**

**Relating to:**

**\$30,000,000**

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

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This instrument prepared by and  
when recorded return to:

Kutak Rock LLP  
Two Logan Square  
100 North 18<sup>th</sup> Street, Suite 1920  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.



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**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

This **LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**, dated as of July 1, 2025 (as amended, modified, supplemented or assigned from time to time, this “Mortgage”), by LDG THE LEGACY ON Kiest, LP, a limited partnership, duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “Grantor”), whose address is c/o LDG Development, LLC, 545 South Third Street, Louisville, Kentucky 40202 and its U.S. employer identification number is 84-3601479, to COURTNEY WOJTON, ESQ., (together with any successor deed of trust trustee hereunder, the “Deed of Trust Trustee”) whose address is 15950 Dallas Parkway, Suite 100, Dallas, Texas 75248, for the benefit of TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, having an address at P.O. Box 13941, Austin, Texas 78711-3941, [Attention: Teresa Morales] (the “Governmental Lender”) (together with its successors and assigns, the “Beneficiary”).

**WITNESSETH:**

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

**WHEREAS**, the Grantor has requested the Governmental Lender to enter into that certain Funding Loan Agreement by and among the Governmental Lender, Community Housing Investment Partners II, LP (the “Funding Lender”) and BOKF, NA (the “Fiscal Agent”), dated as of July 1, 2025 (the “Funding Loan Agreement”) under which the Governmental Lender will issue its Multifamily Housing Revenue Note dated as of the Closing Date (the “Governmental Note”) that will be purchased by the Funding Lender and Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be loaned to the Grantor pursuant to a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”) to finance the acquisition, construction, development, equipping and/or operation of the Project Facilities;

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

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Grantor will execute and deliver to the Governmental Lender its Borrower Note dated the Closing Date in the original face amount of \$30,000,000 (the “Borrower Note”);

**WHEREAS**, the rights of the Governmental Lender (excluding its Reserved Rights) under the Borrower Loan Agreement, this Mortgage, the Borrower Note and the other Funding Loan Documents are being assigned contemporaneously with the execution and delivery hereof to the Fiscal Agent for the benefit of the Funding Lender; and

**WHEREAS**, the Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Note and any other document or instrument given by the Grantor at any time to evidence or further secure any obligations assumed or undertaken by the Grantor in connection with the Governmental Note are sometimes hereinafter collectively referred to as the “Funding Loan Documents”; and

**WHEREAS**, all capitalized terms used herein without definition have the meanings given to such terms in the Funding Loan Agreement or the Borrower Loan Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of issuing the Governmental Note and making the Borrower Loan by the Governmental Lender to the Grantor, of the respective representations, covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, for the purpose of securing payment and performance of the Secured Obligations (defined below), and subject to the terms of this Mortgage, the Grantor hereby irrevocably and unconditionally grants, bargains, sells, transfers, conveys and assigns to the Deed of Trust Trustee, its successors and assigns, with power of sale, and with right of entry and possession, in trust for the benefit of Beneficiary, and its respective successors and assigns, and grants the Beneficiary a lien and a security interest in all estate, right, title and interest which the Grantor now has or may later acquire in and to the following property:

ALL OF Grantor's leasehold estate in the land which is described in Exhibit A (hereinafter sometimes called the "Land"), being the leasehold estate created by, and all of Grantor's right, title and interest, as lessee, in and to that certain lease dated as of July 1, 2025 (the "Ground Lease"), between DHFC The Legacy on Kiest Landowner, LLC, a Texas limited liability company, as lessor (the "Ground Lessor"), and Grantor, as lessee, a memorandum of which is intended to be recorded in the office of the recorder of deeds in and for Dallas County prior to the recording of this Mortgage (Grantor hereby expressly covenanting and agreeing that if Grantor shall, at any time before payment in full of the indebtedness secured hereby, acquire fee title or any other greater estate to the Land and/or any buildings, structures, improvements and fixtures thereon, then the lien of this Mortgage shall automatically attach, extend to, cover and be a lien upon such fee title or other greater estate);

TOGETHER WITH all right, title and interest of the Grantor in and to, and remedies under (a) any and all leases, subleases, license agreements, concessions, tenancies and other use or occupancy agreements (whether oral or written), or any part thereof, now or hereafter existing, covering or affecting any or all of the Property (as hereinafter defined), all extensions and renewals thereof, and all modifications, amendments and guaranties thereof (each of which is hereinafter called a "Lease"), and (b) any and all rents, income, receipts, revenues, royalties, issues, profits, contract rights, accounts receivable, or general intangibles growing out of or in connection with the Leases (whether from residential or non-residential space) and other payments, payable to the Grantor pursuant to any Lease, including, without limitation, cash or securities deposited under any Lease to secure performance by the tenants of their obligations under the Leases, whether such cash or securities are to be held until the expiration of the term of such Leases or are to be applied to one or more of the installments of rent coming due prior to the expiration of such terms and further including subsidy payments received from any source (collectively, the "Rents"), subject, however, to the provisions hereof; and

TOGETHER WITH all right, title and interest of the Grantor in and to any and all rights, alleys, ways, tenements, hereditaments, easements, passages, waters, water rights, water courses, riparian rights, licenses, franchises, privileges and appurtenances, including, without limitation, any easements and agreements which are or may be established to allow satisfactory ingress to, egress from and operation of the Land and the Improvements, now or hereafter to the same belonging or in any way appertaining, as well as any after-acquired right, title, interest, franchise, license, reversion and remainder, and

TOGETHER WITH all right, title and interest of the Grantor, including any after-acquired right, title or reversion, in and to the right of ways, streets, avenues and alleys, open or proposed, located wholly or partially within the boundary of the Land or adjacent thereto, and

TOGETHER WITH all buildings, structures, surface parking and other improvements of every kind and description now or hereafter erected or placed on the Land, all additions, alterations and replacements thereto or thereof, and all materials now owned or hereafter acquired by the Grantor and intended for the operation, construction, reconstruction, alteration and repair thereof, all of which materials shall be deemed to be included within the Property (hereinafter defined) immediately upon the delivery thereof to the Land (all of which are hereinafter called collectively the "Improvements" and, the Improvements and the Land are hereinafter called the "Premises"), and

TOGETHER WITH all of the walks, fences, shrubbery, driveways, fixtures, machinery, apparatus, equipment, fittings, and other goods of every kind and description whatsoever, now owned or hereafter acquired by the Grantor and attached to or contained in and used for any present or future operation or management of the Land or the Improvements, including, without limitation, all lighting, laundry, incinerating and power equipment; all engines, boilers, machines, motors, furnaces, compressors and transformers; all generating equipment; all pumps, tanks, ducts, conduits, wires, switches, fans, switchboards, and other electrical equipment and fixtures; all telephone equipment; all piping, tubing, plumbing equipment and fixtures; all heating, refrigeration, air conditioning, cooling, ventilating, sprinkling, water, power and communications equipment, systems and apparatus; all water coolers and water heaters; all fire prevention, alarm and extinguishing systems and apparatus; all cleaning equipment; all lift, elevator and escalator equipment and apparatus; all partitions, shades, blinds, awnings, screens, screen doors, storm doors, exterior and interior signs, gas fixtures, stoves, ovens, refrigerators, garbage disposals and compactors, dishwashers, cabinets, mirrors, mantles, floor coverings, carpets, rugs, draperies and other furnishings and furniture installed or to be installed or used or usable in any way in the operation of any Improvements or appurtenant facilities erected or to be erected in or upon the Land; and every renewal, replacement or substitution therefor, whether or not the same are now or hereafter attached to the Land in any manner; all except for any right, title or interest therein held by any tenant of any or all of the Land or the Improvements, or by any other person, so long as such tenant or other person is not a party hereto or bound, with respect to such right, title or interest, by the provisions hereof (it being agreed by the parties hereto that all personal property owned by the Grantor and placed by it on the Land shall, so far as permitted by law, be deemed to be affixed to the Land, appropriated to its use, and covered by this Mortgage), and

TOGETHER WITH any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of (a) any condemnation, either temporarily or permanently, (b) any change or alteration of the grade or widening of any street or road, and (c) any other damage, destruction, or injury to, or decrease in value of, the Land or the Improvements or any part thereof, to the extent of all Secured Obligations at the date of receipt by the Beneficiary of any such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and of the counsel fees, costs and disbursements, if any, incurred by the Beneficiary in connection with the collection of such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and

TOGETHER WITH all of Grantor's rights in and to policies of insurance including any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Land or the Improvements or any portion thereof, and

TOGETHER WITH all right, title and interest of the Grantor in and to the Management Agreement by and between the Grantor and Solidago Residential Services LLC, a Texas limited liability company dated [\_\_\_\_], 2025, and any modifications, amendments, extensions, renewals, replacements or substitutions thereof thereafter made, and

TOGETHER WITH all contract rights (including any contract deposits), but not any contract obligations or liabilities, relating to or arising out of any agreement to sell, transfer, assign, convey or encumber the Land, the Improvements, any portion thereof, any interest therein, and

TOGETHER WITH all plans and specifications, surveys, reports, diagrams, drawings, service contracts, accounting records, invoices, change orders, licenses, authorizations, certificates, variances, approvals and other permits necessary or appropriate to permit the construction, reconstruction, repair or alteration, addition, improvement, use, operation and management of the Land and the Improvements, and

TOGETHER WITH all of the Grantor's cash, bank accounts, notes and other instruments, documents, accounts receivable, contract rights, permits, receipts, sales and promotional literature and forms, advertising materials and the like, trademarks, names, logos, copyrights and other items of intangible personal property now or hereafter owned by the Grantor relating to the ownership, operation, development, leasing or management of the Land or the Improvements,

TOGETHER WITH all of Grantor's interest in and to all existing and future funds created under the Borrower Loan Agreement and the Funding Loan Agreement and other documents related to the Funding Loan, and Grantor's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operating, servicing or management of the Property (as defined below), whether now existing or entered into or obtained after the date hereof, all existing and known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the Property or any portion thereof, and

TOGETHER WITH all of Grantor's right, title and interest in and to the Subordinate Debt Documents, such right, title and interest being pledged and assigned as collateral security only with Grantor at all times remaining solely liable under the Subordinate Loan Documents to perform all of the obligations of Grantor thereunder;

TO HAVE AND TO HOLD the Land, the Improvements, fixtures, personal property, tenements, hereditaments, appurtenances and other property interests granted hereinabove (hereinafter collectively called the "Property") unto the Deed of Trust Trustee, its successors and assigns, for the benefit of the Beneficiary, its successors and assigns, subject only to the Permitted Encumbrances.

FOR THE PURPOSE OF SECURING:

(a) payment and performance of each and every obligation, covenant and agreement of the Grantor contained in the Borrower Note and the Borrower Loan Agreement from and after the execution and delivery thereof;

(b) performance of every obligation, covenant and agreement of the Grantor contained in any other Funding Loan Document or in any other agreement or instrument now or hereafter executed by the Grantor which recites that the obligations thereunder are secured by this Mortgage; and

(c) payment of all sums, with interest thereon at the rate set forth in the Borrower Note, the Borrower Loan Agreement and the other Funding Loan Documents that may become due and payable to or for the benefit of the Beneficiary pursuant to the terms of this Mortgage; and

(d) the reimbursement of the Beneficiary for all money advanced, as provided herein, and all expenses (including reasonable attorneys' fees) incurred or paid by, the Beneficiary on account of any

action (whether formal litigation or otherwise) that may arise in connection with this Mortgage, the Funding Loan Documents or the Property, or in obtaining possession of the Property as hereinafter provided.

The obligations described in subparagraphs (a) through (d) above shall hereinafter be referred to collectively as the “Secured Obligations.”

TO PROTECT THE SECURITY GRANTED BY THIS MORTGAGE, THE GRANTOR, AGREES AS FOLLOWS:

## ARTICLE 1 COVENANTS AND AGREEMENTS OF THE GRANTOR

Section 1.01. Payment and Performance of Secured Obligations. The Grantor shall pay and perform when due all of the Secured Obligations, including all of the Grantor’s obligations under the Borrower Loan Agreement and all of the other Funding Loan Documents, in accordance with the terms thereof.

Section 1.02. Maintenance, Repair, Alterations. The Grantor (i) shall maintain, keep and preserve the Property in accordance with the terms of the Borrower Loan Agreement and this Mortgage; (ii) shall not commit or permit any waste or deterioration of the Property; (iii) shall comply with the provisions of all Leases in all material respects; (iv) shall not abandon the Property or any portion thereof or leave the Premises vacant or deserted; (v) shall not initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Premises other than Permitted Encumbrances; (vi) shall secure and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Premises; (vii) shall not cause or permit any fixture or any article of Personal Property (as defined in Article 4 below) to be removed from the Premises without the prior written consent of the Controlling Person except in accordance with Section 4.02 (a); and (viii) except as otherwise prohibited or restricted by the Funding Loan Documents, shall do any and all other acts which may be reasonably necessary to protect and preserve the value of the Property and the rights of the Beneficiary with respect thereto.

Section 1.03. Required Insurance The Grantor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, at no expense to the Beneficiary, policies of insurance in form and amounts, issued by such insurance companies, associations or organizations, and covering such casualties, risks, perils, liabilities and other hazards as are required under Section 6.4 of the Borrower Loan Agreement.

### Section 1.04. Casualties; Insurance Proceeds.

(a) The Grantor shall give prompt written notice to the Beneficiary and the Controlling Person of the occurrence of any casualty to or in connection with the Premises or any part thereof that exceeds \$50,000 to repair (a “Material Casualty”), whether or not covered by insurance. The Controlling Person is hereby authorized and empowered by the Grantor to settle, adjust or compromise any and all claims for loss, damage or destruction that constitute a Material Casualty under any policy or policies of insurance without the consent of the Grantor. So long as no Event of Default has occurred and is continuing beyond any applicable notice, grace or cure period, the Grantor shall have the right to settle, adjust or compromise any casualty that is not a Material Casualty without the consent of the Beneficiary or the Controlling Person.

(b) In the event of a Material Casualty, all proceeds of insurance shall be payable to the Beneficiary for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Funding Loan Agreement, and the Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to the Beneficiary. If the Grantor receives any proceeds of insurance resulting from a Material Casualty, the Grantor shall promptly pay over such proceeds to the Beneficiary. In the event of any Material Casualty, the Controlling Person shall direct the Beneficiary in writing to apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including reasonable attorneys' and adjustor's fees and expenses, to the restoration of the Improvements, so long as (i) no Event of Default, or event or conditions that with the giving of notice would constitute an Event of Default, then exists and is continuing beyond any applicable cure period; (ii) such loss proceeds (including proceeds of property and rental interruption insurance) shall be in an amount sufficient to complete the restoration of the Improvements and, pay during the period of restoration and re-leasing all debt service or, if such loss proceeds are insufficient, the Grantor shall have deposited with the Beneficiary an amount equal to any deficiency within ten (10) business days of the determination of such deficiency and in any event prior to application of any loss proceeds to restoration of the Improvements; (iii) the plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Controlling Person in writing; (iv) the Controlling Person determines, in its reasonable discretion, that the Premises are capable of being fully restored by the earlier of (A) the date which is twelve (12) months from the occurrence of the loss or damage and (B) the Maturity Date (as set forth in the Borrower Note); (v) upon completion of restoration, the Property will be in compliance with the Regulatory Agreement; and (vi) the Grantor shall deliver to the Beneficiary and the Controlling Person an opinion of Governmental Lender Counsel (as defined in the Funding Loan Agreement) to the effect that restoration of the Property will not adversely affect the exclusion from gross income of interest on the Governmental Note for purposes of federal income taxation. If the foregoing conditions are met, the Beneficiary shall disburse the loss proceeds in accordance with customary construction loan practices upon submission of requisitions approved by the Controlling Person, and only as restoration is effected and continuing and expenses become due and payable.

(c) If any one or more of the above conditions are not met, the Beneficiary may direct that all or part of the loss proceeds, after deductions as herein provided, shall be applied to the mandatory prepayment of the Borrower Note in accordance with Section 3.4(b)(ii) of the Funding Loan Agreement. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact for the purpose of executing and delivering such notices, certificates and other documents and instruments, in the name of the Grantor, as may be required under the Funding Loan Documents to effect such prepayment. If the loss proceeds are not sufficient to satisfy fully the Secured Obligations, the Grantor shall pay to the Beneficiary any deficiency with respect thereto within twenty (20) business days of the determination of said deficiency. The application or release by the Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default or Event of Default under this Mortgage or invalidate any act done pursuant to such notice.

Section 1.05. Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage, exercise of the power of sale hereunder or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of the Grantor in and to all policies of property insurance maintained with respect to all or any portion of the Property and all other policies of insurance required by the Borrower Loan Agreement and relating to the Property shall inure to the benefit of and pass to the successor in interest to the Grantor or the purchaser or mortgagee of the Property, to the extent the same may be assigned.

Section 1.06. Condemnation.



(a) The Grantor shall promptly notify the Beneficiary and the Controlling Person if the Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Premises, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by Agreement of interested parties in lieu of such condemnation (all the foregoing herein called a “taking”); shall keep the Beneficiary and the Controlling Person currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to the Beneficiary copies of all notices, pleadings, judgments, determinations and other papers received or delivered by the Grantor therein. For purposes of this Mortgage, a taking that will decrease the value of the Premises by more than \$50,000, will materially restrict access to the Property, or will affect more than ten percent (10%) of the rentable square footage of the Improvements shall be a “Material Taking”. The Controlling Person shall have the right to direct the Beneficiary to appear and participate in any proceedings or negotiations in connection with a Material Taking (or in connection with any taking if at such time an Event of Default has occurred and is continuing), and in connection with such proceedings the Controlling Person and the Beneficiary may be represented by counsel of their choice. The Grantor will not, without the Controlling Person’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any agreement in a Material Taking for the taking of the Premises, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

(b) In the event of any Material Taking, the awards payable in connection therewith are hereby assigned to the Beneficiary, and the Grantor shall pay over such awards remaining after deduction of all expenses of collection and settlement, to the Beneficiary for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Funding Loan Agreement. Subject to the satisfaction of the conditions set forth in Section 1.04(b)(i)-(vi) hereof, the Controlling Person shall cause such awards to be applied to the costs to repair, rebuild or replace the portion of the Premises that was not subject to the taking, upon the terms and conditions as set forth in Section 1.04(b). If any of the conditions set forth in Section 1.04(b)(i)-(vi) hereof are not met, the Controlling Person may cause such awards to be applied to the mandatory prepayment of the Borrower Note as provided therein.

(c) If, in the event of the happening of any permanent taking, the Beneficiary shall be obligated to apply any awards received by it in connection with such taking towards the restoration of the Premises, the Grantor shall promptly, whether or not the awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Premises that was not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

Section 1.07. Obligations Unconditional; Waiver of Offset. All sums payable by the Grantor under this Mortgage shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein or in any of the Funding Loan Documents) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Beneficiary, or any action taken with respect to this Mortgage by a trustee or receiver of the Beneficiary, or by any court, in any such proceeding; (v) any claim which the Grantor has or might have against the Beneficiary; (vi) any default or failure on the part of the Beneficiary to perform or comply with any of the terms hereof; (vii) any default or failure on the part of the Beneficiary to perform or comply with any of the terms of any other

agreement with the Grantor; (viii) any homestead or similar rights; or (ix) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not the Grantor has notice or knowledge of any of the foregoing. Except as expressly provided herein, the Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Grantor.

Section 1.08. Taxes and Impositions; Deposits into Tax and Insurance Escrow Fund.

(a) In accordance with Section 8.2 of the Borrower Loan Agreement, the Grantor shall deposit with the Beneficiary the monthly tax and insurance amount required by the Controlling Person. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may be then or subsequently due for the payment of all Impositions and the insurance premiums for policies required hereunder and under the Borrower Loan Agreement, the Controlling Person may, without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to the Beneficiary for the reimbursement of the Controlling Person as herein elsewhere provided.

(b) The Grantor shall not suffer, permit or initiate the joint assessment of any real or personal property which may constitute all or a portion of the Property or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien; provided, however, that the Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such taxes, assessments or charges by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the Grantor's covenant to pay any such taxes, assessments or charges at the time and in the manner provided in this Section 1.08, unless the Grantor has given prior written notice to the Controlling Person of the Grantor's intent to so contest or object to a tax, assessment or charge, and unless, at the Controlling Person's sole option, (i) the Grantor shall demonstrate to the Controlling Person's satisfaction that the proceedings to be initiated by the Grantor shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such tax, assessment or charge prior to final determination of such proceedings; and (ii) the Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Controlling Person; and (iii) the Grantor shall demonstrate to the Controlling Person's satisfaction that the Grantor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(c) The Grantor hereby agrees to pay and indemnify the Beneficiary, the Fiscal Agent, the Noteowners and the Controlling Person from the payment of all documentary stamp taxes and intangible taxes that may be levied upon the holder of the Secured Obligations, the indebtedness evidenced by the other Funding Loan Documents, the making or recording of this Mortgage or any evidence of indebtedness secured hereby, or, except as otherwise expressly provided therein, the transactions contemplated by the Borrower Loan Agreement, this Mortgage or any of the other Funding Loan Documents, including interest, penalties and costs. The Grantor agrees to pay the Beneficiary, the Fiscal Agent, and the Controlling Person reasonable attorneys' fees and costs incurred in connection with any inquiry from or assertion by governmental authority that any such taxes have not been paid promptly when due.

Section 1.09. Utilities. The Grantor shall pay or cause to be paid prior to delinquency all utility charges incurred by the Grantor for the benefit of the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Premises or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon. The Grantor may contest any such charge in good faith and by appropriate proceedings promptly

initiated and diligently conducted if (i) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the Property subject to such lien or interfere with the operation of the Premises, (ii) the Grantor shall have established a reserve or made other appropriate provision as requested by and satisfactory to the Controlling Person, and (iii) any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed.

Section 1.10. Actions Affecting Property. The Grantor shall give the Beneficiary and the Controlling Person prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect, the Property, the security of this Mortgage or the rights or powers of the Deed of Trust Trustee or Beneficiary. The Grantor shall appear in and contest, in accordance with the written direction of the Controlling Person, any such action or proceeding and shall pay all out-of-pocket costs and expenses, including costs of evidence of title and reasonable attorneys' fees, in any such action or proceeding.

Section 1.11. Actions by the Beneficiary to Preserve Property. . If an Event of Default occurs and is continuing beyond any applicable cure period (or prior to an Event of Default if the Controlling Person determines in its sole and reasonable judgment that the same is necessary to preserve the Premises or the lien of this Mortgage or the other Funding Loan Documents thereon or on any other collateral securing the Secured Obligations, or is necessary to protect the life, health or safety of any persons on or near the Premises or the property of any such person), the Controlling Person in its reasonable discretion, without obligation to do so and without releasing the Grantor from any obligation, and, except as provided in the next succeeding sentences, may make any such payment, or perform any other act or take any appropriate action, including, without limitation, entry on the Premises and performance of work thereon, or direct the Beneficiary in writing to do the same in such manner and to such extent as it may deem necessary to protect the security hereof. The Beneficiary shall use reasonable efforts to notify the Grantor prior to making any such payment or doing any such act; provided, however, that the failure to provide such notice shall not in any way affect the Grantor's obligation to reimburse the Beneficiary or the Controlling Person in accordance with this Section nor shall either the Beneficiary or the Controlling Person incur any liability to the Grantor as a result of such failure. In connection therewith (without limiting its general powers, whether conferred herein, in any other of the Funding Loan Documents, or by law), the Beneficiary acting at the written direction of the Controlling Person shall have and is hereby given the right, but not the obligation, at any time after the occurrence of an Event of Default (i) to enter upon the Premises and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which it may consider necessary or proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security of this Mortgage or the rights or powers of the Beneficiary; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including attorneys' fees and costs or other necessary or desirable consultants. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary or the Controlling Person an amount equal to all of their respective costs and expenses incurred in connection with the exercise by the Beneficiary of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's, and attorneys' fees, together with interest thereon from the date of such expenditures to the date of payment at the Default Rate.

Section 1.12. Transfer of Property by the Grantor. The Grantor agrees that, except for Permitted Transfers, and except for the making of residential leases, the Grantor shall not transfer the Property or any portion thereof or interest therein without the prior written consent of the Controlling Person, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of any transfer of the Property or any portion thereof or interest therein (other than Permitted Transfers or as expressly permitted hereunder or under the Funding Loan Documents, or with the prior written consent of

the Controlling Person), the Beneficiary shall have the absolute right at the option of the Controlling Person, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the Controlling Person's right to require consent to future or successive transfers. With respect to any transfer that requires the consent of Controlling Person, the Controlling Person may grant or deny such consent in its sole and absolute discretion, and may charge a reasonable fee in connection with such request for consent. If consent is given, and if this Mortgage is not released to the extent of the transferred portion of the Property by a writing executed by the Beneficiary and recorded in the proper city, town, or county records, then any such transfer shall be subject to this Mortgage, and any such transferee shall, by accepting such transfer, assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release the Grantor or any maker or guarantor of any of the Secured Obligations from any liability hereunder or thereunder prior to the date of such transfer without the prior written consent of the Controlling Person. The covenants contained in this Section shall run with the Land and shall remain in full force and effect until all of the Secured Obligations are fully paid and fully performed. The Beneficiary may, without notice to the Grantor, deal with any transferees with reference to the Secured Obligations in the same manner as the Grantor, without in any way altering or discharging the Grantor's liability with respect thereto.

Section 1.13. Full Performance Required; Survival of Warranties. All obligations, representations, warranties and covenants of the Grantor contained in any Funding Loan Document shall survive the execution and delivery of this Mortgage and shall remain continuing obligations, warranties, representations and covenants of the Grantor so long as any portion of the Secured Obligations remains outstanding, and the Grantor shall fully and faithfully satisfy and perform all such obligations, representations, warranties and covenants.

Section 1.14. Liens. Except for Permitted Encumbrances, the Grantor shall not create, incur, or permit to exist any lien, encumbrance or charge upon the Property, or any portion thereof or interest therein (individually, a "Lien" or "Encumbrance" and collectively, "Liens or Encumbrances"). If the Grantor fails to remove and discharge any Lien or Encumbrance or contest the same in good faith after the same shall have been bonded over to the satisfaction of the Controlling Person, then, in addition to any other right or remedy of the Beneficiary, (i) the Beneficiary may, but shall not be obligated to, take such action at the written direction of the Controlling Person as the Controlling Person deems warranted to discharge any Lien or Encumbrance either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law and (ii) the Beneficiary shall have the absolute right, at the Controlling Person's written direction, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary an amount equal to all costs and expenses incurred by the Beneficiary in connection with the exercise by the Beneficiary of the foregoing right to discharge any such Lien or Encumbrance, together with interest thereon from the date of such expenditure to the date of payment at the Default Rate.

Section 1.15. Beneficiary's Powers. None of the following actions by or caused by the Beneficiary, with or without notice to any person, shall have any effect on either (a) the liability of any other person liable for the payment of any of the Secured Obligations, or (b) the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid or unperformed Secured Obligations: (i) the release of any person so liable, (ii) the extension of the maturity or the alteration of any of the terms of any of the Secured Obligations, (iii) the grant of any other indulgences, (iv) the release or reconveyance of all or any portion of the Property, (v)

the taking or release of any other or additional security for any of the Secured Obligations, or (vi) the making of arrangements with debtors in relation thereto.

Section 1.16. Trade Names. At the request of the Beneficiary, the Grantor shall execute a certificate in form reasonably satisfactory to the Beneficiary listing all of the trade names and fictitious business names under which the Grantor operates, or intends to operate, any portion of the Property or any business located thereon and representing and warranting that the Grantor does business under no other trade names or fictitious business names with respect to any portion of the Property. The Grantor shall promptly notify the Beneficiary and the Controlling Person in writing of any change in said trade names or fictitious business names, and will, upon request of the Beneficiary, execute any additional financing statements and other certificates necessary to reflect any change in said trade names or fictitious business names.

Section 1.17. Grantor Remains Liable. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under all contracts and agreements relating to the Property, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Mortgage had not been executed, (b) the exercise by the Beneficiary of any of its rights hereunder shall not release the Grantor from any of the Grantor's duties or obligations under any contracts and agreements related to the Property, and (c) the Beneficiary shall not have any obligations or liability under any of the contracts or agreements related to the Property by reason of this Mortgage and shall not be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 1.18. Warranties and Representations of Grantor. The Grantor represents and warrants to the Beneficiary as follows:

(a) The Grantor is the owner of a leasehold interest in the Land pursuant to the Ground Lease and is the fee simple owner of the Improvements and the owner of the other items described herein as Property free and clear of any lien, security interest, charge or encumbrance, except for the lien and charge of this Mortgage and the Permitted Encumbrances and will warrant and defend title to the Property against all claims and demands (subject to the Permitted Encumbrances).

(b) The Grantor has good, right and lawful authority to encumber the Property with and grant the lien and charge created by this Mortgage, and the execution, delivery and performance by the Grantor of this Mortgage have been duly authorized by all necessary parties and do not and will not (i) violate the partnership agreement, certificate of formation, charter or by-laws of the Grantor or any direct or indirect constituent partner of the Grantor or any provision of any law, rule or regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Grantor, or (ii) result in a breach of or constitute a default under any material indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Grantor is a party or by which the Grantor or its properties may be bound or affected. The Grantor will warrant and defend its title to the Property against claims of all persons and entities whomsoever (other than Permitted Encumbrances), and the Grantor will maintain and preserve the lien and charge of this Mortgage so long as any of the Secured Obligations is outstanding.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body, other than the recordation of this Mortgage in the official records of the city, town or county in which the Property is located, is required (i) for the grant by the Grantor of the lien created hereby or for the execution, delivery and performance by the Grantor of this Mortgage, or (ii) for the perfection of the security interests granted hereunder or the exercise by the

Beneficiary of the rights and remedies conferred hereunder (except as may be required by the express terms of this Mortgage).

Section 1.19. Other Instruments. The Grantor shall punctually pay all amounts due and payable under, and shall promptly and faithfully perform or observe each and every other obligation or condition to be performed or observed under the Funding Loan Documents, each mortgage, deed to secure debt, deed of trust, security agreement or other lien or security interest, or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement which affects the Property, in law or in equity.

Section 1.20. Further Acts. The Grantor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof and to carry into effect its objectives and purposes, in order to protect the Deed of Trust Trustee and Beneficiary. Promptly upon written request, from time to time, of the Beneficiary or the Controlling Person and at the Grantor's expense, the Grantor shall execute, acknowledge and deliver to the Beneficiary such other and further instruments and do such other acts as in the opinion of the Beneficiary or the Controlling Person may be necessary or appropriate to (a) grant to the Beneficiary the priority perfected lien and security interest in respect of the Property to secure all of the Secured Obligations, (b) grant to the Deed of Trust Trustee, to the fullest extent permitted by applicable law, the right to foreclose on the Property judicially or nonjudicially or to exercise the power of sale, (c) correct any defect, error or omission which may be discovered in the contents of this Mortgage (including all exhibits and/or schedules hereto) or any of the other Funding Loan Documents, (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby and properly intended by the terms hereof to be covered hereby (including any renewals, additions, substitutions, replacements or appurtenances to the Property), (e) assure the intended priority of this Mortgage and of such liens, encumbrances, security interests and assignments, and (f) otherwise effect the intent of this Mortgage. Without limiting the generality of the foregoing, the Grantor, upon the Beneficiary's or the Controlling Person's written request, at such times and as often as may be reasonably necessary, and, to the extent consistent with applicable law, at the Grantor's own expense, shall promptly record, rerecord, file and refile in such offices, this Mortgage, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests (and priority thereof) intended to be created hereby and the rights and remedies of the Beneficiary hereunder. Upon written request by the Deed of Trust Trustee and Beneficiary or the Controlling Person, the Grantor shall supply evidence of fulfillment of its obligations under this Section 1.20.

Section 1.21. Preservation of Grantor's Leasehold Interest under Ground Lease.

(a) Grantor will promptly pay (before they become delinquent) all rents, charges and other sums or amounts required to be paid by Grantor under the Ground Lease, and will further keep and perform all of the covenants, terms and provisions of the Ground Lease that impose any obligations on Grantor under the Ground Lease, and will do all other things necessary to preserve and keep unimpaired the rights of Grantor under the Ground Lease.

(b) Grantor will promptly send to the Beneficiary a true copy of any notice of default served on the Grantor under the Ground Lease, and Grantor will promptly, if known, notify the Beneficiary in writing of the occurrence of any event, which, with or without any notice or lapse of time or both, would constitute a default on the part of Grantor under the Ground Lease.

(c) Grantor will not surrender the Ground Lease or its leasehold estate thereunder, nor terminate or cancel the Ground Lease, nor assign any of its rights or obligations under the Ground Lease without first obtaining the prior written consent of the Beneficiary. Nor will Grantor make or

consent to any modification, change, supplement, amendment or alteration of any terms of the Ground Lease without first obtaining the prior written consent of the Beneficiary. Grantor hereby assigns to the Beneficiary all rights, which it may have now or in the future to terminate, cancel, modify, change, supplement, amend or alter the Ground Lease.

(d) Grantor agrees to exercise any option to renew or extend the Ground Lease if at the time that option becomes exercisable any indebtedness secured by this Mortgage has not been fully paid. Grantor will confirm exercise of that option to the Beneficiary in writing within ten (10) days after the date on which that option first becomes exercisable. Grantor hereby irrevocably appoints the Beneficiary as its attorney-in-fact, with full power of substitution, to exercise any such option on behalf of Grantor if Grantor for any reason fails or refuses to exercise that option at least twenty (20) days prior to the expiration of the period of time for its exercise.

(e) Grantor will, within twenty (20) days after written request by the Beneficiary and at no cost to the Beneficiary, obtain and deliver to the Beneficiary from the Grantor under the Ground Lease any Grantor's estoppel certificate provided for in the Ground Lease.

(f) Upon the Beneficiary's request, Grantor will submit satisfactory evidence of payment of all of its monetary obligations under the Ground Lease (including but not limited to ground rent, taxes, assessments, insurance premiums and operating expenses).

(g) If at any time Grantor fails to comply fully with any of its obligations under the Ground Lease, and that failure in any manner threatens to impair the Beneficiary's security under this Mortgage, or if the Beneficiary, Controlling Person and/or Funding Lender is given the right to cure any of Grantor's defaults under the terms of the Ground Lease, then the Beneficiary, Controlling Person and/or Funding Lender may, but is not obligated to, perform any of those obligations on behalf of Grantor or cure any of Grantor's defaults. The Beneficiary, Controlling Person and/or Funding Lender may take such action with notice to but without demand upon Grantor and without releasing Grantor from any obligation under this Mortgage. Any and all costs and expenses (including but not limited to legal fees and disbursements) incurred by the Beneficiary, Controlling Person and/or Funding Lender in connection with any such actions will be immediately due and payable by Grantor on demand and will bear interest, at the higher of ten percent (10%) per annum or the interest rate set forth in the Notes, from the time of advancement by the Beneficiary, Controlling Person and/or Funding Lender until repaid.

The Beneficiary, Controlling Person and/or Funding Lender will have the right to appear in and participate in all proceedings, including any arbitration proceedings, which would affect the Beneficiary's security in the leasehold interest of Grantor under the Ground Lease. Grantor agrees to pay promptly upon demand all reasonable costs and expenses of the Beneficiary, Controlling Person and/or Funding Lender (including but not limited to legal fees and disbursements) incurred in any such proceedings.

## ARTICLE 2

### ASSIGNMENT OF RENTS, LEASES AND OTHER AGREEMENTS

Section 2.01. Assignment of Rents and Leases, Issues and Profits. As part of the consideration for the Secured Obligations, and not as additional security therefor, the Grantor hereby irrevocably, absolutely, presently, and unconditionally assigns to the Beneficiary all of the Rents and hereby gives to and confers upon the Beneficiary the right, power and authority to collect such Rents. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, acting at the written direction of the Controlling Person, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in its name or in the name of the Grantor, for all such Rents, and apply the same to the payment of the Secured Obligations; provided, however, that the Grantor

shall have and is hereby granted the right, in the form of a revocable license, to enforce payment, give satisfactions, sue for and collect such Rents (but not more than one month in advance unless the written approval of the Controlling Person has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing. The assignment of the Rents in this Article 2 is intended to be an absolute assignment from the Grantor to the Beneficiary and not merely the passing of a security interest. The Grantor and the Beneficiary further agree that, solely for the purposes of any bankruptcy of the Grantor or its general partners, during the term of this Mortgage, the Rents shall not constitute property of the Grantor (or of any estate of the Grantor) within the meaning of 11 U.S.C. §541, as amended from time to time.

Section 2.02. Collection Upon Default. Upon the occurrence and during the continuation of an Event of Default hereunder, the license granted to the Grantor in Section 2.01 shall be automatically revoked without notice. The Beneficiary may, at any time without notice, upon the written direction of the Controlling Person, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Premises, or any part thereof, and, with or without taking possession of the Premises or any part hereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with the Grantor by any lessee or tenant of the Grantor to secure the payment of any rent or for any services thereafter to be rendered by the Grantor for any other obligation of any tenant to the Grantor arising under any Lease). The Grantor agrees that, upon the occurrence and continuance of any Event of Default hereunder beyond all applicable notice, grace and/or cure periods, the Grantor shall promptly deliver all such Rents and monies to the Beneficiary. The Beneficiary shall apply such Rents and monies (other than security deposits), in the following manner:

First, to the cost of receivership;

Second, to the payment of all taxes and lien assessments levied against the Premises, where provision for paying such is not otherwise made;

Third, to the payment of any amounts due and owing under the Secured Obligations;

Fourth, to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Premises;

Fifth, to Grantor or its designee.

All Rents collected by Beneficiary shall be applied to the items above according to those priorities set forth in Chapter 654 of the Texas Code.

The collection of such Rents, or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make the Beneficiary a mortgagee-in-possession of the Premises or any portion thereof.

Section 2.03. Assignment of Leases.

(a) As part of the consideration for the Secured Obligations, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in, to and under the Leases, including Grantor's right, power and authority to modify the terms of any such Lease,



or extend or terminate any such Lease. It is the intention of Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Grantor's right, title and interest in, to and under the Leases. Grantor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Property," as that term is defined in the granting clauses. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State of Texas (the "State"), then the Leases shall be included as a part of the Property and it is the intention of the Grantor that in this circumstance this Mortgage create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Mortgage.

(b) Until the occurrence and continuance of an Event of Default beyond any applicable notice, grace or cure period, Grantor shall have all rights, power and authority granted to Grantor under any Lease (except as otherwise limited by this Section or any other provision of this Mortgage), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence and continuance of an Event of Default beyond any applicable notice, grace or cure period, the permission given to Grantor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Grantor shall comply with and observe Grantor's obligations under all Leases, including Grantor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Grantor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Section 2.03 shall not be construed to make Beneficiary a mortgagee-in-possession of the Property so long as Beneficiary has not itself entered into actual possession of the Land and the Improvements. The acceptance by Beneficiary of the assignment of the Leases pursuant to Section 2.03(a) shall not at any time or in any event obligate Beneficiary to take any action under this Mortgage or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Beneficiary's actual entry into and taking possession of the Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Mortgage by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

(d) From and after the occurrence and continuation of an Event of Default beyond all applicable cure periods, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State, Beneficiary immediately shall have all rights, powers and authority granted to Grantor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Grantor shall, promptly upon Controlling Person's request, deliver to Controlling Person an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Controlling Person, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Controlling Person's prior written consent.

(f) Grantor shall not lease any portion of the Property for non-residential use, except for leases for services associated with residential rental properties (such as laundry and cable lease) and minor service leases entered into in the ordinary course of business in an amount not to exceed \$25,000, except with the prior written consent of Controlling Person and Controlling Person's prior written approval of the Lease agreement, which consent and/or approval shall not be unreasonably withheld, conditioned or delayed. Grantor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Mortgage) without the prior written consent of Controlling Person. Grantor shall, without request by Controlling Person, deliver an executed copy of each non-residential Lease to Controlling Person promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Mortgage (unless waived in writing by Controlling Person); (2) the tenant shall attorn to Controlling Person and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Property by any purchaser at a foreclosure sale or by Controlling Person in any manner; (3) the tenant agrees to execute such further evidences of attornment as Controlling Person or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Property; (5) after a foreclosure sale of the Property, Controlling Person or any other purchaser at such foreclosure sale may, at Controlling Person's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Controlling Person, pay all Rents payable under the Lease to Controlling Person.

(g) Grantor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

Section 2.04. Further Assignments. Upon written demand of the Beneficiary or the Controlling Person, the Grantor shall, from time to time hereafter, execute and deliver to the Beneficiary recordable assignments of any other agreements relating to, or affecting the use, occupancy, management or maintenance of, or services provided to, the Property or now or hereafter affecting the Property or any portion thereof. Each such assignment shall be made by an instrument (herein, an "Assignment") in form and substance satisfactory to the Controlling Person. The Beneficiary may, at the written direction of the Controlling Person, exercise its rights hereunder or under any such Assignment, and such exercise shall not constitute a waiver of any right hereunder or thereunder. To the extent not inconsistent, all rights and remedies of the Beneficiary under any such Assignment and under this Mortgage shall be cumulative.

### **ARTICLE 3**

#### **REMEDIES UPON DEFAULT**

Section 3.01. Event of Default. The term "Event of Default", as used herein means an "Event of Default" as defined in the Borrower Loan Agreement. The General Partner or Special Limited Partner shall have the right, but not the obligation, to cure any default hereunder and all parties agree to accept such performance as if done by the Grantor itself. Investor Limited Partner shall have the right, but not the obligation, to cure any default hereunder and all parties agree to accept such performance as if done by the Grantor itself.

Section 3.02. Acceleration Upon Default. Upon the occurrence and continuation of an Event of Default, the Beneficiary, acting at the written direction of the Controlling Person, may declare all Secured Obligations to be immediately due and payable upon ten (10) days' written notice or demand; provided no such declaration shall be required, and acceleration shall be deemed to have occurred, if the default is an event set forth in Section 7.1(g) of the Borrower Loan Agreement. Grantor acknowledges that the power of sale granted in this Mortgage may be exercised by Beneficiary without prior judicial

hearing. Beneficiary will be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys' fees and costs, costs of documentary evidence, abstracts and title report.

Section 3.03. Remedies.

(a) Upon the occurrence and continuance of an Event of Default beyond any applicable notice, grace or cure period, the Beneficiary, acting at the written direction of the Controlling Person, may either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security,

(i) enter upon the Premises and take possession of the Property, or any part thereof, in its own name, and do any act which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof;

(ii) with or without taking possession of the Premises, sue for or otherwise collect the Rents including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, to the payment of any Secured Obligations, all in such order as the Beneficiary may determine;

(iii) deliver to the Deed of Trust Trustee a written declaration of default and demand for sale, and a written notice of default and of election to cause the Property to be sold, and cause any or all of the Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

(iv) specifically enforce any of the covenants hereof; or

(v) exercise all other rights and remedies provided herein, in any of the other Funding Loan Documents, or provided by law or equity.

(b) The entering upon the Premises and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession, by the Beneficiary or a receiver of all or any portion of the Property or the collection, receipt and application of any of the Rents thereby, the Beneficiary shall be entitled to exercise every right provided for in any of the Funding Loan Documents or by law upon occurrence of any Event of Default that extends beyond the expiration of all notice, grace or cure periods.

Section 3.04. Foreclosure.

(a) When the Secured Obligations, or any part thereof, shall become due, whether upon maturity, by acceleration, or otherwise, the Deed of Trust Trustee on behalf of the Beneficiary, acting at the written direction of the Controlling Person, may institute an action of foreclosure against the Property, or take such other action at law or in equity of the enforcement of this Mortgage and realization on the Property or any other security herein or elsewhere provided for as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Secured Obligations, with interest from and after the occurrence and continuance of the Event of Default beyond any applicable cure period at the Default Rate together with all other sums due by the Grantor in accordance with the provisions of this Mortgage and the other Funding Loan Documents including all sums which may have been paid, incurred or advanced by or on behalf of the Beneficiary or the Controlling Person for taxes, water or sewer rents, charges or claims, payments of prior liens, insurance appraiser's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Beneficiary or the Controlling Person may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Property, all costs of suit, together with interest at the Default Rate on any judgment obtained by the Beneficiary from and after the date of such judgment including the period from and after the date of any judicial sale until actual payment is made of the full amount due the Beneficiary as a result of such sale, and a reasonable attorney's commission for collection.

(b) If any or all of the Premises or any estate or interest therein is to be sold under the provisions of this Mortgage, by virtue of a judicial sale, it may be sold, as an entirety or in one or more parcels, by one sale or by several sales held at one time or at different times, with such postponement of any such sale as the Beneficiary, acting at the written direction of the Controlling Person, may deem appropriate and without regard to any right of the Grantor or any other person to the marshaling of assets. The Beneficiary or the Controlling Person may bid and become the purchaser at any such sale.

(c) Upon any sale of the Grantor's interest in any or all of the Property, whether by other foreclosure or judicial proceedings, the proceeds of such sale, together with any other sum then held as security hereunder or due under any of the provisions hereof as part of the Property (after paying all expenses of sale, including reasonable attorneys' fees, and all taxes, assessments or impositions in connection with the Property which the Beneficiary deems it advisable or expedient to pay and all sums advanced, with interest thereon, as herein provided shall be applied) to the payment of the Secured Obligations then due and owing under the Funding Loan Documents and secured hereby and interest thereon to the date of payment and prepayment fees, if any, paying over the surplus, if any, less the expense, if any, of obtaining possession, to the Grantor or any person entitled thereto upon the surrender and delivery to the purchaser of possession of the Property.

Section 3.05. Appointment of Receiver. The Beneficiary, acting at the written direction of the Controlling Person, may apply for the appointment of a receiver of the Premises and/or the Rents, without notice except as required by law, and shall be entitled to the appointment of the receiver as a matter of right, without consideration of the value of the Premises, the solvency of any person liable for the payment of the Secured Obligations, or the effect of the receivership on the operation of the Premises or the Grantor's business thereon.

Section 3.06. Application of Funds After Default. Except as otherwise herein provided or provided in the other Funding Loan Documents, upon the occurrence and continuance of an Event of

Default beyond all applicable notice, grace or cure periods hereunder, the Beneficiary, acting at the written direction of the Controlling Person, may, at any time without notice, apply any or all sums or amounts received and held by the Beneficiary (other than the security deposits from tenant leases) to pay insurance premiums, taxes, assessments and other impositions in connection with the Property, or apply amounts received as rents or income of the Property, or as insurance or condemnation proceeds, and all other sums or amounts received by the Beneficiary from or on account of the Grantor or the Property, or otherwise, to any of the Secured Obligations then due and payable, in such manner and order as the Beneficiary, acting at the written direction of the Controlling Person, may elect, notwithstanding that said indebtedness or the performance of said obligation may not yet be due. The receipt, use or application of any such sum or amount shall not be construed (i) to affect the maturity of any Secured Obligations or any of the rights or powers of the Beneficiary hereunder or under the terms of the Funding Loan Documents; or (ii) any of the obligations of the Grantor or any guarantor hereunder or under the Funding Loan Documents; or (iii) to cure or waive any default or notice of default hereunder or under any of the Funding Loan Documents; or (iv) to invalidate any act of the Beneficiary.

Section 3.07. Costs of Enforcement. If any Event of Default occurs and continues beyond all applicable notice, grace or cure periods, the Beneficiary and the Controlling Person may employ an attorney or attorneys to protect their respective rights hereunder. The Grantor agrees to pay to the Beneficiary or the Controlling Person (as applicable), on demand, the fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby, including recording fees, receivers' fees and expenses, and all other expenses, of whatever kind or nature, incurred by the Beneficiary, in connection with the enforcement of the Secured Obligations, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest, from date of expenditure, at the Default Rate.

Section 3.08. Remedies Not Exclusive. The Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Mortgage or under any Funding Loan Documents or other agreement or any law now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, deed to secure debt, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Beneficiary's rights to realize upon or enforce any other security now or hereafter held by the Beneficiary, it being agreed that the Beneficiary shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Beneficiary in such order and manner as the Controlling Person in its sole discretion may direct in writing. No remedy herein conferred upon or reserved to the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute. Every power or remedy given hereunder or under any of the Funding Loan Documents to the Beneficiary or to which the Beneficiary may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Beneficiary or the Controlling Person, and the Beneficiary and the Controlling Person may pursue inconsistent remedies.

Section 3.09. Power of Sale.

(a) During the continuance of an Event of Default, the Beneficiary, upon the direction of the Controlling Person, may request the Deed of Trust Trustee to proceed with foreclosure under the power of sale, to the extent permitted by law, which is hereby conferred.

(b) When the Secured Obligations, or any part thereof, shall become due, whether upon maturity, by acceleration, or otherwise, the Beneficiary, upon the direction of the Controlling

Person, may require the Deed of Trust Trustee to exercise the power of sale granted under this Section 3.09 and upon such notification it shall be lawful for and the duty of the Deed of Trust Trustee, and the Deed of Trust Trustee is hereby authorized and empowered to expose to sale and to sell the Property or any part thereof as follows:

(i) Deed of Trust Trustee shall proceed to sell the same at auction at the Property or at other place in the city or county in which the Property or the greater part hereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the land was formerly a part, as Deed of Trust Trustee may select upon such terms and conditions as Deed of Trust Trustee may deem best after first advertising the time, place and terms of sale not less than once a week for two weeks if published on a weekly basis in advance of the date of such sale, in a newspaper published or having a general circulation in the county or city in which the Property or some portion thereof is located or such other public notice as may be required by applicable law.

(ii) The power of sale above granted may be exercised at different times as to different portions of the Property, and if for any reason any executory contract of sale shall not be performed, then new contracts may be made with respect to the same portion of the Property (with or without other portions). If the Deed of Trust Trustee deems it best for any reason to postpone or continue the sale at any time or from time to time, s/he may do so, in which event Deed of Trust Trustee shall announce, at the time and place last appointed for such sale, the postponement thereof and the time and place for the postponed sale, or shall give further notice of sale as Deed of Trust Trustee may see fit to give, and in either case the proposed sale will be advertised as required by law.

(iii) The Deed of Trust Trustee shall deliver to the purchaser at any such trustee's sale its deed, without warranty, or in such other form as may be required by applicable law, which shall convey to the purchaser the interest in the property which the Grantor has or has the power to convey at the time of the execution of this Mortgage, and such as it may have acquired hereafter. The Deed of Trust Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of this Mortgage, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrances for value. With respect to any notices required or permitted under the Uniform Commercial Code, Grantor agrees that thirty (30) days' prior written notice (with a copy to the Investor Limited Partner shall be deemed commercially reasonable. At any such sale (A) whether made under the power herein contained, the Uniform Commercial Code, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Deed of Trust Trustee to be physically present at or to have constructive possession of the Property (Grantor shall deliver to Deed of Trust Trustee any portion of the Property not actually or constructively possessed by Deed of Trust Trustee immediately upon demand by Deed of Trust Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Deed of Trust Trustee had been actually present and delivered same to purchaser at such sale, (B) each instrument of conveyance executed by Deed of Trust Trustee shall contain a special warranty of title, binding upon Grantor, (C) each recital contained in any instrument of conveyance made by Deed of Trust Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Secured Obligations, advertisement and conduct of such sale in the manner provided herein and otherwise by law, and appointment of any successor Deed of Trust Trustee hereunder, (D) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (E) the receipt of Deed of Trust Trustee or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (F) to the fullest extent

permitted by law, Grantor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Grantor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Grantor. Beneficiary may be a purchaser at such sale and if Beneficiary is the highest bidder, may credit the portion of the purchase price that would be distributed to Beneficiary against the Secured Obligations in lieu of paying cash. If Beneficiary so elects, Beneficiary may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC. If the Secured Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Beneficiary may at its option exhaust the remedies granted under any of said security instruments either concurrently or independently, and in such order as Beneficiary may determine.

#### **ARTICLE 4** **SECURITY AGREEMENT**

Section 4.01. Creation of Security Interest. The Grantor hereby grants to the Beneficiary a security interest in all rights, titles, interests, estates, power and privileges that the Grantor now has or may hereafter acquire in and to that portion of the Property, which, under applicable law, may be subject to a security interest under the Uniform Commercial Code of the State of Texas (the "Personal Property") to secure the Secured Obligations.

Section 4.02. Representations, Warranties and Covenants of the Grantor. The Grantor hereby represents, warrants and covenants as follows:

(a) The tangible portion of the Personal Property shall be kept on or at the Premises and the Grantor shall not, without the prior written consent of the Controlling Person, which consent shall not be unreasonably withheld, conditioned or delayed, remove the Personal Property or any portion thereof therefrom except as set forth in the Plans and Specifications and such portions or items of Personal Property as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by the Grantor with similar items of comparable value if required for the efficient operation of the Premises.

(b) The Grantor shall promptly notify the Controlling Person of any material claim against the Personal Property adverse to the interest of the Beneficiary therein.

(c) Without the prior written consent of the Controlling Person, the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed, shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in the Personal Property, including replacements and additions thereto.

Section 4.03. Use of Personal Property by the Grantor. Until the occurrence and continuance of an Event of Default beyond all applicable notice, grace and cure periods hereunder, the Grantor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Mortgage and not inconsistent with any policy of insurance covering the Premises or the Personal Property.

Section 4.04. Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Article 3, upon the occurrence of an Event of Default and during the continuation thereof beyond all applicable notice, grace and cure periods,

the Beneficiary may, acting at the written direction of the Controlling Person, at the Controlling Person's option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom the Grantor and all others claiming under the Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Grantor with respect to the Personal Property or any part thereof;

(ii) Without notice to or demand upon the Grantor, make such payments and do such acts as the Controlling Person may direct in writing to protect the Beneficiary's security interest in the Personal Property (including paying, purchasing, contesting or compromising any Lien or Encumbrance (other than Permitted Encumbrances), whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require the Grantor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by the Beneficiary and promptly deliver such Personal Property to the Beneficiary or an agent or representative designated by the Beneficiary;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon the Beneficiary by this Mortgage or by any of the other Funding Loan Documents or by law, either concurrently or in such order as the Controlling Person may determine;

(v) Sell or cause to be sold in such order as the Controlling Person may determine, as a whole or in such parcels as the Controlling Person may determine, the Personal Property;

(vi) Sell, lease or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as the Controlling Person may determine, and the Beneficiary or the Controlling Person may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

The Beneficiary, the Controlling Person and their respective agents and representatives shall have the right to enter upon any or all of the Premises to exercise the Beneficiary's rights hereunder.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Beneficiary shall give the Grantor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made, which notice the Grantor agrees is reasonable. Such notice may be mailed to the Grantor at its address set forth in the opening paragraph of this Mortgage.

(c) Subject to the terms of Section 5.7 of the Funding Loan Agreement, the proceeds of any sale under Section 4.04(a)(vi) shall be applied as follows:

(i) to the repayment of the costs and expenses of taking, holding and preparing for the sale and the selling of the Personal Property (including costs of litigation and reasonable attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any,



on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) the payment of the Secured Obligations, including interest, in such order as the Controlling Person shall determine;

(iii) to be held as collateral for any obligation of the Grantor to the Beneficiary under the Funding Loan Documents; and

(iv) the surplus, if any, shall be paid to the Grantor or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) The Beneficiary, acting upon the written direction of the Controlling Person, shall have the right to enforce one or more remedies under this Section 4.04 successively or concurrently and such action shall not operate to stop or prevent the Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the provisions hereof shall not operate to release the Grantor until full payment of any deficiency has been made in cash.

Section 4.05. Security Agreement. This Mortgage constitutes and shall be deemed to be a “security agreement” for all purposes of the Uniform Commercial Code; and the Beneficiary shall be entitled to all the rights and remedies of a “secured party” under the Uniform Commercial Code as to any Personal Property. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph of this Mortgage.

Section 4.06. Fixture Filing. Some of the Personal Property is or is to become fixtures on the Premises and this instrument is to be recorded in the real estate records. This Mortgage is effective as a financing statement filed as a fixture filing, executed by the Grantor, as debtor, in favor of the Beneficiary, as secured party, with respect to all fixtures included in the Property and the Personal Property. Products of the collateral are also covered. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph of this Mortgage. The Grantor’s organizational identification number is 805440935.

Section 4.07. Financing Statements. The Grantor hereby authorizes the Beneficiary or Controlling Person to file any financing statements, as well as extensions, renewals and amendments thereof, and any reproductions of this Mortgage in such form as the Beneficiary or Controlling Person may require to perfect a security interest with respect to such items. The Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements as the Beneficiary or the Controlling Person may require. The filing of such financing statements shall under no circumstance be construed as impairing either the Beneficiary’s remedies or the priority of the lien granted hereby, and the Grantor agrees that all items of Personal Property are, and at all times, for all purposes and in all proceedings (both legal and equitable) shall be, at the election of the Beneficiary or Controlling Person, regarded as part of the real estate encumbered by this Mortgage. It is understood and agreed that the Beneficiary shall have no duty or obligation to file financing statements hereunder, and such duty shall be solely that of the Grantor.

## ARTICLE 5 MISCELLANEOUS

Section 5.01. Amendments. No amendment or waiver of any provision of this Mortgage nor consent to any departure by the Grantor herefrom shall in any event be effective unless the same shall be

in writing and signed by the Beneficiary with the prior written consent of the Controlling Person, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. All amendments shall be made in accordance with any applicable provisions of Article VI of the Funding Loan Agreement.

Section 5.02. Future Advances. Until this Mortgage is released of record, the Beneficiary may advance or re-advance additional sums of money to the Grantor from time to time and such advances or re-advances shall become part of the Secured Obligations secured hereby to the fullest extent permitted by law.

Section 5.03. Business Purpose. The Grantor hereby stipulates and warrants that the Secured Obligations are a commercial facility and that such facility is being granted solely to acquire or carry on a business, professional or commercial enterprise or activity.

Section 5.04. Grantor Waiver of Rights. The Grantor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the indebtedness secured hereby and marshaling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which the Grantor may have or be able to assert by reason of applicable laws pertaining to the rights and remedies of sureties, and (d) all homestead rights.

Section 5.05. Statements by the Grantor. The Grantor shall, within ten (10) days after a request from the Beneficiary or the Controlling Person, deliver to the Beneficiary and the Controlling Person a written statement setting forth the then unpaid amounts of the Secured Obligations and stating whether any offset or defense exists against payment of such amounts.

Section 5.06. Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given in the manner prescribed in the Borrower Loan Agreement, to the addresses provided therein. All notices provided herein to the Beneficiary shall also be provided to the Controlling Person and to R4 LKTX Acquisition LLC as Investor Limited Partner.

Section 5.07. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.08. Invalidity of Certain Provisions. Every provision of this Mortgage is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Secured Obligations, and all payments made under the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Mortgage.

Section 5.09. Subrogation. To the extent that the Beneficiary or the Controlling Person pays any outstanding lien, charge or prior encumbrance against the Property, the Beneficiary or the Controlling Person, as applicable, shall be subrogated to any and all rights and liens held by any owner or holder of

such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

Section 5.10. Attorneys' Fees. If the Secured Obligations are not paid when due or if any Event of Default occurs, the Grantor agrees to pay all costs of enforcement and collection incurred by the Beneficiary or the Controlling Person, including attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" and "attorneys' fees and costs" shall each mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" and "attorneys' fees and costs" shall also each include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred and shall also include all such fees and expenses incurred in enforcing any judgment. This agreement to pay costs is part of and not a limitation on any obligation on the part of the Grantor to pay costs and expenses under the Borrower Loan Agreement.

Section 5.11. Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES.

NOTWITHSTANDING THE FOREGOING, THE PARTIES STIPULATE AND AGREE THAT THE BENEFICIARY MAY ENFORCE, IN ACCORDANCE WITH THE LAW OF THE STATE, ANY OR ALL OF ITS RIGHTS TO SUE THE GRANTOR, TO COLLECT ANY INDEBTEDNESS IN TEXAS OR ELSEWHERE, BEFORE OR AFTER FORECLOSURE, AND IF THE BENEFICIARY OBTAINS A DEFICIENCY JUDGMENT OUTSIDE OF THE STATE, THE BENEFICIARY MAY ENFORCE THAT JUDGMENT IN THE STATE, AS WELL AS IN OTHER STATES.

Section 5.12. Construction. Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine and neuter genders shall each be deemed to include the others. Except as otherwise indicated herein, all section and exhibit references in this Mortgage shall be deemed to refer to the sections and exhibits of and to this Mortgage, and the terms "herein", "hereof", "hereto", "hereunder" and similar terms refer to this Mortgage generally rather than to the particular provision in which such term is used. Whenever the words "including", "include" or "includes" are used in this Mortgage, they shall be interpreted as though immediately followed by the words "without limitation." As used herein, the word "person" includes corporation, partnership, limited liability company, and any other form of association, as well as any governmental or quasi-governmental body or agency.

Section 5.13. Non-foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code") provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property pursuant to the terms of this Mortgage, the Grantor hereby certifies, under penalty of perjury, that the Grantor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder, that the Grantor's U.S. employer identification number and that the Grantor's principal place of business is as set forth on the first page of this Mortgage. It is understood that the Beneficiary may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. The Grantor shall execute such further certificates, which shall be signed under penalty of perjury, as the

Beneficiary shall reasonably require. The covenants set forth in this Section shall survive the foreclosure of the lien of this Mortgage or acceptance of a deed in lieu thereof.

Section 5.14. Access to Property and Dissemination of Information. The Grantor hereby authorizes the Deed of Trust Trustee, Beneficiary, the Controlling Person, any prospective bidder at any foreclosure sale, or in connection with the exercise of the power of sale hereunder, and their respective officers, directors, employees, agents and independent contractors, upon reasonable prior notice and so long as such persons do not unreasonably interfere with the Grantor's operations on the Premises or the rights of tenants, to enter upon all or any portion of the Premises at any time and from time to time (following the occurrence and continuance of an Event of Default beyond all applicable notice, grace and cure periods) for the purpose of conducting such tests, inspections, inquiries, examinations, studies, analyses, samples, surveys and other information-gathering activities (collectively, "Tests and Studies") with respect to the Premises as any of them may from time to time deem reasonably necessary or appropriate, including Tests and Studies with respect to the structural integrity of the Improvements and the presence of hazardous substances in or around the Premises. The Grantor hereby covenants and agrees to reasonably cooperate with such persons and entities in their efforts to conduct Tests and Studies, and further covenants and agrees to make reasonably available to such persons and entities such portions of the Premises as any of them may designate. The results of all Test and Studies shall be and at all times remain the property of such persons and entities, and under no circumstances shall any such person have any obligation whatsoever to disclose or otherwise make available to the Grantor or any other person such results or any other information obtained by them in connection with such Tests and Studies, unless such Tests and Studies are used to demonstrate or provide evidence of an Event of Default. Notwithstanding the foregoing provisions of this Section, the Beneficiary reserves the right, and the Grantor expressly authorizes the Beneficiary, to make available to any person (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all information which the Beneficiary may have with respect to the Premises, whether provided by the Grantor or any other person or obtained as a result of Tests and Studies (including environmental reports, surveys and engineering reports). The Grantor consents to the Beneficiary's notifying any person (either as a part of a Notice of Sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. The Grantor acknowledges that the Beneficiary cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of the Tests and Studies or any information contained therein to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount which a person may bid at such sale. The Grantor agrees that the Beneficiary shall have no liability whatsoever as a result of delivering in accordance with this Section 5.14 any or all of the Tests and Studies or any information contained therein to any person, and the Grantor hereby releases, remises and forever discharges the Beneficiary from any and all claims, damages or causes of action arising out of, connected with or incidental to the Tests and Studies or the delivery thereof in accordance with this Section 5.14 to any person.

Section 5.15. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds the Grantor and the heirs, legatees, devisees, administrators, personal representatives, executors and the successors and assigns thereof, and the Beneficiary. The term "Beneficiary" means the Person named herein as the Beneficiary, and its successors-in-interest or assigns under the Funding Loan Documents from time to time, whether or not named as the Beneficiary herein and any such successor or assignee shall be for all purposes the sole Beneficiary after the date of such substitution. Without limiting the generality of the foregoing, the Controlling Person and the Noteowners are and shall be express third party beneficiaries of the rights of the Beneficiary hereunder. The term "Grantor" means the Grantor named herein and the successors-in-interest, if any, of the named the Grantor in and to the Property or any part thereof. If there is more than one Grantor hereunder, their obligations are joint and several. This Section shall not be deemed a waiver of any of the provisions of Section 1.12 hereof, Section 6.12 of the Borrower Loan Agreement or Section 10 of the Regulatory Agreement.

Section 5.16. No Merger of Lease. Upon the foreclosure of the lien created by this Mortgage on the Property or the exercise of the power of sale granted hereunder pursuant to the provisions hereof, any Lease then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless the Beneficiary or any purchaser at such foreclosure or exercise of the power of sale shall so elect. If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless the Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until the Beneficiary so elects, the Beneficiary shall continue to have and enjoy all of the rights and privileges of the Beneficiary hereunder as to the separate estates.

Section 5.17. Counterparts; Electronic Signatures. This Mortgage may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Mortgage.

Section 5.18. Nonrecourse. The provisions of Section 10.13 of the Borrower Loan Agreement are hereby incorporated herein by reference.

Section 5.19. Consent. Notwithstanding anything to the contrary in this Mortgage, whenever Beneficiary or the Controlling Person is required under this Mortgage to provide consent of approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall, prior to an Event of Default, not be unreasonably withheld or conditioned and shall be given within a reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the requested.

Section 5.20. WAIVER OF TRIAL BY JURY.

- (a) **THE GRANTOR AND THE BENEFICIARY EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS MORTGAGE OR THE RELATIONSHIP BETWEEN THE PARTIES AS GRANTOR AND BENEFICIARY THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) **THE GRANTOR AND THE BENEFICIARY EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

Section 5.21. Notice of Additional Provisions Regarding Insurance. Any terms to the contrary contained in this Mortgage notwithstanding, the following requirements are hereby imposed pursuant to Section 307.052 of the Texas Finance Code:

- (a) **THE GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN AN AMOUNT EQUAL TO THE INDEBTEDNESS, (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER, AND (iii) NAME THE BENEFICIARY**

**AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS.**

- (b) **IF THE GRANTOR FAILS TO COMPLY WITH SUBSECTION (a) ABOVE, THE BENEFICIARY MAY, BUT WILL NOT BE OBLIGATED TO, OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE, SUBJECT TO PRIOR WRITTEN NOTICE TO THE GRANTOR.**

**ARTICLE 6**  
**DEED OF TRUST TRUSTEE**

Section 6.01. Concerning Deed of Trust Trustee.

(a) The Deed of Trust Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in the Deed of Trust Trustee's opinion, such action would be likely to involve the Deed of Trust Trustee in expense or liability, unless requested so to do by a written instrument signed by the Beneficiary and, if the Deed of Trust Trustee so requests, unless the Deed of Trust Trustee is tendered security and indemnity satisfactory to the Deed of Trust Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Deed of Trust Trustee shall act in accordance with such request or direction of the Beneficiary. The Deed of Trust Trustee shall not be responsible for the execution, acknowledgment, or validity of the Funding Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and the Deed of Trust Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of the Beneficiary.

(b) At the direction of the Beneficiary, the Deed of Trust Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for the Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of this Mortgage, and shall be fully protected in relying as to legal matters on the advice of counsel; (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys; (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of the Deed of Trust Trustee, and the Deed of Trust Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care and approved by the Beneficiary, or for any error of judgment or act done by the Deed of Trust Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Deed of Trust Trustee's negligence or bad faith or failure to act in accordance with the terms hereof; and (iv) any and all other lawful action as the Beneficiary or the Controlling Person may instruct the Deed of Trust Trustee to take to protect or enforce the Beneficiary's rights hereunder. The Deed of Trust Trustee shall not be personally liable in case of entry by the Deed of Trust Trustee, or anyone entering by virtue of the powers herein granted to the Deed of Trust Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. The Deed of Trust Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by the Deed of Trust Trustee hereunder, believed by the Deed of Trust Trustee in good faith to be genuine. The Deed of Trust Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties hereunder and to reasonable compensation for such of the Deed of Trust Trustee's services hereunder as shall be rendered.

The Grantor will, from time to time, pay the compensation due to the Deed of Trust Trustee hereunder and reimburse the Deed of Trust Trustee for, and save the Deed of Trust Trustee harmless against, any and all liability and expenses which may be incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties.

(c) All moneys received by the Deed of Trust Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and the Deed of Trust Trustee shall be under no liability for interest on any moneys received by the Deed of Trust Trustee hereunder.

(d) The Deed of Trust Trustee may resign by the giving of notice of such resignation in writing or verbally to the Beneficiary and the Grantor. If the Deed of Trust Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, the Beneficiary shall prefer to appoint a substitute Deed of Trust Trustee or multiple substitute Deed of Trust Trustees, or successive substitute Deed of Trust Trustees or successive multiple substitute Deed of Trust Trustees, to act instead of the aforementioned Deed of Trust Trustee, the Beneficiary and the Grantor shall have full power to appoint a substitute Deed of Trust Trustee (or, if preferred, multiple substitute Deed of Trust Trustees) in succession who shall succeed (and if multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall succeed) to all the estates, right, powers, and duties of the aforementioned Deed of Trust Trustee. Such appointment may be executed by any authorized agent of the Beneficiary, and if the Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. The Grantor hereby ratifies and confirms any and all acts which the aforementioned Deed of Trust Trustee, or the Deed of Trust Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Deed of Trust Trustees, whenever any action or undertaking of such substitute Deed of Trust Trustees is requested or required under or pursuant to this Mortgage or applicable law.

(e) Should any deed, conveyance, or instrument of any nature be required from the Grantor by any Deed of Trust Trustee or substitute Deed of Trust Trustee to more fully and certainly vest in and confirm to the Deed of Trust Trustee or substitute Deed of Trust Trustee such estates, rights, powers, and duties, then, upon request by the Deed of Trust Trustee or substitute Deed of Trust Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by the Grantor.

(f) Any substitute Deed of Trust Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Deed of Trust Trustee herein; but nevertheless, upon the written request of the Beneficiary or of the substitute Deed of Trust Trustee, the Deed of Trust Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Deed of Trust Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Deed of Trust Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Deed of Trust Trustee to the substitute Deed of Trust Trustee so appointed in the Deed of Trust Trustee's place.

(g) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to the Deed of Trust Trustee or the Beneficiary pursuant to this Mortgage,

including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Deed of Trust Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by the Deed of Trust Trustee or the Beneficiary.

Section 6.02. Indemnity.

(a) The Grantor shall indemnify, defend, protect and hold harmless the Beneficiary, the Controlling Person and the Deed of Trust Trustee, their respective parents, subsidiaries, directors, officers, employees, representatives, agents, successors, and assigns from and against any and all liability, damage, loss, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses), action, proceeding, claim or dispute incurred or suffered by the foregoing parties so indemnified, except with respect to conditions or circumstances which, pursuant to a final judgment or ruling by a Governmental Authority with jurisdiction (i) are determined to have been caused solely by the bad faith, fraud or willful misconduct in the case of the Beneficiary or the gross negligence or willful misconduct of the Governmental Lender and/or the negligence or misconduct of the Controlling Person, or (ii) are determined not to have existed prior to, and to have arisen solely out of actions, conditions or events occurring, (1) following any sale of the Property by foreclosure of this Mortgage or deed in lieu thereof after such time as the Grantor and/or its affiliates, agents, employees or representatives no longer have possession or control of the Project Facilities, or (2) following the appointment and acceptance of possession by a receiver for the Property after such time as the Grantor and/or its affiliates, agents, employees or representatives no longer have possession or control of the Project Facilities, whether voluntarily or involuntarily incurred or suffered, in respect of the following:

(i) any litigation concerning this Mortgage or the Property, or any interest of the Grantor, the Deed of Trust Trustee or the Beneficiary therein, or the right of occupancy thereof by the Grantor, the Deed of Trust Trustee or the Beneficiary, whether or not any such litigation is prosecuted to a final, non-appealable judgment;

(ii) any dispute among or between any of the constituent parties or other partners or venturers of the Grantor if the Grantor is a general or limited partnership, or among or between any employees, officers, directors, shareholders, members or managers of the Grantor if the Grantor is a corporation or limited liability company, or among or between any members, trustees or other responsible parties if the Grantor is an association, trust or other entity;

(iii) any action taken or not taken by the Beneficiary, the Controlling Person or the Deed of Trust Trustee which is allowed or permitted under this Mortgage relating to the Grantor, the Property, any constituent parties or otherwise in connection with this Mortgage, including without limitation, the protection or enforcement of any lien, security interest or other right, remedy or recourse created or afforded by this Mortgage;

(iv) any action brought by the Beneficiary or the Deed of Trust Trustee against the Grantor under this Mortgage, whether or not such action is prosecuted to a final, non-appealable judgment; and

(v) any and all loss, damage, costs, expense, action, causes of action, or liability (including reasonable attorneys' fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a hazardous substance on, in, under or about the property, whether known or unknown at



the time of the execution hereof, including without limitation (1) all foreseeable consequential damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence; and (2) the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup, or detoxification of the property, and the preparation and implementation of any closure, remedial, or other required plans.

**THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS MORTGAGE AND THE OTHER FUNDING LOAN DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. THE GRANTOR SHALL REIMBURSE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 6.02 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS MORTGAGE, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY THE GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BENEFICIARY, THE CONTROLLING PERSON OR THE DEED OF TRUST TRUSTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN.**

## **ARTICLE 7 GROUND LEASE PROVISIONS**

Section 7.01. Representations and Warranties. The Grantor warrants and covenants that:

- (a) the Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised thereby for the term therein set forth, is in full force and effect in accordance with the terms thereof, and has not been modified, except such modifications of which the Beneficiary has received copies and approved in writing;
- (b) there are no defaults under the Ground Lease not heretofore waived by the parties thereto and all rents payable by the Grantor under the Ground Lease have been paid to the extent they were due and payable prior to the date hereof;
- (c) there exists no event or condition which, with the giving of notice or the passage of time, or both, could become a default or an event of default under the Ground Lease;
- (d) the Grantor is the owner and holder of the Ground Lease and the leasehold estate created thereby;

(e) the Grantor will not, without the prior written consent of the Controlling Person, modify, assign, supplement, release, surrender or terminate or permit the termination (whether voluntary or involuntary) of the Ground Lease or any other lease of the Property now in existence or hereafter created and any attempt to do so shall be void and of no force and effect; and

(f) the Grantor shall advise the Beneficiary and the Controlling Person in writing of the receipt of any communication or notice (written or otherwise) within twenty four (24) hours of receipt, (i) given by the Ground Lessor to the Grantor of any default in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of the Grantor, as lessee thereunder, to be performed and/or observed, or (ii) any summons, notice or legal process which may affect the validity of the Ground Lease, or the terms thereof, or which may affect either the Grantor's or the Beneficiary's interest in or possession of the Property or any part thereof, and will contemporaneously therewith deliver to the Beneficiary and the Controlling Person a true copy of each such notice when such communication or notice is written. The Grantor will furnish to the Beneficiary and the Controlling Person, immediately upon written request, any and all information concerning the Grantor's performance of its duties and obligations under the Ground Lease. The Grantor shall deliver to the Beneficiary and the Controlling Person true and complete copies of any and all notices, agreements and other documentary evidence showing the Grantor's compliance with the terms of the Ground Lease.

Section 7.02. Covenants Regarding Ground Lease.

(a) The Grantor covenants and agrees that it will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it as tenant under the Ground Lease, and that if the Grantor shall fail so to do then the Beneficiary or the Controlling Person may (but shall not be obligated to) take any action the Beneficiary or the Controlling Person deems necessary or desirable to prevent or to cure any default by the Grantor in the performance of or compliance with any of the Grantor's covenants or obligations under the Ground Lease. Upon receipt by the Beneficiary of any written notice of default by the Grantor under the Ground Lease, the Beneficiary may rely thereon and, at the direction of the Controlling Person, take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by the Grantor or by any party on behalf of the Grantor. The Grantor hereby expressly grants to the Beneficiary and the Controlling Person, and agrees that the Beneficiary and the Controlling Person shall have, the absolute and immediate right to enter in and upon the Premises or any part thereof to such extent and as often as the Beneficiary or the Controlling Person, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by the Grantor under the Ground Lease. The Beneficiary or the Controlling Person, with or without possession, may, but shall not be obligated to, perform the Grantor's obligations under the Ground Lease and/or may pay and expend such sums of money as the Beneficiary or the Controlling Person in its sole discretion deems necessary for any such purpose, and the Grantor hereby agrees to pay to the Beneficiary, immediately and without demand, all such sums so paid and expended by the Beneficiary together with interest thereon from the date of each such payment at the Default Rate. All sums so paid and expended by the Beneficiary or the Controlling Person, and the interest thereon, shall be added to and be secured by the lien of this Mortgage. In addition to the other remedies set forth in this Mortgage, the Beneficiary shall have all the rights and remedies granted to a "leasehold mortgagee" under the Ground Lease.

(b) The Grantor further covenants and agrees that:

(i) Unless the Controlling Person shall otherwise expressly consent in writing, the fee title to the Land and the leasehold estate demised by the Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the Ground Lessor or in the Grantor, or in a third party by purchase or otherwise. If the Grantor acquires the fee title

or any other estate, title or interest in the Land, or any part thereof, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Property with the same force and effect as if specifically encumbered herein. The Grantor agrees to execute all instruments and documents which the Beneficiary or the Controlling Person may require to ratify, confirm and further evidence the Beneficiary's lien on the acquired estate, title or interest.

(ii) The Grantor shall enforce its rights under the Ground Lease and shall use its best efforts to obtain and deliver to the Beneficiary and the Controlling Person within ten (10) days after written demand by the Beneficiary and the Controlling Person, an estoppel certificate from the Ground Lessor under the Ground Lease setting forth (A) that the Ground Lease has not been modified or, if it has been modified, the date of each modification (together with copies of each such modification), (B) the amount of the basic rent and other charges payable under the Ground Lease, (C) the date to which all rental charges have been paid by the tenant under the Ground Lease, and (D) whether there are any alleged defaults of the tenant under the Ground Lease and, if there are, setting forth the nature thereof in reasonable detail.

(iii) The Grantor will enter into no agreement amending or modifying the Ground Lease, will pay all rents and other amounts when due under the Ground Lease and will permit no default thereunder and will timely perform all of its obligations thereunder and do all that is necessary to keep the Ground Lease in full force and effect and in good standing, will not exercise any right to terminate the Ground Lease without Beneficiary's prior written consent and will not exercise any other right or remedy under the Ground Lease without Beneficiary's prior written consent. The Grantor's liability under the Secured Obligations shall not be discharged, released or in any way diminished and shall remain direct and primary notwithstanding any and all actions taken by the Ground Lessor or by the Beneficiary following any default by the Grantor under the Ground Lease or the Funding Loan Documents.

(c) Furthermore, the Grantor hereby appoints the Beneficiary and each of the Beneficiary's officers its true and lawful attorneys in fact to execute and deliver all the instruments and documents described in clause (b)(i) above in the name and on behalf of the Grantor. This power, being coupled with an interest, shall be irrevocable as long as any amount secured hereby remains unpaid.

Section 7.03. No Assignment of Obligations. Notwithstanding anything to the contrary contained herein, this Mortgage shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and the Beneficiary shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. The Beneficiary shall be liable for the obligations of the tenant arising under the Ground Lease for only the period of time during which the Beneficiary is in actual possession of the leased premises or has acquired, by foreclosure or otherwise, and is holding all of the Grantor's right, title and interest therein, and shall not be liable for any periods before or after such period.

Section 7.04. Assignment of Rights. The Grantor hereby conveys and assigns to the Beneficiary all of its rights, privileges and prerogatives under the Ground Lease to surrender, terminate, cancel, assign, modify, change, supplement, alter or amend the Ground Lease, which rights, privileges and prerogatives shall be exercised by the Beneficiary at the written direction of the Controlling Person.

Section 7.05. Bankruptcy Matters. The Grantor agrees that:

(a) If there shall be filed by or against the Grantor a petition under the Bankruptcy Code, 11 U.S.C. § 101 et seq., or any successor or similar statute, or similar state law (the "Code") and if

the Grantor, as lessee under the Ground Lease, or the Grantor's bankruptcy trustee ("the Bankruptcy Trustee") shall decide to reject the Ground Lease pursuant to the Code, the Grantor and/or the Bankruptcy Trustee shall give the Beneficiary not less than forty five (45) days prior written notice of the date of which the Grantor and/or the Bankruptcy Trustee shall apply to the Bankruptcy Court for the authority to reject the Ground Lease. The Beneficiary shall have the right, but not the obligation, to serve upon the Grantor or the Bankruptcy Trustee within such forty five (45) day period a notice stating that (A) the Beneficiary demands that the Grantor and/or the Bankruptcy Trustee assign the Ground Lease to the Beneficiary pursuant to the Code and (B) the Beneficiary covenants to cure or provide adequate assurance of prompt cure of all curable defaults and provide adequate assurance of future performance under the Ground Lease. If the Beneficiary serves upon the Grantor and/or the Bankruptcy Trustee the notice described in the preceding sentence, the Grantor and/or the Bankruptcy Trustee shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (A) of the preceding sentence within forty five (45) days after the notice shall have been given subject to the performance by the Beneficiary of the covenant provided in clause (B) of the preceding sentence.

(b) Effective upon the entry of an order for relief in respect of the Grantor under the Code, the Grantor and the Bankruptcy Trustee hereby assign and transfer to the Beneficiary a non-exclusive right to apply to the Bankruptcy Court under the Code on behalf of any and all parties for an order extending the period during which the Ground Lease may be rejected or assumed.

(c) The lien of this Mortgage attaches to all the Grantor's and the Bankruptcy Trustee's rights and remedies at any time arising under or pursuant to the Code, including, without limitation, all of the Grantor's rights to remain in possession of the Property thereunder.

(d) The Grantor agrees that in the event the Ground Lessor, or its successors and assigns, files or has filed against it a petition under the Code, the Grantor shall not, without the Controlling Person's prior written consent, elect to treat the Ground Lease as terminated or rejected under the Code. Any such election made without the Controlling Person's prior written consent shall be null and void and of no effect. In addition to the foregoing, the Grantor hereby irrevocably assigns to the Beneficiary the Grantor's right to elect to treat the Ground Lease as terminated or rejected under the Code and the Beneficiary may exercise the rights hereunder at any time, which right shall be exercised by the Beneficiary at the Controlling Person's direction.

(e) The Grantor hereby unconditionally assigns, transfers and sets over to the Beneficiary all of the Grantor's claims and rights to the payment of damages arising from any rejection by the Ground Lessor of the Ground Lease under the Code. The Beneficiary, acting upon the Controlling Person's direction, shall have the right to proceed in its own name or in the name of the Grantor in respect to any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Ground Lessor under the Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights, and remedies.

Section 7.06. Application of Loan Proceeds. The Ground Lessor acknowledges and agrees that the Beneficiary owes the Ground Lessor no obligation to advance any proceeds of the Governmental Note or to ensure that the funds advanced are used for any specific purpose. Any application or use of funds advanced by the Beneficiary for purposes other than those provided for in the Funding Loan Documents shall in no way impair, alter or diminish the lien created by this Mortgage, including without limitation any application of funds for purposes other than improvement of the Property.

Section 7.07. Rights of Beneficiary. The Ground Lessor agrees that the Beneficiary may deal exclusively with the Grantor in all matters relating to the Borrower Note and the loan of the proceeds thereof without notice to or the approval of the Ground Lessor. It is intended that the lien created by this Mortgage shall remain fully effective regardless of any act or omission by the Beneficiary which might otherwise directly or indirectly result, by operation of law or otherwise, in the discharge or release in whole or in part of the Grantor, or the discharge, release or impairment of any collateral now or hereafter held as security for any of the Secured Obligations. Without limiting the generality of the foregoing, the Ground Lessor agrees that the Beneficiary may do or fail to do any of the following one or more times, without notice to or the approval of the Ground Lessor, and without diminishing, altering or otherwise affecting the lien created by this Mortgage: (i) the Beneficiary may agree with the Grantor on any modification, extension, renewal or replacement of any of the terms and conditions of the Funding Loan Documents, (ii) the Beneficiary may extend, renew, accelerate or otherwise change the time for payment and performance of any of the obligations under the Funding Loan Documents, (iii) the Beneficiary may release the Grantor or any other person having any liability under the Funding Loan Documents, (iv) the Beneficiary may release, surrender, substitute or exchange any collateral securing the Loan, (v) the Beneficiary does not have to marshal assets and may direct the order or manner of sale of any of the Property and any other collateral securing the Loan as the Beneficiary may determine in its discretion, (vi) the Beneficiary may apply any money, the Property or any other collateral for the Loan to repayment of any amounts owing to the Beneficiary under the Funding Loan Documents in any order the Beneficiary may determine in its discretion, (vii) Beneficiary may forbear from pursuing the Grantor or any other person, or forbear from foreclosing or otherwise realizing upon any of the Property or any other collateral securing the Loan, (viii) the Beneficiary may impair or fail to perfect the security interest in any of the Property or any other collateral securing the Loan, (ix) the Beneficiary does not have to notify the Ground Lessor when the Beneficiary advances Loan proceeds or pays any obligations of the Grantor, (x) without waiving or impairing any of its rights hereunder, the Beneficiary shall take commercially reasonable efforts to notify Ground Lessor of any default by the Grantor under the Funding Loan Documents; provided neither the giving nor the receipt of any such notice shall be a precondition to the exercise of any rights hereunder or under the Funding Loan Documents, and (xi) the Beneficiary does not have to make presentment and demand for payment, protest or notice of demand, protest, dishonor and nonpayment.

Section 7.08. Waivers by Ground Lessor. The Ground Lessor waives any act or thing which might otherwise be deemed a legal or equitable discharge of a surety, including without limitation any defense based on any of the following: (i) lack of diligence or any delays in collecting or enforcing the Funding Loan Documents, (ii) the failure or invalidity of, or any defect in, the Funding Loan Documents, (iii) any disability or other defense of the Grantor or any other person, (iv) the termination from any cause whatsoever of any of the Secured Obligations other than payment in full, (v) the loss or impairment of any right of recourse, reimbursement, contribution, subrogation or any other right or remedy of the Ground Lessor against the Grantor or any other person, or (vi) any modification of any of the Funding Loan Documents in any form whatsoever and without notice to the Ground Lessor, including without limitation the renewal, extension, compromise, acceleration or other change in time for payment and performance. The Ground Lessor waives any right to require the Beneficiary to proceed against the Grantor or any other person or to proceed against or exhaust any other collateral for the Loan or pursue any other remedy in its power before foreclosing this Mortgage, any right to have the Ground Lessor's interest in the Property sold separately from the interests of the Grantor in the Property, and any right of subrogation the Ground Lessor may have against the Grantor, and any benefit of or right to participate in the Beneficiary's lien on the Property, until all Secured Obligations are paid in full. The Ground Lessor agrees that any right of reimbursement, contribution, recourse or other right or remedy the Ground Lessor may have against the Grantor to recover any amount which the Ground Lessor may pay the Beneficiary on account of the Secured Obligations is unconditionally subordinated to the rights and remedies of the Beneficiary under this Mortgage and the Funding Loan Documents.

[remainder of page intentionally left blank; signature follows]

IN WITNESS WHEREOF, the Grantor has executed this Mortgage as of the day and year first above written.

**LDG THE LEGACY ON KEST, LP**, a Texas limited partnership

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

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

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

STATE OF TEXAS )  
 )  
COUNTY OF )

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, \_\_\_\_\_, personally appeared Aaron Eaquinto, known to me or proven on the basis of satisfactory evidence to be the General Manager of City of Dallas Housing Finance Corporation, the sole member of DHFC The Legacy on Kiest GP, LLC, the general partner of LDG The Legacy on Kiest, LP, the within named Borrower, and that he being authorized to do so, executed the foregoing for the purposes therein contained by his signature on the instrument LDG The Legacy on Kiest, LP executed the instrument.

WITNESS my hand and official seal.

Notary

My Commission expires:

(SEAL)

**CONSENT AND JOINDER TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS  
AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

Intending to be legally bound hereby, the undersigned DHFC The Legacy on Kiest Landowner, LLC, a limited liability company organized and existing under the laws of the State of Texas (the “Land Owner”), as fee owner of the real property described on Exhibit A to the Mortgage (as hereinafter defined) upon which Improvements and ancillary personal property are or will be located thereon to be used in connection therewith (the “Land”), hereby joins in that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (with Power of Sale) dated as of July 1, 2025 (the “Mortgage”) from LDG The Legacy on Kiest, LP (the “Grantor”), in favor of a deed of trust trustee for the benefit of Texas Department of Housing and Community Affairs (the “Beneficiary”), for the purpose of: (a) subjecting its fee title to the Land to the lien of the Mortgage, to be bound by the Mortgage, and each and every term, condition, covenant and agreement as contained in the Mortgage, to the same extent as if the Land Owner had been the named Grantor therein executing and delivering the Mortgage; (b) acknowledging and consenting to the existence of the Mortgage; (c) agreeing that the undersigned shall not declare an event of default under or exercise its option to terminate or exercise any other remedies under the Ground Lease under any circumstances permitted thereunder without the prior written consent of the Controlling Person and that any attempted action in violation of such agreement shall be of no force or effect whatsoever; and (d) consenting to and agreeing to be bound by the terms of the Mortgage (including, without limitation, Articles 3 and 7 thereof) to the extent applicable to the Land Owner. Notwithstanding anything to the contrary herein, the obligations of the Land Owner hereunder shall be recoverable solely out of the Land, and shall otherwise be without recourse to the Land Owner or any of its other assets or any past, present or future, direct or indirect, partners, members or shareholders in the Land Owner, except that the Deed of Trust Trustee (as defined in the Mortgage) shall have recourse to the assets of any such person or entity if and only to the extent such person or entity has expressly assumed (other than by execution and delivery of this Consent and Joinder) or hereafter expressly assumes liability for, or has encumbered (other than pursuant to this Consent and Joinder) or hereafter encumbers any of its other assets as security for the performance of the Secured Obligations or of the Land Owner’s obligations hereunder.

By executing and delivering this Consent and Joinder, the Land Owner does hereby irrevocably grant, convey, and assign unto the Deed of Trust Trustee, for the benefit of the Beneficiary, and grants the Beneficiary a lien on and a security interest in, all of its right, title and interest in and to the Land (which, for purposes of this Joinder, shall be deemed to include Land Owner’s interest in the Ground Lease), to secure the Secured Obligations. Land Owner acknowledges and agrees that, upon the occurrence and during the continuance of an Event of Default by Grantor, Deed of Trust Trustee and/or Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor, Land Owner and in and to the Land, to the fullest extent under the terms of the Mortgage (which, without limiting the generality of the foregoing, include, at the election of Beneficiary, foreclosing upon or exercising the power of sale with respect to the Land Owner’s interest in the Land, as defined in the Mortgage, and/or foreclosing upon the Grantor’s leasehold interest in the Land, all in accordance with the terms and provisions of the Mortgage and this Consent and Joinder).

Upon foreclosure or exercise of the power of sale under the Mortgage with respect to the Grantor’s leasehold interest in the Land, or assignment of the leasehold interest in the Land in lieu of thereof, (a) the Beneficiary or its designee shall have the right to acquire the leasehold interest in the Land created under the Ground Lease in its own name or the name of a nominee without consent or approval of Land Owner, (b) the acquiring entity or its nominee shall have the right to further assign or sublet the leasehold interest or a portion thereof to a third party, and (c) the Land Owner shall recognize the purchaser or other transferee in connection therewith as the “tenant” under the Ground Lease.



The Land Owner acknowledges and agrees that it will not be possible for the Grantor to acquire or construct the Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the acquisition and construction of said Improvements and the development of the Property. Therefore, Land Owner hereby covenants and agrees that its interest in the Ground Lease and its ownership interest in the Land are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, "cash flow", "soft" or refinancings thereof) obtained by the Grantor for the purpose of financing the acquisition and construction of the Improvements and the development and operation of the Property, and to the lien of any mortgages or deeds of trust (each, a "Permitted Leasehold Mortgage"), assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the lender or lenders providing such financing, and to all renewals, extensions, modifications, consolidations, replacements and refinancings thereof, and to all advances made or hereafter to be made upon the security of such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments. The Land Owner shall, at Grantor's request, join in, execute and/or deliver any and all such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments as may be required by such lender or lenders in order to subject and subordinate the Land Owner's interest in the Ground Lease and its ownership interest in the fee simple title to the Land or to otherwise consent to or facilitate the subordination or encumbrance of the Grantor's interest in the Property to the lien of such documents or instruments, and upon Grantor's request shall join in, execute and/or deliver any and all such further instruments or assurances as any such lender or lenders may reasonably deem necessary to evidence or confirm the subordination of the Ground Lease or the encumbrance of the Land Owner's interest in such Ground Lease and the Land Owner's ownership interest in the Land to the lien of any such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments; provided, however, and notwithstanding anything contained herein or in the Mortgage or any other documents evidencing the Loans described herein to the contrary, the Land Owner shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of Grantor thereunder, and any mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments of any nature whatsoever which the Land Owner may be called upon to join in, execute and/or deliver under and pursuant to this section shall expressly exculpate the Land Owner from and against any and all such personal liability.

Grantor may, without the Land Owner's consent, assign, encumber or mortgage the Ground Lease (including any options it contains) to any leasehold mortgagee for the purposes described above, each a "Permitted Leasehold Mortgagee." A Permitted Leasehold Mortgagee (and anyone whose title derives from a Permitted Leasehold Mortgagee) may, without the Land Owner's consent, hold a foreclosure sale, take title to the Ground Lease, and transfer or assign the Ground Lease, either in its own name or through a nominee or designee.

The Land Owner represents and warrants to the Beneficiary as follows: (i) the Land Owner is the sole owner of fee simple title to the Land, free from any liens or encumbrances other than the Permitted Encumbrances (as defined in the Mortgage), (ii) the Land Owner has full power and authority to execute and deliver the Mortgage and the person(s) executing the Mortgage on the Land Owner's behalf have the authority to do so, (iii) the benefits to the Land Owner from the Grantor and the Secured Obligations (as defined in the Mortgage) constitute reasonably equivalent value for the Land Owner's execution of the Mortgage, (iv) the Land Owner has reviewed and understands the terms of the Funding Loan Documents (as defined in the Mortgage), (v) the terms of the Funding Loan Documents comply with all conditions to the Land Owner's execution of the Mortgage or such conditions have been waived by the Land Owner, (vi) the Beneficiary has made no representation to the Land Owner regarding the Grantor, including without limitation the creditworthiness of the Grantor, (vii) the Beneficiary shall have no obligation to disclose any information to the Land Owner or furnish any materials acquired in the course of the

Beneficiary's relationship with the Grantor, and (viii) the Land Owner acknowledges that the Beneficiary would not make a loan to the Grantor without the Land Owner executing the Mortgage.

[Signature on following page.]



**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

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**ASSIGNMENT OF LEASEHOLD DEED OF TRUST DOCUMENTS  
AND FUNDING LOAN DOCUMENTS**

**from**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**to**

**BOKF, NA,**

**with the consent of**

**LDG THE LEGACY ON KIEST, LP**

**Dated as of July 1, 2025**

**Relating to:**

**\$30,000,000**

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

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This instrument prepared by and  
when recorded return to:

Kutak Rock LLP  
Two Logan Square  
100 North 18<sup>th</sup> Street, Suite 1920  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire

**ASSIGNMENT OF LEASEHOLD DEED OF TRUST DOCUMENTS  
AND FUNDING LOAN DOCUMENTS**

This **ASSIGNMENT OF DEED OF TRUST DOCUMENTS AND FUNDING LOAN DOCUMENTS**, dated as of July 1, 2025 (as the same may be amended, modified or supplemented from time to time, “Assignment”) from the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency organized under the laws of the State of Texas (together with its successors and assigns, the “Assignor”), to BOKF, NA, a national banking association organized under the laws of the United States of America, in its capacity as fiscal agent (together with any successor fiscal agent under the Funding Loan Agreement described below and their respective successors and assigns, the “Assignee”) under the Funding Loan Agreement dated as of July 1, 2025 (as the same may be amended, modified or supplemented from time to time, the “Funding Loan Agreement”), among the Assignor as Governmental Lender, the Assignee as Fiscal Agent and Community Housing Investment Partners II, LP (the “Funding Lender”).

**WITNESSETH:**

**WHEREAS**, LDG The Legacy on Kiest, LP (the “Borrower”) has applied to the Assignor for a loan (the “Borrower Loan”), to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 180 units and related personal property and equipment, located in Dallas, Texas and to be known as “The Legacy on Kiest” (the “Project Facilities”); all capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Funding Loan Agreement;

**WHEREAS**, the Borrower has requested the Assignor to enter into the Funding Loan Agreement of even date herewith with Funding Lender and Assignee as “Fiscal Agent” (as it may be supplemented or amended, the “Funding Loan Agreement”) under which the Assignor will issue its Multifamily Housing Revenue Note dated as of the Closing Date (the “Governmental Note”) that will be purchased by the Funding Lender and Funding Lender will make a loan (the “Funding Loan”) to the Assignor, the proceeds of which will be loaned to Borrower pursuant to a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”) to finance the acquisition, construction, development, equipping and/or operation of the Project Facilities;

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

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Assignor its Borrower Note dated the Closing Date (the “Borrower Note”) which will be secured by that certain Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (With Power of Sale), dated as of even date herewith (the “Mortgage”) on the Project Facilities;

**WHEREAS**, the rights of the Assignor (excluding its Reserved Rights) under the Mortgage, the Borrower Note and the other Funding Loan Documents (collectively, the “Assigned Documents”) are being assigned contemporaneously with the execution and delivery hereof to the Assignee for the benefit of the Funding Lender as set forth in the Funding Loan Agreement; and

**NOW THEREFORE**, in consideration of issuing the Governmental Note and making the Funding Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

**NOW THEREFORE**, in consideration of the Funding Loan and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

Section 1. Definitions. All words and phrases defined in the Funding Loan Agreement have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment. The Assignor sells, assigns and sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Assigned Documents, excluding the Reserved Rights of the Assignor, subject to the rights, protections, indemnities and immunities afforded to the Assignee in its capacity as fiscal agent under the Funding Loan Agreement and the Borrower Loan Agreement, which are incorporated herein and into the Assigned Documents by reference. This Assignment is made and shall be without recourse, warranty or representation of the Assignor.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

Section 4. Counterparts; Electronic Signatures. This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Assignment.

Section 5. Governing Law. It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of Texas, without reference to its conflicts of laws and principles.

[remainder of page intentionally left blank; signature follows]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

**ACKNOWLEDGMENT**

STATE OF TEXAS            )  
                                      )  
COUNTY OF TRAVIS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by James B. "Beau" Eccles, Secretary to the Board of Texas Department of Housing and Community Affairs, a public and official agency on behalf of said Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
Notary Public's Signature  
My commission expires: \_\_\_\_\_

(SEAL)



**ASSIGNEE:**

**BOKF, NA**

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

Name: Biddel Tekeste

Title: Vice President

**ACKNOWLEDGMENT**

STATE OF TEXAS            )  
  )  
COUNTY OF HARRIS)

On this \_\_\_\_ day of \_\_\_\_\_, 2025, before me, \_\_\_\_\_, personally appeared Biddel Tekeste, known to me or proven on the basis of satisfactory evidence to be a Vice President of BOKF, NA, and that he being authorized to do so, executed the foregoing Assignment of Leasehold Deed of Trust Documents and Funding Loan Documents for the purposes therein contained by his signature on the instrument BOKF, NA executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary

My Commission expires:

(SEAL)



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

[July 1], 2025

among

**Texas Department of Housing and Community Affairs,**  
as Governmental Lender

and

**BOKF, NA,**  
as Fiscal Agent

and

**LDG The Legacy on Kiest, LP,**  
as Borrower

regarding

**[\$30,000,000]**

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

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of [July 1], 2025, but effective as of the Issue Date of the Governmental Note (as defined below) is among the **Texas Department of Housing and Community Affairs** (together with its successors and assigns, the “Governmental Lender”), a public and official agency of the State (as defined herein), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as Fiscal Agent under the hereinafter defined Funding Loan Agreement (together with any successor Fiscal Agent under the Funding Loan Agreement described below and their respective successors and assigns, the “Fiscal Agent”), and **LDG The Legacy on Kiest, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”) and is entered into in connection with the issuance of the \$[30,000,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the “Governmental Note”). The representations of facts and circumstances and the covenants of the Governmental Lender made herein are made in part for purposes of fulfilling the requirements set forth in section 1.148-2(b)(2) of the Regulations (as defined herein).

### RECITALS

WHEREAS, the Governing Board of the Governmental Lender has determined to authorize the issuance of the Governmental Note pursuant to and in accordance with the terms of the Funding Loan Agreement (as defined herein) for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); and

WHEREAS, the Governmental Lender desires to use the Proceeds (as defined herein) of the Governmental Note to fund a mortgage loan to the Borrower (i.e., the Borrower Loan, as defined herein) upon the terms and conditions set forth in the Borrower Loan Agreement (as defined herein) in order to finance Project Costs (as defined herein); and

WHEREAS, the Governmental Lender and the Borrower desire that interest on the Governmental Note be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Governmental Note and the Project and to establish the expectations of the Governmental Lender, the Borrower, and the Fiscal Agent as to future events regarding the Governmental Note, the Project, and the use and investment of Proceeds of the Governmental Note.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Governmental Lender, the Borrower, and the Fiscal Agent (but not in their individual capacities), respectively, as follows:

1. Definitions. Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the meaning or is in the amount therein specified. All capitalized terms used but not defined herein, to the extent that such terms are defined in the Funding Loan Agreement, the Borrower Loan Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially shall mean Bracewell LLP.

**“Bond Year”** means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Governmental Lender and the Fiscal Agent. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final maturity date of the Governmental Note or the date that is five years after the Issue Date of the Governmental Note, a bond year will end on each anniversary of the Issue Date of the Governmental Note and on the final maturity date of the Governmental Note.

**“Borrower Loan”** means the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement.

**“Borrower Loan Agreement”** means the Borrower Loan Agreement among the Governmental Lender and the Borrower, dated as of [July 1], 2025.

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

**“Computation Date”** means each Installment Computation Date and the Final Computation Date.

**“Costs of Issuance”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

**“Costs of Issuance Fund”** means the “Costs of Issuance Fund” established pursuant to the Funding Loan Agreement, with a Funding Loan Proceeds Subaccount and an Equity Subaccount therein.

***“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 excludability from gross income for federal income tax purposes of interest payable on the Governmental Note under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Governmental Note or other customary exceptions acceptable to the recipient thereof).

***“Fee Owner”*** means DHFC The Legacy on Kiest Landowner, LLC.

***“Final Computation Date”*** means the date on which the final payment in full of the Governmental Note is made.

***“Financial Advisor”*** means Hilltop Securities Inc.

***“Form 8038”*** means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

***“Funding Lender”*** means Community Housing Investment Partners II, LP.

***“Funding Loan Agreement”*** means the Funding Loan Agreement by and between the Governmental Lender, the Fiscal Agent, and the Funding Lender, dated as of [July 1], 2025.

***“Governmental Note Payment Fund”*** means the “Governmental Note Payment Fund” established pursuant to the Funding Loan Agreement.

***“Gross Proceeds”*** means any Proceeds and any Replacement Proceeds.

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

***“Investment Proceeds”*** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

***“IRS”*** means the Internal Revenue Service.

***“Issue Date”*** means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation.

***“Issue Price”*** has the meaning ascribed to it in section 1.148-1(f) of the Regulations.

***“Median Gross Income for the Area”*** means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.



**“Minor Portion”** means that portion of the Gross Proceeds of the Governmental Note that does not exceed in the aggregate \$100,000.

**“Net Proceeds”** means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

**“Nonpurpose Investment”** means any “investment property,” within the meaning of section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Governmental Note.

**“Official Intent Date”** means April 11, 2024.

**“Original Issue Discount”** means the excess of the Stated Redemption Price at Maturity over the Issue Price.

**“Original Issue Premium”** means the excess of the Issue Price over the Stated Redemption Price at Maturity.

**“Other Funds”** means the “Replacement Reserve Fund,” the “Tax and Insurance Escrow Fund,” the “Taxable Loan Payment Fund,” and the “Taxable Loan Account,” “Equity Account,” “Equity Subaccount” of the Capitalized Interest Account, and “Subordinate Debt Account” of the Project Fund established pursuant to the Funding Loan Agreement and the “Operating Reserve Account” established pursuant to the Borrower Loan Agreement.

**“Permitted Investments”** has the meaning set forth in the Funding Loan Agreement.

**“Placed in Service”** has the meaning set forth in section 1.150-2(c) of the Regulations and means, with respect to a facility, the date on which, based on all the facts and circumstances, (a) the facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) the facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

**“Preliminary Expenditures”** are described in section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition, construction or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation.

**“Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

**“Project”** means an approximately 180-unit multifamily residential housing development to be located at 2621 Southerland Avenue, Dallas, Dallas County, Texas 75203.

***“Project Costs”*** has the meaning set forth in the Funding Loan Agreement.

***“Project Fund”*** means the “Project Fund” established pursuant to the Funding Loan Agreement, with a Funding Loan Proceeds Account, an Equity Account and a Capitalized Interest Account (containing a Funding Loan Proceeds Subaccount and an Equity Subaccount) therein.

***“Qualified Administrative Costs”*** are those costs of issuing, carrying or repaying the Governmental Note, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Borrower Loan.

***“Qualified Project Costs”*** means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Governmental Note during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the construction of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being constructed or rehabilitated by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing or rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the construction of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) (i) The costs were paid no earlier than 60 days prior to the Official Intent Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to any amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Governmental Note.

***“Qualified Project Period”*** means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued

with respect to the Project is outstanding for federal income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

**“Qualifying Tenant”** means a tenant whose Annual Income is 60 percent or less of Median Gross Income for the Area, as determined under sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

**“Rebate Amount”** has the meaning set forth in section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations.

**“Rebate Analyst”** means a Person that is (a) qualified and experienced in the calculation of rebate payments under section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

**“Rebate Fund”** means the “Rebate Fund” established pursuant to the Funding Loan Agreement.

**“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 among the Governmental Lender, the Fiscal Agent, the Fee Owner, and the Borrower, dated as of [July 1], 2025.

**“Related Party”** means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Proceeds”** has the meaning set forth in section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

**“Sale Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other

disposition) of any obligation, including amounts used to pay underwriters' discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

**“State”** means the State of Texas.

**“Stated Redemption Price at Maturity”** means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

**“Substantial User”** has the meaning given to such term in section 1.103-11(b) of the Regulations, and generally includes any person who regularly uses a part of a facility in its trade or business and (i) such facility, or part thereof, is specifically constructed, reconstructed, or acquired for such person or (ii) such person (A) receives more than five percent of the total revenue derived by all users of such facility as gross revenue or (B) occupies more than five percent of the entire usable area of the facility.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that, a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

**“Weighted Average Maturity”** means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Issue Price of such obligation.

**“Yield”** on (a) an issue of obligations has the meaning set forth in section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal, interest and fees for qualified guarantees to be paid on the obligation produces an amount equal to the Issue Price of such issue and (b) any investment has the meaning set forth in section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments to be received on the investment produces an amount equal to all payments for the investment.

**“Yield Reduction Payments”** means amounts paid in accordance with section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an investment.

**“40-60 Test”** means the requirement set forth in section 142(d)(1)(B) of the Code providing that 40 percent or more of the Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

## 2. Authorized Representatives.

(a) Governmental Lender. The undersigned representative of the Governmental Lender represents that such representative (i) is charged, along with others, with the responsibility for the Governmental Note and, as such, the undersigned is familiar

with the facts herein certified and is authorized on behalf of the Governmental Lender to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Governmental Lender personnel and consultants to the Governmental Lender, the undersigned representative of the Governmental Lender has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Fiscal Agent. The undersigned representative of the Fiscal Agent represents that such representative is a duly chosen, qualified and acting officer or other representative of the Fiscal Agent and is authorized on behalf of the Fiscal Agent to execute and deliver this Agreement.

3. Reasonable Expectations. The Governmental Lender and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Governmental Lender has also relied, to the extent appropriate, on (a) the Certificate of Funding Lender attached hereto as Exhibit A and (b) the Certificate of Financial Advisor attached hereto as Exhibit B. The undersigned representatives of the Governmental Lender and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower's Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Governmental Lender concerning the use and investment of the Proceeds of the Governmental Note and certain other matters described in this Agreement are based solely upon representations, expectations, certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Governmental Lender has not made any independent investigations of the matters pertaining thereto. The Governmental Lender is not aware of any facts or circumstances that would cause it to question the accuracy or

reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Governmental Note, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to the Issuance of the Governmental Note.

(a) Governmental Purpose. The Borrower has applied to the Governmental Lender and been approved for the Borrower Loan to be made from the Proceeds of the Governmental Note. The proceeds of the Borrower Loan (and, thus, the Proceeds of the Governmental Note) will be used to finance a portion of the Project Costs.

(b) Public Hearing and Approval. As required under section 147(f) of the Code, the Issuer hosted a public hearing on April 24, 2025, regarding the Governmental Note and the Project and for which there was reasonable public notice. The Attorney General of the State approved the issuance of the Governmental Note.

(c) Volume Cap. The Governmental Lender has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Governmental Note (or if greater, the Issue Price of the Governmental Note) for the purpose of issuing the Governmental Note to finance the Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Governmental Note (i.e., less than 15 days apart), (ii) are sold pursuant to the same plan of financing with the Governmental Note, and (iii) will be paid out of substantially the same source of funds as the Governmental Note.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Governmental Note, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was furnished by the Borrower, is true, correct, and complete. The Governmental Lender will cause Form 8038 with respect to the Governmental Note to be filed timely with the IRS.

(f) Substantial User. No person that was a Substantial User of the Project at any time during the five-year period before the Issue Date of the Governmental Note or

any Related Person to such Substantial User will (i) receive (directly or indirectly) more than five percent of the Proceeds of the Governmental Note for such user's interest in the Project and (ii) be a Substantial User of the Project at any time during the five-year period after the Issue Date of the Governmental Note. For purposes of this subparagraph, a user that is a governmental unit within the meaning of section 1.103-1 of the Regulations is disregarded.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Governmental Note in an amount related to the amount of the Borrower Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Governmental Lender.

(h) No Federal Guarantee. Neither the Governmental Lender nor the Borrower will take any action that would result in all or any portion of the Governmental Note being treated as federally guaranteed within the meaning of section 149(b)(2) of the Code.

(i) Borrower's EIN. The Borrower represents that the Borrower's EIN is 33-2187321.

7. Sale Proceeds of the Governmental Note. The amount of Sale Proceeds received by the Governmental Lender from the sale of the Governmental Note is \$[30,000,000.00], which represents the Stated Redemption Price at Maturity of the Governmental Note. The Sale Proceeds of the Governmental Note will be loaned to the Borrower and deposited in the Funding Loan Proceeds Account of the Project Fund to pay Project Costs. The aggregate amount of the Project Costs is anticipated to exceed such amount. Any Project Costs not financed out of Proceeds of the Governmental Note will be financed out of the Borrower's available funds.

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Governmental Note.

9. Use of Proceeds of the Governmental Note.

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Governmental Note actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Governmental Note will be expended for or allocated to Project Costs that are not Qualified Project Costs.

For purposes of this subparagraph (a) the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living, sleeping, eating, cooking and sanitation that will be used on other than a transient basis by one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to

such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. No Costs of Issuance are expected to be paid out of the Net Proceeds of the Governmental Note. Any Costs of Issuance financed out of Net Proceeds of the Governmental Note will not exceed in the aggregate two percent of the Sale Proceeds of the Governmental Note (i.e., \$[600,000]). Costs of Issuance in excess of two percent of Sale Proceeds of the Governmental Note will be paid by the Borrower from sources other than Net Proceeds of the Governmental Note.

(ii) Capitalized Interest. [Net proceeds of the Governmental Note will not be used to pay interest on the Governmental Note accruing after the Placed in Service Date of the Project].

(iii) Acquisition of Existing Property. No portion of the Net Proceeds of the Governmental Note will be used to pay or reimburse the cost of acquiring any property or an interest therein unless, except for land, the first use of such property is pursuant to such acquisition.

(iv) Limitation on Land Acquisition. The Borrower does not expect to use any Net Proceeds of the Governmental Note (directly or indirectly) to acquire land (or an interest therein). In no event will 25 percent or more of the Net Proceeds of the Governmental Note be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Governmental Note will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest thereon) to the extent that a portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project.

(v) Prohibited Facilities. None of the Proceeds of the Governmental Note will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that, any fitness room functionally related to and subordinate to the Project for use by tenants of the Project or their guest is not considered a health club facility for purposes of this subparagraph.



(vi) Payments to Related Persons. Any amount of Proceeds of the Governmental Note paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Governmental Note paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Governmental Note that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vii) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Governmental Note (and that is directly related to the Project), the Proceeds of the Governmental Note will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Governmental Lender's income were subject to federal income taxation; (B) interest on the Governmental Note in an amount that does not cause the aggregate amount of interest paid on the Governmental Note to exceed that amount of interest on the Governmental Note that is attributable to the period that commences on the Issue Date of the Governmental Note and ends on the later of (1) the date that is three years from the Issue Date of the Governmental Note or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Governmental Note or payment for a qualified hedge on the Governmental Note.

(viii) No Pooling. The Proceeds of the Governmental Note are not being used directly or indirectly to make or finance loans to two or more ultimate unrelated borrowers.

(ix) Weighted Average Economic Life. The Weighted Average Maturity of the Governmental Note, as calculated by the Financial Advisor as set forth in Exhibit B hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Governmental Note is at least [WAM/1.2] years. Thus, the Weighted Average Maturity of the Governmental Note is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Governmental Note. Such weighted average reasonably expected economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Governmental Note or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under section 167 of the Code prior to the enactment of the ACRS system under section 168 of the Code (i.e., the mid-point lives under the Class Life Asset

Depreciation Range System of section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not to make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Governmental Note to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Governmental Note.

(c) Reimbursement. The Borrower will not use Proceeds of the Governmental Note to reimburse itself for expenditures paid prior to the Issue Date of the Governmental Note.

(d) Allocations and Accounting. The Borrower will prepare a final allocation of the Proceeds of the Governmental Note to expenditures not later than 18 months after the later of the date the original expenditure is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Governmental Note or the retirement of the Governmental Note, if earlier; provided that, if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Governmental Note to Qualified Project Costs of the Project. No Proceeds of the Governmental Note will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price. In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Governmental Lender hereby identifies in its books and records maintained for the Governmental Note the rule the Governmental Lender will use to determine the Issue Price for each maturity of the Governmental Note as the rule set forth in the second sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the price paid by the single buyer. Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Governmental Note is \$[30,000,000]. The Issue Price of the Governmental Note represents the Stated Redemption Price at Maturity (excluding Pre-Issuance Accrued Interest for those Note the interest on which is paid at least once annually) of the Governmental Note.

11. Yield on the Governmental Note. The Governmental Lender and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Governmental Note is the discount rate that, when used in computing the present value as of the Issue Date of the Governmental Note, of all unconditionally payable payments of principal and interest on the Governmental Note, produces an amount equal to the present value, using the same discount rate, of the Issue Price of the Governmental Note plus any Pre-Issuance Accrued Interest as of the Issue Date of the Governmental Note.

(b) The Yield with respect to that portion of the Governmental Note, if any, subject to optional redemption is computed by treating such portion of the Governmental

Note as retired at the Stated Redemption Price at Maturity because (i) the Governmental Lender has no present intention to redeem prior to maturity the portion of the Governmental Note that is subject to optional redemption; (ii) the Governmental Note is not subject to optional redemption at any time for a price less than the retirement price at final maturity plus accrued interest; (iii) the Governmental Lender has no present intention of exercising its right to optionally redeem the Governmental Note within five years of the Issue Date of the Governmental Note; (iv) no portion of the Governmental Note subject to optional redemption is issued at an Issue Price that exceeds the Stated Redemption Price at Maturity of such portion of the Governmental Note by more than one-fourth of one percent multiplied by the product of the Stated Redemption Price at Maturity of such portion of the Governmental Note and the number of complete years to the first optional redemption date for such portion of the Governmental Note; and (v) no portion of the Governmental Note subject to optional redemption bears interest at a rate that increases during the term of the Governmental Note.

(c) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Governmental Note, calculated in the manner set forth above, is [Governmental Note Yield] percent.

(d) Neither the Governmental Lender nor the Borrower has entered into any hedging transaction with respect to the Governmental Note, and each covenants not to enter into a hedging transaction with respect to the Governmental Note unless there is first received a Favorable Opinion of Bond Counsel.

12. Yield on the Borrower Loan. The Governmental Lender and the Borrower hereby represent, covenant and agree as follows:

(a) The Borrower Loan is allocated to the Governmental Note. The Yield on the Borrower Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Governmental Note. For the purposes of this Agreement, the Yield on the Borrower Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Governmental Note of all receipts with respect to the Borrower Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Borrower Loan as of the Issue Date of the Governmental Note. The aggregate payments made to the Borrower with respect to the Borrower Loan include no payments other than the “purchase price” of the Borrower Loan. The purchase price of the Borrower Loan is the amount loaned to the Borrower by the Governmental Lender on the Issue Date of the Governmental Note, i.e. \$[30,000,000].

(b) The Borrower Loan is a purpose investment that the Governmental Lender intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons

who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Governmental Lender has not waived the right to treat the Borrower Loan as a program investment.

(c) The receipts from the Borrower with respect to the Borrower Loan include interest and principal payments with respect to the Borrower Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by section 1.148-5(e) of the Regulations, for purposes of computing the Yield on the Borrower Loan. Because the Governmental Lender intends to treat the Borrower Loan as a “program investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Borrower Loan, which include amounts paid directly to the Governmental Lender as set forth in Exhibit C hereto.

(d) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Borrower Loan, calculated in the manner set forth above, is [Borrower Loan Yield], which does not exceed the Yield on the Governmental Note by more than 1.5 percentage points.

13. Investment of Proceeds Pending Expenditure; No Arbitrage.

(a) Investment Proceeds. Amounts on deposit in the Project Fund may be comprised of Proceeds of the Governmental Note and amounts that are not Proceeds of the Governmental Note or any tax-exempt obligation. If Proceeds of the Governmental Note and amounts that are not Proceeds of the Governmental Note are commingled, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Governmental Note and amounts that are not Proceeds of the Governmental Note have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Governmental Note pending expenditure of such Proceeds for Project Costs will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Governmental Note will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such

amounts will be invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Governmental Note and, provided further, that, if permitted by section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Governmental Note Is Not A Hedge Bond. Not more than 50 percent of the Proceeds of the Governmental Note will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Governmental Note are reasonably expected to be used to carry out the governmental purposes of the Governmental Note within the three-year period beginning on the Issue Date of the Governmental Note.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Governmental Lender and the Borrower that the Gross Proceeds of the Governmental Note will not be used in a manner that would cause the Governmental Note to be an “arbitrage bond” within the meaning of section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Governmental Lender and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Funding Loan Agreement and the Borrower Loan Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Borrower Loan Agreement or the note relating to the Borrower Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Governmental Note, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Governmental Note, direct or permit the Fiscal Agent to invest Gross Proceeds of the Governmental Note in any investment (or to use Gross Proceeds of the Governmental Note to replace money so invested), if as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Governmental Note to stated maturity, except as permitted by section 148 of the Code. The Governmental Lender and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Fiscal Agent complies with all applicable requirements of section 148 of the Code relating to the Governmental Note and the interest thereon.

(e) [Guaranteed Investment Contract. If Proceeds of the Governmental Note are co-mingled as an investment in a guaranteed investment contract (the “GIC”), the Borrower will take into account for purposes of its covenant to comply with the rebate requirement that proceeds of the Governmental Note and amounts that are not proceeds of the Governmental Note have been co-mingled as an investment in the GIC and will comply with the requirements of section 1.148-5(d)(6)(iii) of the Regulations.]

14. Covenants of Fiscal Agent Relating to Investment of Proceeds. The Fiscal Agent will invest funds held under the Funding Loan Agreement in accordance with the respective terms

of the Funding Loan Agreement and this Agreement, which covenant will extend throughout the term of the Governmental Note, to all funds and accounts created under the Funding Loan Agreement and this Agreement and all moneys on deposit to the credit of any fund or account.

Should the Governmental Lender or the Borrower deliver notice (in the manner required under the Funding Loan Agreement or the Borrower Loan Agreement, as applicable) to the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so deliver) or should the Fiscal Agent receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Governmental Note would cause the Governmental Note to become an “arbitrage bond” within the meaning of section 148 of the Code, then the Fiscal Agent will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Governmental Note from becoming an “arbitrage bond.”

The Governmental Lender and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Fiscal Agent will be deemed to have complied with such provisions and will have no liability to the extent the Fiscal Agent materially follows the written directions of the Borrower or the Governmental Lender. The Fiscal Agent is not liable or responsible for monitoring compliance by the Borrower, the Governmental Lender or the Rebate Analyst with any of the requirements of section 148 of the Code or any applicable regulation, ruling or other judicial or administrative interpretation thereof, it being acknowledged and agreed that the sole obligation of the Fiscal Agent in this regard is (i) to invest the moneys received by the Fiscal Agent pursuant to the written instructions of the Borrower or Governmental Lender in specific investments identified by the Borrower, or in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of the Funding Loan Agreement and this Agreement and (ii) to materially follow investment instructions as provided in the Funding Loan Agreement and this Agreement.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Governmental Lender and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Governmental Note have been invested at a Yield that is “materially higher” than the Yield on the Governmental Note and Yield Reduction Payments are permitted under section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “rebtable arbitrage earnings” on the investment of the Gross Proceeds of the Governmental Note, within the meaning of section 148(f) of the Code, be rebated to the federal government.

(b) Rebate Fund. The Funding Loan Agreement established the Rebate Fund, which will be maintained and held in trust by the Fiscal Agent and which will be disbursed and applied only as herein authorized in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Funding Loan Agreement relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Fiscal Agent is afforded all the rights, protections and immunities otherwise accorded to it thereunder as if the

provisions set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Funding Loan Agreement.

(c) Delivery of Documents and Money by Borrower on Computation Dates.  
The Borrower will deliver to the Fiscal Agent and the Governmental Lender, within 55 days after each Computation Date:

(i) (A) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date and the amount of any Yield Reduction Payments due, and (B) a copy of the report prepared by the Rebate Analyst in connection therewith;

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount and Yield Reduction Payments due as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount and Yield Reduction Payments due as of such Final Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Fiscal Agent will deposit or transfer to the credit of the Rebate Fund, pursuant to written direction from the Borrower, each amount delivered to the Fiscal Agent by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Fiscal Agent may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Fiscal Agent will have no duty or responsibility with respect to the Rebate Fund or the Borrower’s duties and responsibilities with respect thereto except to follow the Borrower’s specific written instructions related thereto.

(ii) Moneys and securities held by the Fiscal Agent in the Rebate Fund will not be deemed funds of the Governmental Note and are not pledged or

otherwise subject to any security interest in favor of the owners of the Governmental Note to secure the Governmental Note or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Fiscal Agent, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Fiscal Agent will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes. In the absence of written direction from the Borrower, the Fiscal Agent will not be responsible or liable for keeping the moneys held as part of the Rebate Fund fully invested.

(iv) The Borrower will provide to the Fiscal Agent and the Fiscal Agent will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Governmental Note and any tax-exempt obligations issued to refinance the Governmental Note is retired. The Fiscal Agent will keep and make available to the Governmental Lender and the Borrower such records concerning the investments of Gross Proceeds of the Governmental Note and the investments of earnings from those investments as may be requested by the Governmental Lender or the Borrower in order to enable the Borrower to make the computations required under section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of section 148(f) of the Code or section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Governmental Lender, or the Fiscal Agent), the Borrower will (i) deliver to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States of America from the Rebate Fund (A) the Rebate Amount or Yield Reduction Payments due that the Borrower failed to pay, plus any interest specified in section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Fiscal Agent within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Fiscal Agent within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 100 percent penalty required by section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Fiscal Agent and the Governmental Lender a Form 8038-T completed as of such date. If such Rebate Amount or Yield Reduction Payments, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Governmental Note from becoming an “arbitrage bond” within the meaning of section 148 of the Code.

(f) Identification of Rebate Analyst. The contact information for the initial Rebate Analyst is:

Name: BLX Group  
Attn: Sandee Stallings



Address: 4925 Greenville Avenue, Suite 880  
Dallas, Texas 75206  
Telephone: (214) 989-2701  
E-mail: [sstallings@blxgroup.com](mailto:sstallings@blxgroup.com)

If the Borrower determines to engage the services of a different Rebate Analyst, the Borrower will provide the name and contact information for such entity to the Governmental Lender within thirty days of engagement.

(g) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Fiscal Agent, or the Governmental Lender in connection with computing the Rebate Amount and the Yield Reduction Payments; provided that nothing herein will be construed as the Fiscal Agent being responsible for creating, preparing or reviewing any of the computations contemplated under this Agreement.

(h) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Governmental Note that is not purchased at fair market value (as defined in section 1.148-5(d)(6)(iii) of the Regulations) or includes terms that the Borrower would not have included if the Governmental Note were not subject to section 148(f) of the Code.

(i) Amounts Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Governmental Note have not been invested at a Yield that is “materially higher” than the Yield on the Governmental Note and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Fiscal Agent and the Governmental Lender within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Fiscal Agent to the United States of America if the Borrower furnishes to the Governmental Lender and the Fiscal Agent a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.

(j) Fiscal Agent Reliance on Written Directions. The Governmental Lender and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Fiscal Agent will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Governmental Lender, or the Rebate Analyst.

16. Funds.

(a) Project Fund. All of the Proceeds of the Governmental Note in the Funding Loan Proceeds Account of the Project Fund and the Funding Loan Proceeds Subaccount of the Capitalized Interest Account of the Project Fund are expected to be invested and disbursed as described in the Funding Loan Agreement to pay Project Costs. The Borrower (i) reasonably expects to allocate at least 85 percent of the Net Proceeds of the Governmental Note, including amounts deposited in the Funding Loan Fund as capitalized interest, to expenditures on capital projects of the Project prior to the date that is three years after the Issue Date of the Governmental Note, (ii) has incurred, or reasonably expects to incur within six months after the Issue Date of the Governmental Note, a binding obligation to a third party that is not subject to any contingencies within the control of the Borrower pursuant to which the Borrower is obligated to expend at least five percent of the Net Proceeds of the Governmental Note on capital projects of the Project, and (iii) reasonably expects that the acquisition, construction, and equipping of the Project will proceed with due diligence to completion and the Net Proceeds of the Governmental Note are reasonably expected to be expended on the Project with reasonable dispatch; therefore, all of such amounts may be invested without regard to Yield restriction. Any amounts not so expended prior to the applicable dates set forth in the preceding sentence will thereafter be invested at a Yield that is not “materially higher” than the Yield on the Governmental Note, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Governmental Note Payment Fund. Amounts on deposit in the Governmental Note Payment Fund will be used for the purposes set forth in Section 4.3 of the Funding Loan Agreement. The Governmental Note Payment Fund will be used primarily to achieve a proper matching of payments made pursuant to the Borrower Loan Agreement and debt service on the Governmental Note within each Bond Year. Any amounts in the Governmental Note Payment Fund held for longer than 13 months will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Governmental Note, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(c) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund will be used for the purpose of paying Costs of Issuance. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance, and in any event not later than six months following the Closing Date of the Governmental Note, will be (i) to the extent such amounts represent Proceeds of the Governmental Note, transferred to the Funding Loan Proceeds Account of the Project Fund and (ii) to the extent such amounts represent amounts that are not Proceeds of the Governmental Note, transferred to the Borrower.

There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Governmental Note.

(d) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Funding Loan Agreement; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Governmental Note.

(e) Other Funds. Amounts on deposit in the Other Funds will be used for the purposes set forth in the Funding Loan Agreement. There is no assurance that amounts on deposit in the Other Funds will be available to pay debt service on the Governmental Note.

17. Replacement Proceeds. The Governmental Lender and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Governmental Note Payment Fund, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Governmental Note.

(b) No Pledged Funds. Other than amounts in the Governmental Note Payment Fund, there is no amount that is directly or indirectly pledged to pay principal or interest on the Governmental Note, or to a guarantor of the Governmental Note, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Governmental Note if the Governmental Lender encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Governmental Note.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Governmental Note because the Governmental Lender reasonably expects that the term of the Governmental Note will not be longer than is reasonably necessary for the governmental purpose of the Governmental Note. Furthermore, even if the Governmental Note were outstanding longer than necessary for the purpose of the Governmental Note, no Replacement Proceeds will arise because the Governmental Lender reasonably expects that no amounts will become available during the period that the Governmental Note remain outstanding longer than necessary based on the reasonable expectations of the Governmental Lender as to the amounts and timing of future revenues. The Governmental Note would be issued to achieve the governmental purpose of the Governmental Note independent of any arbitrage benefit as evidenced by the expectation that the Governmental Note reasonably would have been issued if the interest on the Governmental Note were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

18. Not an Abusive Transaction. The Governmental Lender and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Governmental Note to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Governmental Note is or will be an abusive arbitrage device by having the effect of (i) enabling the Governmental Lender or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Governmental Note over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Governmental Note are not invested in higher yielding investments over the term of the Governmental Note) and (ii) overburdening the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Governmental Note, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Governmental Note is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Governmental Note would reasonably be taken to accomplish the governmental purposes of the Governmental Note if the interest on the Governmental Note were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Governmental Note); and (C) the Proceeds of the Governmental Note will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Governmental Note and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Governmental Note.

(b) No Sinking Fund. No portion of the Governmental Note has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Governmental Note.

(c) No Window. No portion of the Governmental Note has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Governmental Lender to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.

(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Governmental Note are outstanding.

(e) No Overissuance. The Net Proceeds of the Governmental Note do not exceed the total amount necessary for the governmental purposes of the Governmental Note. The issuance of the Governmental Note as sized is necessary to achieve the 50% of basis requirement of Section 42 of the Code in order for the Borrower to receive low-

income housing tax credits, without which the Project could not be provided for low-income tenants.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project will be comprised of (i) Units, all of which will be rented to individuals or families for residential occupancy and none of which will be owner-occupied (other than any functionally related and subordinate Units used by management for the purpose of housing any reasonably required resident managers, security personnel or maintenance personnel for the Project) and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units are similarly constructed and offer fixtures of similar quality. All amenities that are part of the Project will be made available to all residential tenants and their guests on an equal basis, regardless of the rent charged for the Unit occupied by the residential tenant.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Governmental Note for purposes of satisfying the requirements of section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Borrower Loan Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) The Project will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (i) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (ii) will be owned by the same person for federal income tax purposes, and (iii) will be financed pursuant to a common plan.

(f) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(g) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(h) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph. Costs relating to the acquisition, construction and equipping of any nonresidential or commercial space developed in connection with the Project (including any costs of land acquisition allocable thereto) will be allocated to sources other than the Governmental Note.

(i) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

20. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period.

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of section 142(d)(7) of the Code to file timely, the annual certifications described in section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Governmental Note are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

21. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant's physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

22. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax purposes for interest paid by the Borrower with respect to the portion of the Borrower Loan that is allocable to Proceeds of the Governmental Note that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Governmental Note, if any, and will use such amount to redeem or, if not permitted by the terms of the Governmental Note, defease the Governmental Note, all in accordance with the requirements of section 1.142-2 of the Regulations, the Funding Loan Agreement and the Borrower Loan Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. Cashflow Sufficiency. The Borrower reasonably expects that the cash flow from the Project on an annual basis (excluding cash generated from the investment of nonoperating funds or other investment funds maintained by the Borrower) will be sufficient to pay annual debt service on the Borrower Loan during each year. Accordingly, the Borrower expects that debt service on the Borrower Loan will not be paid, directly or indirectly, from non-operating or other investment funds maintained by the Borrower or any Related Person to the Borrower. Except for the funds described in the "Funds" paragraph above, the Borrower does not expect to create or establish, or otherwise set aside or dedicate, any fund or account that is expected to be used to pay principal of, or interest on, the Governmental Note or to be pledged, directly or indirectly, to the payment of principal of, or interest on, the Governmental Note. Investment Proceeds of the Governmental Note and amounts earned from the investment of such Investment Proceeds will not be commingled with other receipts or revenues of the Borrower.

24. Post-Issuance Compliance Procedures. The Governmental Lender has implemented written post-issuance tax compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements

under the Code and Regulations and to monitor the requirements of section 148 of the Code. A copy of the Governmental Lender's then-current post-issuance tax compliance procedures is and will be available on the Governmental Lender's website during the term of this Agreement. If the Governmental Lender's website is not available, a copy of the then-current post-issuance tax compliance procedures will be made available to the Borrower, upon request. The Borrower agrees to take such actions as required therein to be taken by the Borrower to maintain compliance with requirements in the Code. In the event that the terms of the Governmental Lender's post-issuance tax compliance procedures conflict with the terms of this Agreement, the terms of this Agreement will control.

25. Record Retention. The Borrower and the Fiscal Agent (to the extent the Fiscal Agent receives such records in accordance with the terms of the Bond Documents) will retain or cause to be retained all pertinent and material records relating to any formal elections made for purposes of federal income tax law; the use of the Project; the investment, use and expenditure of the Proceeds of the Governmental Note; and the calculation of rebate in connection with the Governmental Note until three years after the Governmental Note, including any tax-exempt obligations issued to refinance the Governmental Note, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Governmental Lender to retrieve and reproduce such books and records in the event of an examination of the Governmental Note by the IRS.

26. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the excludability of interest on the Governmental Note from the gross income of the owners thereof for federal tax purposes, the Governmental Lender will likely be treated as the "taxpayer", and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Governmental Lender (and in consultation with the Fiscal Agent, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Governmental Lender to provide a defense regarding the excludability of the interest on the Governmental Note from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE GOVERNMENTAL LENDER AND THE FISCAL AGENT AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE GOVERNMENTAL LENDER AND THE FISCAL AGENT (INCLUDING THE COST OF THE GOVERNMENTAL LENDER'S AND THE FISCAL AGENT'S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE GOVERNMENTAL LENDER (WITH RESPECT TO INDEMNIFICATION OF THE GOVERNMENTAL LENDER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE FISCAL AGENT (WITH RESPECT TO INDEMNIFICATION OF THE FISCAL AGENT).

27. Term. The obligations of the Governmental Lender, the Borrower and the Fiscal Agent, under this Agreement will survive the defeasance and discharge of the Governmental Note



for as long as such matters are relevant to the excludability from gross income of interest on the Governmental Note for federal income tax purposes. The indemnification provisions set forth in Section 26 will survive the defeasance and discharge of the Governmental Note and/or the resignation or removal of the Fiscal Agent.

28. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Governmental Lender, the Fiscal Agent and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Governmental Lender, the Fiscal Agent and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Governmental Lender and the Fiscal Agent, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

29. Remedies. The Governmental Lender, the Fiscal Agent, and the Borrower each hereby agrees that the remedies available under the Funding Loan Agreement and the Borrower Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Funding Loan Agreement or the Borrower Loan Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

30. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provisions hereof.

(b) Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid,

addressed to such parties at the addresses set forth in the Funding Loan Agreement and the Borrower Loan Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Governmental Lender, the Borrower, and the Fiscal Agent.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

(g) Fiscal Agent. Every provision of this Agreement relating to the conduct of, or affecting the liability of, or affording protection to, the Fiscal Agent shall be expressly subject to the Funding Loan Agreement.

[EXECUTION PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Governmental Lender, the Borrower and the Fiscal Agent (but, as for the Fiscal Agent, it is only agreeing to sections 2(c), 14, 15, and 25 through 30) have caused this Agreement to be executed and delivered by duly authorized officers thereof as of Issue Date of the Governmental Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Governmental  
Lender

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

*Signature Page to Tax Exemption Agreement*

**LDG THE LEGACY ON Kiest, LP**, a Texas  
limited partnership

By: DHFC The Legacy on Kiest GP, LLC, a Texas  
limited liability company, its general partner

By: City of Dallas Housing Finance  
Corporation, a Texas housing finance  
corporation, its sole member

By: \_\_\_\_\_  
Name: Aaron Eaquinto  
Title: General Manager

*Signature Page to Tax Exemption Agreement*

**BOKF, NA**, as Fiscal Agent

By: \_\_\_\_\_  
Name: Dayna Smith  
Title: Vice President

*Signature Page to Tax Exemption Agreement*

## EXHIBIT A

### CERTIFICATE OF FUNDING LENDER

I, the undersigned officer of Community Housing Investment Partners II, LP (the “Funding Lender”), make these certifications in connection with the \$[30,000,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the “Governmental Lender Note”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement (the “Tax Exemption Agreement”) to which this Exhibit A is attached.

1. I hereby certify as follows in good faith as of the Issue Date of the Governmental Lender Note:

- (a) I am the duly chosen, qualified and acting officer of the Funding Lender for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Funding Lender. I am the officer of the Funding Lender charged, along with other officers of the Funding Lender, with responsibility for the Governmental Lender Note.

- (b) The Funding Lender is not acting as an Underwriter with respect to the Governmental Lender Note. The Funding Lender has no present intention to sell, reoffer, or otherwise dispose of the Governmental Lender Notes (or any portion of the Governmental Lender Notes or any interest in the Governmental Lender Notes); provided, however, that the Funding Lender has the right to transfer the Governmental Lender Notes as provided in the Funding Loan Agreement. The Funding Lender has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Governmental Lender Notes and the Funding Lender has not agreed with the Governmental Lender pursuant to a written agreement to sell the Governmental Lender Notes to persons other than the Funding Lender or a Related Party to the Funding Lender.

- (c) The Funding Lender has purchased the Governmental Lender Note from the Governmental Lender for an aggregate purchase price of \$[30,000,000], which price includes no amount of Pre-Issuance Accrued Interest.

- (d) Neither the Funding Lender nor any related person to the Funding Lender is or will be (except through the exercise of remedies following a default on the Governmental Lender Notes or the related Borrower Loan) a Related Party to the Borrower.

2. For purposes of this Certificate of Funding Lender, the following definitions apply:

- (a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

- (b) “Related Party” means any two or more persons who are subject, directly

or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Governmental Lender (or with the lead Underwriter to form an underwriting syndicate) to participate in the initial sale of the Governmental Lender Notes to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Governmental Lender Notes to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Governmental Lender Notes to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Funding Lender’s interpretation of any laws, including specifically sections 103 and 148 of the Code. The undersigned understands that the foregoing information will be relied upon by the Governmental Lender and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Governmental Lender Note, and by Bracewell LLP in connection with rendering its opinion that the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038, and other federal income tax advice it may give to the Governmental Lender from time to time relating to the Governmental Lender Note.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Funding Lender has been duly executed as of the Closing Date.

**COMMUNITY HOUSING INVESTMENT  
PARTNERS II, LP,**  
a Delaware limited partnership, as Funding Lender

By: CHIP II Investors, LLC, a Delaware limited  
liability company, its general partner

By:

---

Name: Kenneth Thompson  
Title: Managing Director

*Signature Page to Certificate of Funding Lender*



## **EXHIBIT B**

### **CERTIFICATE OF FINANCIAL ADVISOR**

I, the undersigned officer of Hilltop Securities Inc. (the “Financial Advisor”), make this certificate in connection with the \$[30,000,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Note (The Legacy on Kiest) Series 2025 (the “Governmental Note”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Governmental Note:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price plus any Pre-Issuance Interest on the Governmental Note, based on the representations of the Funding Lender in the Certificate of Funding Lender attached as Exhibit A to the Tax Exemption Agreement, is not more than \$[30,000,000].

3. The Financial Advisor has computed the Yield on the Governmental Note, based on such Issue Price, to be [Governmental Note Yield] percent.

4. The Financial Advisor has calculated the Yield on the Borrower Loan to be [Borrower Loan Yield] percent. Accordingly, the Yield on the Borrower Loan does not exceed the Yield on the Governmental Note by more than 1.5 percentage points.

5. For purposes of determining the Yields in paragraphs 3 and 4 above, the Financial Advisor has performed certain calculations relating to the Governmental Note and the Borrower Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Yield on the Governmental Note” and “Yield on the Borrower Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Governmental Lender, which the Financial Advisor, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Governmental Note, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

6. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Governmental Note, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

7. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Governmental Note, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Governmental Lender may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the excludability of interest on the Governmental Note from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Governmental Note as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Financial Advisor has been duly executed as of the Issue Date of the Governmental Note.

**HILLTOP SECURITIES INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature Page to Certificate of Financial Advisor*

**SCHEDULE I**  
**TO CERTIFICATE OF FINANCIAL ADVISOR**

*Schedule I to Certificate of Financial Advisor*

## EXHIBIT C

### SCHEDULE OF BORROWER LOAN COSTS

#### **Paid Prior to Closing**

Application Fee	\$3,600
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#### **Paid at Closing**

Governmental Lender Issuance Fee	0.50% of the initial principal amount of the Funding Loan
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Governmental Lender Administration Fee (first two years, prorated)	[\$60,000]
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Governmental Lender Compliance Fee (first year)	[\$4,500]
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#### **Annual Fees**

Governmental Lender Administrative Fee (beginning July 1, 2027)	0.10% per annum of the aggregate principal amount of the Governmental Note outstanding
--	--

Governmental Lender Compliance Fee (beginning July 1, 2028)	\$25 per Low-Income Unit (as defined in the Regulatory Agreement) in the Project (excluding market rate units)
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## Texas Department of Housing and Community Affairs

### Governing Board

#### Board Action Request

**File #: 1038**

**Agenda Date: 6/12/2025**

**Agenda #: 13.**

Presentation, discussion, and possible action on the 2026 Low Income Home Energy Assistance Program State Plan and Awards

#### **RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) develops and submits a State Plan to the U.S. Department of Health and Human Services (USHHS) each year to administer the Low Income Home Energy Assistance Program (LIHEAP);

**WHEREAS**, the Board approved a draft 2026 LIHEAP State Plan (the Plan) on April 10, 2025, which was then made available for public comment and that public comment is addressed in Attachment A; and

**WHEREAS**, the final 2026 LIHEAP State Plan includes the awards to subrecipients of 2026 LIHEAP funds as recommended through the Previous Participation Review and Approval Process (PPRAP) in Attachment B;

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to submit the Plan to USHHS and upon USHSS approval of such Plan to contract for the awards represented in the Plan and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings such as anticipated grant guidance on development of the Plan from USHHS or to make such decision and non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing.

#### **BACKGROUND**

The Department develops and submits a LIHEAP Plan each year on or before September 1 to USHHS. The draft, approved by the Board on April 10, 2025, was released for public comment. The public comment period was open from April 25, 2025, to May 21, 2025, and four public hearings were held at four locations throughout the state May 13-15, 2025. Public comment was received and a summary of this comment with a Department response is provided in Attachment A.

It should be noted that the Plan follows a template and series of required responses pre-determined by USHHS with character limitations and specific instructions. Also, the Plan has yet to be reviewed and approved by USHHS. In its review, it is common for USHHS to request corrections to the Plan. Staff recommends approval for staff to make such required changes to ensure USHHS approval.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of LIHEAP awards

prior to recommendation to the Board. These LIHEAP awards are subject to this review and are listed in Attachment B. The review has been performed and all awards in Attachment B are recommended for award with no conditions, except for South Texas Development Council and Tri-County Community Action which are recommended for award with the following conditions:

Agency	Condition
South Texas Development Council (STDC)	South Texas Development Council is required to provide all documentation relating to the FYE 2023 Single Audit and FYE 2024 Single Audit on or before <b>September 30, 2025</b> . The compliance Single Audit must also be uploaded to the Federal Audit Clearinghouse (FAC), with confirmation provided to the Department. Depending on the results of that Single Audit, the Department may impose additional conditions upon the Contract in accordance with 2 CFR §200.207. Additionally, STDC is notified that failure to complete this condition may serve as good cause under 10 TAC §1.411(f) for nonrenewal or reduction of block grant funds.
Tri-County Community Action	Tri-County Community Action is required to provide all documentation relating to the FYE 2023 Single Audit on or before <b>September 30, 2025</b> . The compliance Single Audit must also be uploaded to the Federal Audit Clearinghouse (FAC), with confirmation provided to the Department. Depending on the results of that Single Audit, the Department may impose additional conditions upon the Contract in accordance with 2 CFR §200.207. Additionally, Tri-County Community Action is notified that failure to complete this condition may serve as good cause under 10 TAC §1.411(f) for nonrenewal or reduction of block grant funds.

## ATTACHMENT A: SUMMARY OF PUBLIC COMMENT AND STAFF RESPONSE

The Department accepted public comment from April 25, 2025, through May 21, 2025, and conducted four public hearings between May 13 and May 15, 2025, in Austin, Fort Worth, Houston and Odessa. Comment was received from Amanda Shelton, Executive Director of the Texas Association of Community Action Agencies (TACAA). The comment summary and the Department's response is presented in the table below.

Commenter	Comment Summary	Staff Response	Proposed Changes to the Plan
TACAA	Commenter recommends the Department retain pressure testing for propane gas tanks as an allowable activity for utility assistance in Sections 2.7, 3.7 and 4.13. Commenter points out that it was allowed in the 2025 LIHEAP Plan and prior versions, but was removed in the 2026 Plan. The basis for this recommendation is that propane companies will only fill a propane tank if the propane level is below a certain threshold due to health and safety regulations. It becomes a liability for propane companies if they do not test the tank pressure prior to filling. Clients would experience delays in utility assistance because the CEAP service provider would have to wait for the client to afford and pay for their own pressure testing prior to approving propane tank refills.	The removal of tank pressure testing from the benefits listed in Sections 2.7, 3.7 and 4.13 was not meant to eliminate it as a benefit. The Department will add tank pressure testing back into the Plan as well as a list of in-kind benefits listed in 10 TAC §6.310 Crisis Assistance Component. The Department appreciates the comment.	Include tank pressure testing as a benefit in Sections 2.7, 3.7 and 4.13 of the Plan.



## ATTACHMENT B: LIST OF SUBRECIPIENTS AND ALLOCATIONS

### 2026 LIHEAP CEAP ALLOCATIONS

Contract Period: January 1, 2026 - December 31, 2026

	SUBRECIPIENT	ALLOCATION
1	Aspermont Small Business Development Council	753,697
2	BakerRipley	27,856,283
3	Bexar County Community and Development Services	11,286,156
4	Brazos Valley Community Action Programs	5,164,811
5	City of Fort Worth	8,522,328
6	City of Lubbock	1,863,859
7	Combined Community Action Agency	3,188,256
8	Community Action Corporation of South Texas	1,754,484
9	Community Action Inc. of Central Texas	6,067,661
10	Community Council of South Central Texas	1,287,062
11	Community Services of Northeast Texas	6,938,799
12	Concho Valley Community Action Agency	2,795,819
13	Cornerstone Community Action Agency	2,065,319
14	Crossroads Community Action	1,086,630
15	Dallas County Department of Health and Human Services	13,731,241
16	Economic Action Committee of the Gulf Coast	651,385
17	Economic Opportunities Advancement Corporation of PR XI	3,468,752
18	El Paso Community Action Program-Project Bravo	6,603,646
19	Greater East Texas Community Action Program	9,982,816
20	Hidalgo County Community Services Agency	8,666,624
21	Hill Country Community Action Association	2,892,671
22	Kleberg County Human Services	3,021,095
23	Nueces County Community Action Agency	2,314,371
24	Opportunities for Williamson & Burnet Counties	1,432,425
25	Panhandle Community Services	4,068,279
26	Pecos County Community Action Agency	1,152,804
27	Rolling Plains Management Corporation	3,092,481
28	South Plains Community Action Association	2,064,967
29	South Texas Development Council*	1,378,759
30	Texas Neighborhood Services	2,088,114
31	Texoma Council of Governments	6,140,655
32	Travis County Health and Human Services	4,848,961
33	Tri-County Community Action Inc.*	2,372,966
34	Webb County Community Action Agency	2,396,572
35	West Texas Opportunities	3,276,101
	<b>Total</b>	<b>\$ 166,276,849</b>

Note: All figures are estimates and based on 2025 allocations. Staff will proportionally revise the award amounts according to formula upon Congressional approval and receipt of grant notifications from the U.S. Department of Health and Human Services.

\*The Board has placed a condition on these awards that must be met before a contract is executed.

## 2026 LIHEAP WAP ALLOCATIONS

Contract Period: January 1, 2026 - December 31, 2026

	SUBRECIPIENT	ALLOCATION
1	Alamo Area Council of Governments	1,325,329
2	BakerRipley	2,414,608
3	Brazos Valley Community Action Programs	492,739
4	City of Fort Worth	811,911
5	Combined Community Action Agency	426,957
6	Community Action Corporation of South Texas	381,551
7	Community Council of South Central Texas	2,025,295
8	Concho Valley Community Action Agency	483,913
9	Crossroads Community Action	233,534
10	Dallas County Department of Health and Human Services	1,307,080
11	Economic Opportunities Advancement Corporation of Planning Region XI	392,364
12	El Paso Community Action Program-Project Bravo	629,517
13	Greater East Texas Community Action Program	1,318,391
14	Hill Country Community Action Association	441,657
15	Nueces County Community Action Agency	221,771
16	Panhandle Community Services	388,500
17	Rolling Plains Management Corporation	543,196
18	South Plains Community Action Association	375,006
19	Texoma Council of Governments	851,042
20	Travis County Health and Human Services	462,714
21	West Texas Opportunities	313,195
	<b>Total</b>	<b>\$15,840,270</b>

Note: All figures are estimates and based on 2025 allocations. Staff will proportionally revise the award amounts according to formula upon Congressional approval and receipt of grant notifications from the U.S. Department of Health and Human Services.

**LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)**

**MODEL PLAN**

**PUBLIC LAW 97-35, AS AMENDED**

**FEDERAL FISCAL YEAR 2026**

**GRANTEE:** Texas Department of Housing and Community Affairs

**EIN:** 17426105429

**ADDRESS:** P.O. Box 13941  
Austin, Texas 78711-3941

**LIHEAP COORDINATOR:** Michael DeYoung

**EMAIL:** michael.deyoung@tdhca.state.tx.us

**TELEPHONE:** (512) 475-2125 **FAX:** (512) 475-3935

**CHECK ONE:** **TRIBE / TRIBAL ORGANIZATION** \_\_\_\_\_ **STATE** X \_\_\_\_\_ **INSULAR AREA** \_\_\_\_\_

**Department of Health and Human Services**  
**Administration for Children and Families**  
**Office of Community Services**  
**Washington, DC 20447**

**August 1987, revised 05/92, 02/95, 03/96, 12/98, 11/01**

**OMB Approval No. 0970-0075**

THE PAPERWORK REDUCTION ACT OF 1995 (Pub. L. 104-13)

Use of this model plan is optional. However, the information requested is required in order to receive a Low Income Home Energy Assistance Program (LIHEAP) grant in years in which the grantee is not permitted to file an abbreviated plan. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## Assurances

The Texas Department of Housing and Community Affairs agrees to:

(1) use the funds available under this title to--

(A) conduct outreach activities and provide assistance to low income households in meeting their home energy costs, particularly those with the lowest incomes that pay a high proportion of household income for home energy, consistent with paragraph (5);

(B) intervene in energy crisis situations;

(C) provide low-cost residential weatherization and other cost-effective energy-related home repair; and

(D) plan, develop, and administer the State's program under this title including leveraging programs, and the State agrees not to use such funds for any purposes other than those specified in this title;

(2) make payments under this title only with respect to--

(A) households in which one or more individuals are receiving--

(i) assistance under the State program funded under part A of title IV of the Social Security Act;

(ii) supplemental security income payments under title XVI of the Social Security Act;

(iii) food stamps under the Food Stamp Act of 1977; or

(iv) payments under section 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978; or

(B) households with incomes which do not exceed an amount equal to 150 percent of the poverty level for such State; or

(i) an amount equal to 60 percent of the State median income;

except that a State may not exclude a household from eligibility in a Federal fiscal year solely on the basis of household income if such income is less than 110 percent of the poverty level for such State, but the State may give priority to those households with the highest home energy costs or needs in relation to household income.

(3) conduct outreach activities designed to assure that eligible households, especially households with elderly individuals or disabled individuals, or both, and households with high home energy burdens, are made aware of the assistance available under this title, and any similar energy-related assistance available under subtitle B of title VI (relating to community services block grant program) or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(4) coordinate its activities under this title with similar and related programs administered by the Federal Government and such State, particularly low-income energy-related programs under subtitle B of title VI (relating to community services block grant program), under the supplemental security income program, under part A of title IV of the Social Security Act, under title XX of the Social Security Act, under the low-

income weatherization assistance program under title IV of the Energy Conservation and Production Act, or under any other provision of law which carries out programs which were administered under the Economic Opportunity Act of 1964 before the date of the enactment of this Act;

(5) provide, in a timely manner, that the highest level of assistance will be furnished to those households which have the lowest incomes and the highest energy costs or needs in relation to income, taking into account family size, except that the State may not differentiate in implementing this section between the households described in clauses 2(A) and 2(B) of this subsection;

(6) to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of this title, to give special consideration, in the designation of such agencies, to any local public or private nonprofit agency which was receiving Federal funds under any low-income energy assistance program or weatherization program under the Economic Opportunity Act of 1964 or any other provision of law on the day before the date of the enactment of this Act, except that--

(A) the State shall, before giving such special consideration, determine that the agency involved meets program and fiscal requirements established by the State; and

(B) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the State shall give special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the Federal fiscal year preceding the Federal fiscal year for which the determination is made;

(7) if the State chooses to pay home energy suppliers directly, establish procedures to--

(A) notify each participating household of the amount of assistance paid on its behalf;

(B) assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment made by the State under this title;

(C) assure that the home energy supplier will provide assurances that any agreement entered into with a home energy supplier under this paragraph will contain provisions to assure that no household receiving assistance under this title will be treated adversely because of such assistance under applicable provisions of State law or public regulatory requirements; and

(D) ensure that the provision of vendor payments remains at the option of the State in consultation with local grantees and may be contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households, including providing for agreements between suppliers and individuals eligible for benefits under this Act that seek to reduce home energy costs, minimize the risks of home energy crisis, and encourage regular payments by individuals receiving financial assistance for home energy costs;

(8) provide assurances that--

(A) the State will not exclude households described in clause (2)(B) of this subsection from receiving home energy assistance benefits under clause (2), and

(B) the State will treat owners and renters equitably under the program assisted under this title;

(9) provide that--

(A) the State may use for planning and administering the use of funds under this title an amount not to exceed 10 percent of the funds payable to such State under this title for a Federal fiscal year; and

(B) the State will pay from non-Federal sources the remaining costs of planning and administering the program assisted under this title and will not use Federal funds for such remaining cost (except for the costs of the activities described in paragraph (16));

(10) provide that such fiscal control and fund accounting procedures will be established as may be necessary to assure the proper disbursement of and accounting for Federal funds paid to the State under this title, including procedures for monitoring the assistance provided under this title, and provide that the State will comply with the provisions of chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act");

(11) permit and cooperate with Federal investigations undertaken in accordance with section 2608;

(12) provide for timely and meaningful public participation in the development of the plan described in subsection (c);

(13) provide an opportunity for a fair administrative hearing to individuals whose claims for assistance under the plan described in subsection (c) are denied or are not acted upon with reasonable promptness; and

(14) cooperate with the Secretary with respect to data collecting and reporting under section 2610.

(15) beginning in Federal fiscal year 1992, provide, in addition to such services as may be offered by State Departments of Public Welfare at the local level, outreach and intake functions for crisis situations and heating and cooling assistance that is administered by additional State and local governmental entities or community-based organizations (such as community action agencies, area agencies on aging and not-for-profit neighborhood-based organizations), and in States where such organizations do not administer functions as of September 30, 1991, preference in awarding grants or contracts for intake services shall be provided to those agencies that administer the low-income weatherization or energy crisis intervention programs.

\* This assurance is applicable only to States, and to territories whose annual regular LIHEAP allotments exceed \$200,000. Neither territories with annual allotments of \$200,000 or less nor Indian tribes/tribal organizations are subject to Assurance 15.

(16) use up to 5 percent of such funds, at its option, to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance, including needs assessments, counseling, and assistance with energy vendors, and report to the Secretary concerning the impact of such activities on the number of households served, the level of direct benefits provided to those households, and the number of households that remain unserved.

Certification to the Assurances: As Chief Executive Officer, I agree to comply with the sixteen assurances contained in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended. By signing these assurances, I also agree to abide by the standard assurances on lobbying, debarment and suspension, and a drug-free workplace.

Signature of the Tribal or Board Chairperson or Chief Executive Officer of the State or Territory.

Signature: \_\_\_\_\_

Title: Executive Director, Texas Department of Housing and Community Affairs

Date: August 2026 (*The exact date to be notated in USHHS OLDC system at time of submission.*)

**The Governor of Texas has delegated the responsibility of signing this document to the Executive Director of the Texas Department of Housing and Community Affairs. A copy of the letter is attached.**

**The Unique Entity ID (SAM) of the Texas Department of Housing & Community Affairs, which receives the grant funds, appears on the cover of this application.**

In the above assurances which are quoted from the law, "State" means the 50 States, the District of Columbia, an Indian Tribe or Tribal Organization, or a Territory; "title" of the Act refers to Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (OBRA), as amended, the "Low Income Home Energy Assistance Act"; "section" means Section 2605 of OBRA; and, "subsection" refers to Section 2605(b) of OBRA.

## Section 1

NOTE: Capitalized terms are defined in Title 10, Chapters 1, 2, or 6 (as applicable) of the Texas Administrative Code or by federal law.

### Program Components, 2605(a), 2605(b)(1) – Assurance 1, 2605(c)(1)(C)

1.1 Check which components you will operate under the LIHEAP program. (Note: You must provide information for each component designated here as requested elsewhere in this plan.)

#### Dates of Operation

NOTE: Identification of these periods does not limit the payment of assistance on any “seasonal” basis.

- |                                     |                           |                        |                      |
|-------------------------------------|---------------------------|------------------------|----------------------|
| <input checked="" type="checkbox"/> | Heating assistance        | Start date: 10/01/2025 | End date: 09/30/2027 |
| <input checked="" type="checkbox"/> | Cooling assistance        | Start date: 10/01/2025 | End date: 09/30/2027 |
| <input checked="" type="checkbox"/> | Crisis assistance         | Start date: 10/01/2025 | End date: 09/30/2027 |
| <input checked="" type="checkbox"/> | Weatherization assistance | Start date: 10/01/2025 | End date: 09/30/2027 |

### Estimated Funding Allocation, 2604(c), 2605(k)(1), 2605(b)(9), 2605(b)(16) – Assurances 9 and 16

1.2 Estimate what amount of available LIHEAP funds will be used for each component that you will operate: **The total of all percentages must add up to 100%**

15% heating assistance

50% cooling assistance

10% crisis assistance

Up to 15% weatherization assistance NOTE: If 15% is not used for weatherization assistance, the balance will be added to heating, cooling, or crisis assistance as needed.

0% carryover to the following Federal fiscal year

10% administrative and planning costs

0% services to reduce home energy needs including needs assessment (Assurance 16)

0% used to develop and implement leveraging activities

100% **TOTAL**



### Alternate Use of Crisis Assistance Funds, 2605(c)(1)(C)

1.3 The funds reserved for winter crisis assistance that have not been expended by March 15 will be reprogrammed to:

- ☐ Heating assistance  
☐ Weatherization assistance  
☐ Cooling assistance  
☒ Other (specify): funds are utilized for all eligible components

### Categorical Eligibility, 2605(b)(2)(A) – Assurance 2, 2605(c)(1)(A), 2605(b)(8A) – Assurance 8

1.4 Do you consider households categorically eligible if at least one household member receives at least one of the following categories of benefits in the left column below? ☒ Yes ☐ No

Program	Cooling	Heating	Crisis	Weatherization
Temporary Assistance for Needy Families	Yes	Yes	Yes	Yes
Supplemental Security Income	Yes	Yes	Yes	Yes
Supplemental Nutrition Assistance Program	Yes	Yes	Yes	Yes
Means-tested Veterans Programs	Yes	Yes	Yes	Yes

#### 1.4a. - Provide your definition of categorical eligibility.

Categorical Eligibility for CEAP benefits exists when at least one person in the Household receives assistance from:

- (1) SSI payments from the Social Security Administration;
- (2) Means Tested Veterans Program payments. See paragraph (37) of §6.2 of this chapter (relating to Definitions);
- (3) Supplemental Nutrition Assistance Program (SNAP); or
- (4) Temporary Assistance for Needy Families (TANF).

1.5 Do you automatically enroll households without a direct annual application?  
☐ Yes ☒ No

1.6 How do you ensure there is no difference in the treatment of categorically eligible households from those not receiving other public assistance when determining eligibility and benefit amounts?  
Texas provides Categorical Eligibility for SNAP, TANF, SSI, and Means-Tested Veterans Programs. State rules have a provision that there is to be no difference in the treatment of Categorically Eligible Households. The Department has a system for persons to submit complaints, and the monitoring reviews would also note any differences in treatment of persons that are or are not Categorically Eligible.

### **SNAP Nominal Payments**

1.7 Do you allocate LIHEAP funds toward a nominal payment for SNAP households? If you answered "yes" to question 1.7a you must provide a response to 1.7b, 1.7c, 1.7d.

a. ☐ Yes ☒ No

b. Amount of Nominal Assistance: \$ \_\_\_\_ NA \_\_\_\_\_

c. Frequency of Assistance:

☐ Once per year

☐ Once every five years

☐ Other (describe): \_\_\_\_\_ NA \_\_\_\_\_

d. How do you confirm that the household receiving a nominal payment has an energy cost or need?

### **Determination of Eligibility – Countable Income**

1.8 In determining a household's income eligibility for LIHEAP, do you use gross income or net income?

☒ Gross Income (except for self-employment or farm income or gambling/lottery winnings)

NOTE: Exceptions on use of gross income are provided for in 10 TAC §6.4.

☐ Net Income

1.9. Select all of the applicable forms of countable income used to determine a household's income eligibility for LIHEAP.

☒ Wages (except as prohibited by the Workforce Investment Act of 1998)

☒ Self-employment income

☒ Contract income

☒ Payments from mortgage or sales contracts

☒ Unemployment Insurance

☒ Strike pay

☒ Social Security Administration (SSA) benefits

☐ Including MediCare deduction ☒ Excluding MediCare deduction

☒ Supplemental Security Income (SSI)

☒ Retirement / pension benefits

☒ General Assistance benefits (except as excluded by federal law or 10 TAC §6.4)

☒ Temporary Assistance for Needy Families (TANF) benefits (except for one-time payments)

☐ Supplemental Nutrition Assistance Program (SNAP) benefits

☐ Women, Infants, and Children Supplemental Nutrition Program (WIC) benefits

☐ Loans that need to be repaid

☐ Cash gifts

☐ Savings account balance

☐ One-time lump-sum payments, such as rebates/credits, refund deposits, etc.

☐ Jury duty compensation

☒ Rental income

☐ Income from employment through Workforce Investment Act (WIA)

☐ Income from work study programs

☒ Alimony

☐ Child support

☒ Interest, dividends, or royalties

☒ Commissions

☐ Legal settlements

- ☐ Insurance payments made directly to the insured
- ☐ Insurance payments made specifically for the repayment of a bill, debt, or estimate
- ☒ Veterans Administration (VA) benefits (except for 38 USC 1315, 1521, 1541, 1542)
- ☐ Earned income of a child under the age of 18
- ☐ Balance of retirement, pension, or annuity accounts where funds cannot be withdrawn without a penalty.
- ☐ Income tax refunds
- ☐ Stipends from senior companion programs, such as VISTA
- ☐ Funds received by household for the care of a foster child
- ☐ AmeriCorps Program payments for living allowances, earnings, and in-kind aid (except if the CEO of the CNCS has made a determination that it be included income).
- ☐ Reimbursements (for mileage, gas, lodging, meals, etc.)
- ☒ Other Any item not excluded in 10 TAC §6.4 or by other federal law

1.10 Do you have an online application process

☒ Yes ☐ No

1.10 a. If yes, describe the types of online application (Select all that apply)

- ☒ A PDF version of the application available online and can be downloaded, filled out and mailed in for processing.
- ☐ A state-wide online application that allows a customer to complete data entry and submit an application electronically for processing.
- ☒ One or more locally available online applications that allows a customer to complete data entry and submit an application electronically for processing.
- ☐ Online application that is also mobile friendly
- ☐ Other, please describe

NOTE: Some subrecipients have an online application that is form fillable or downloadable off their website, and can be submitted either electronically or by mail.

1.10b Can all program components be applied for online?

☐ Yes ☒ No

If no, explain which components can and cannot be applied for online.

Some of the State's subrecipients/contractors have an application to download from their website. A few subrecipients have an on-line application system.

1.11 Do you have a process for conducting and completing applications by phone

☒ Yes ☐ No

1.12 Do you or any of your subrecipients require in person appointments in order to apply

☐ Yes ☒ No

If yes, please provide more information regarding why in-person appointments are required and in what circumstances they are required.

1.13 How can applicants submit documentation for verification? Select all that apply:

- ☒ In person
- ☒ Mail
- ☒ Email
- ☒ Portal application
- ☒ Other, please describe: The responses relate to the State's subrecipients/contractors.

## Section 2 - HEATING ASSISTANCE

### Eligibility, 2605(b)(2) – Assurance 2

2.1 Designate the income eligibility threshold used for the heating component:

<i>Household Size</i>	<i>Eligibility Guidelines</i>	<i>Eligibility Threshold</i>
All Household Sizes	USHHS Poverty Guidelines	150%

2.2 Do you have additional eligibility requirements for **HEATING ASSISTANCE**?

(NOTE: 10 TAC §6.307(f) states: “A Dwelling Unit cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter (relating to Definitions); (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility.”)

☐ Yes ☒ No

2.3 Check the appropriate boxes below and describe the policies for each.

- |  | <u>Yes</u>               | <u>No</u>                           |
|--|--------------------------|-------------------------------------|
| ● Do you require an assets test?                             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: |                          |                                     |
| ● Renters?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters living in subsidized housing?                      | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Renters with utilities included in the rent?               | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

(NOTE: Per 10 TAC §6.309(i)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent.)

- Do you give priority in eligibility to:
- |  |                                     |                          |
|--|-------------------------------------|--------------------------|
| ● Older Adults (60 years or older)?    | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Individuals with a disability?       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Young children?                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ● Other?                               | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
- Households with high energy consumption

Explanations of policies for each “yes” checked above for Older Adults and for individuals with a disability, young children, high energy burden, and high energy consumption:

10 TAC §6.307(e) states “Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.” The state will provide a written procedure to a statewide or regional contractor.

## **Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

2.4 Describe how you prioritize the provision of heating assistance to vulnerable households, e.g., benefit amounts, application period, etc.

Subrecipients and statewide or regional contractors use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Households with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household's income. Households with the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per program year based on the Household's heating and cooling need and is not required to be applied equally to heating and cooling costs.

2.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- ☒ Income
- ☒ Family (household) size
- ☒ Home energy cost or need:
  - ☐ Fuel type
  - ☐ Climate/region
  - ☒ Individual bill
  - ☐ Dwelling type
  - ☒ Energy burden (% of income spent on home energy)
  - ☒ Energy need
  - ☒ Other (Describe:)

Other: Subrecipient must make utility payments on behalf of Households based on the previous 12 month's home energy consumption history, including allowances for cost inflation. If a 12 month's home energy consumption history is unavailable, Subrecipient must base payments on a Department approved alternative billing method. If neither a 12 month's home energy consumption history nor an approved alternative billing method exists, then Subrecipient may base payments on current bill. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company. The Department recommends an ABM where the Subrecipient determines the average consumption amount (kWh, therms, MCF, gallons, etc.) per month, for each household size and type based on a minimum sample size of 30 files that contain complete billing histories; however, if it is not possible for subrecipients to obtain the recommended 30 file per household sample size to create an average consumption amount, Subrecipients should use all the applicable files to determine the average consumption and document the lack of files for that household size. Subrecipients can propose other types of ABMs. The state will provide statewide or regional contractors other types of ABMs, if required. The ABM proposed by the Subrecipient must be approved by the Department prior to utilization.

## **Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

2.6 Describe estimated benefit levels for FY 2024:

\$1 Minimum benefit      \$12,600 Maximum benefit

Note: The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00 because the OLDC system requires that a figure be inserted in the minimum amount.

The maximum benefit amount per household is \$12,600 per program year and could be reached if a household received up to \$1,800 in Crisis Assistance, \$1,800 in Utility Assistance, and a \$9,000 purchase, repair or replacement of a heating or cooling unit or crisis-related purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits. The initial assistance payment that would include arrears does not count towards the annual benefit cap for a household.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,800 for the Utility Assistance Component and the Crisis Assistance Component; Households with incomes more than 50% but at or below 75% FPIG have a maximum of \$1,500 per Component; Households with incomes more than 75% but at or below 150% FPIG have a maximum of \$1,200 per Component; and there is a maximum of up to \$9,000 for the purchase, service or repair of heating and cooling units, replacement of irreparable existing heating and cooling unit components, or the purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits depending on the classification of the household as vulnerable or non-vulnerable and whether a crisis exists. Subrecipients should attempt to repair individual components of a system; if a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The Department allows payment of 100% of a customer's annual usage in one lump sum payment. See 10 TAC §6.309, §6.310, and §6.311 for details.

2.7 Do you provide in-kind (e.g., blankets, space heaters) and/or other forms of benefits?

☒ Yes      ☐ No -- If yes, describe.

Under 10 TAC §6.310(c) Crisis Assistance Component, low income households may also be eligible for the following:

- 1) Emergency deliveries of fuel up to 250 gallons per crisis per Household including coverage for tank pressure testing;
- 2) Utility reconnection costs;
- 3) Blankets;
- 4) For Non-Vulnerable Populations, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system or the system is not functioning according to its intended purpose;
- 5) For Households meeting the definition of Life-Threatening Crisis, purchase of portable cooling and/or heating units, window units, evaporative coolers, and mini splits is allowable;
- 6) Fans; and
- 7) Generators.

When Disasters result in energy supply shortages or other energy-related emergencies, eligible households may also receive assistance to cover the cost of temporary shelter or transportation.

For a complete description and more detail concerning these benefits and their eligibility requirements, refer to 10 TAC §6.310.

### Section 3: COOLING ASSISTANCE

#### Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

3.1 Designate the income eligibility threshold used for the cooling component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%

3.2 Do you have additional eligibility requirements for **COOLING ASSISTANCE**

☐ Yes ☒ No

NOTE: 10 TAC §6.307(f) states: "A Dwelling Unit cannot be served if the meter is utilized by another Household that is not part of the application for assistance. In instances where separate structures share a meter and the applicant is otherwise eligible for assistance, Subrecipient must provide services if: (1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter (relating to Definitions); (2) the members of the separate structures that share a meter submit one application as one Household; and (3) all persons and applicable income from each structure are counted when determining eligibility."

3.3 Check the appropriate boxes below and describe the policies for each.

- |  | <u>Yes</u>               | <u>No</u>                           |
|--|--------------------------|-------------------------------------|
| ● Do you require an assets test?                             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ● Do you have additional/differing eligibility policies for: |                          |                                     |
| • Renters?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Renters living in subsidized housing?                      | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Renters with utilities included in the rent?               | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

NOTE: Per 10 TAC §6.309(i)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent.

- Do you give priority in eligibility to:
- |  |                                     |                          |
|--|-------------------------------------|--------------------------|
| • Elderly?                             | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Disabled?                            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Young children?                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Other?                               | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
- Households with high energy consumption

Explanations of policies for each "yes" checked above for Older Adults, individuals with a disability, young children, high energy burden, and high energy consumption:

10 TAC §6.307(e) states “Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.” The state will provide a written procedure to a statewide or regional contractor.

3.4 Describe how you prioritize the provision of cooling assistance to vulnerable households, e.g., benefit amounts, application periods, etc.

Subrecipients and statewide or regional contractors use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption. Benefit amounts are determined on a sliding scale based on the Household’s income. Households with the presence of a vulnerable member such as the Elderly, Persons with Disabilities, and Households with Young Children do not have a limit on the number of benefit payments, but adhere to the same benefit amounts. The maximum benefit amount is determined per-program year based on Household’s heating and cooling needs and is not required to be applied equally to heating and cooling costs.

#### **Determination of Benefits, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

3.5 Check the variables you use to determine your benefit levels. (Check all that apply):

- ☒ Income
- ☒ Family (household) size
- ☒ Home energy cost or need
  - ☐ Fuel type
  - ☐ Climate/region
  - ☒ Individual bill
  - ☐ Dwelling type
  - ☒ Energy burden (% of income spent on home energy)
  - ☒ Energy need
  - ☒ Other (describe)

Other: Subrecipient must make utility payments on behalf of Households based on the previous 12 month's home energy consumption history, including allowances for cost inflation. If a 12 month's home energy consumption history is unavailable, Subrecipient must base payments on a Department approved alternative billing method. If neither a 12 month’s home energy consumption history nor an approved alternative billing method exists, then Subrecipient may base payments on current bill. Subrecipient will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company. The Department recommends an ABM where the Subrecipient determines the average consumption amount (kWh, therms, MCF, gallons, etc.) per month, for each household size and type based on a minimum sample size of 30 files that contain complete billing histories; however, if it is not possible for subrecipients to obtain the recommended 30 file per household sample size to create an average consumption amount, Subrecipients should use all the applicable files to determine the average consumption and document the lack of files for that household size. Subrecipients can propose other types of ABMs. The ABM proposed by the Subrecipient must be approved by the Department prior to utilization.



## **Benefit Levels, 2605(b)(5) – Assurance 5, 2605(c)(1)(B)**

### **3.6 Describe benefit levels:**

\$1 Minimum benefit    \$12,600 Maximum benefit

Note: The State of Texas does not have a minimum benefit amount. The amount of benefit/assistance indicates \$1.00 because the OLDC system requires that a figure be inserted in the minimum amount.

The maximum benefit amount per household is \$12,600 per program year and could be reached if a household received up to \$1,800 in Crisis Assistance, \$1,800 in Utility Assistance, and a \$9,000 purchase, repair or replacement of a heating or cooling unit or crisis-related purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits. The initial assistance payment that would include arrears does not count towards the annual benefit cap for a household.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,800 for the Utility Assistance Component and the Crisis Assistance Component; Households with incomes more than 50% but at or below 75% FPIG have a maximum of \$1,500 per Component; Households with incomes more than 75% but at or below 150% FPIG have a maximum of \$1,200 per Component; and there is a maximum of up to \$9,000 for the purchase, service or repair of heating and cooling units, replacement of irreparable existing heating and cooling unit components, or the purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits depending on the classification of the household as vulnerable or non-vulnerable and whether a crisis exists. Subrecipients should attempt to repair individual components of a system; if a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The Department allows payment of 100% of a customer's annual usage in one lump sum payment. See 10 TAC §6.309, §6.310, and §6.311 for details.

### **3.7 Do you provide in-kind (e.g., fans, air conditioners) and/or other forms of benefits?**

☒ Yes    ☐ No -- If yes, describe.

Under 10 TAC §6.310(c) Crisis Assistance Component, low income households may also be eligible for the following:

- 1) Emergency deliveries of fuel up to 250 gallons per crisis per Household including coverage for tank pressure testing;
- 2) Utility reconnection costs;
- 3) Blankets;
- 4) For Non-Vulnerable Populations, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system or the system is not functioning according to its intended purpose;
- 5) For Households meeting the definition of Life-Threatening Crisis, purchase of portable cooling and/or heating units, window units, evaporative coolers, and mini splits is allowable;
- 6) Fans; and
- 7) Generators.

When Disasters result in energy supply shortages or other energy-related emergencies, eligible households may also receive assistance to cover the cost of temporary shelter or transportation. For a complete description and more detail concerning these benefits and their eligibility requirements, refer to 10 TAC §6.310.

#### **Section 4: CRISIS ASSISTANCE**

##### **Eligibility - 2604(c), 2605(c)(1)(A)**

4.1 Designate the income eligibility threshold used for the crisis component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold	
1	All Household Sizes	USHHS Poverty Guidelines	150%	

4.2 Provide your LIHEAP program's definition for determining a crisis.

Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions):

- (1) Extreme Weather Conditions, with assistance provided within 48 hours;
- (2) Disaster, with assistance provided within 48 hours; or
- (3) Life Threatening Crisis, with assistance provided within 18 hours.

4.3 What constitutes a life-threatening crisis?

A Life Threatening Crisis exists when the life of at least one person in the applicant Household who is a U.S. Citizen, U.S. National, or a Qualified Alien would likely, in the opinion of a reasonable person, be endangered if utility assistance or heating and cooling assistance is not provided. Examples of life endangerment include, but are not limited to, a Household member who needs electricity for life-sustaining equipment (e.g., kidney dialysis machines, oxygen concentrators, medicinal refrigeration and cardiac monitors); a Household member whose medical professional has prescribed that the ambient air temperature be maintained at a certain temperature; a Household member whose life is endangered if absence of heating or cooling were to continue; or the presence of noxious gases as a result of heating or cooling the Dwelling Unit. In cases concerning an applicant's medical condition or need for life-sustaining equipment, documentation must not be requested about the medical condition of the applicant but the applicant must affirm that such a device is required in the Dwelling Unit because of a life threatening illness or risk of death.

##### **Crisis Requirements, 2604(c)**

4.4 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households? 48 Hours

4.5 Within how many hours do you provide an intervention that will resolve the energy crisis for eligible households in life-threatening situations? 18 Hours

NOTE: Pursuant to §2604(c)(2) of the LIHEAP Statute, the Department provides "some form of assistance that will resolve the energy crisis" not later than 18 hours after a household applies for crisis benefits if such household is eligible to receive such benefits and is in a life-threatening situation.

## Crisis Eligibility, 2605(c)(1)(A)?

4.6 Do you have additional eligibility requirements for **CRISIS ASSISTANCE**?

☐ Yes ☒ No

4.7 Check the appropriate boxes below and describe the policies for each.

- |  | Yes                                 | No                                  |
|--|-------------------------------------|-------------------------------------|
| ● Do you require an assets test?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| ● Do you give priority in eligibility to:  |                                     |                                     |
| • Older Adults (60 years and older)?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Individuals with a disability?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Young children?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Households with high energy burdens?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Other?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Households with high energy consumption  |                                     |                                     |
| ● In order to receive crisis assistance: NOTE: The program has different requirements depending on whether the household contains a member of a priority group.  |                                     |                                     |
| • Must the household have received a shut-off notice or have a near empty tank?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Must the household have been shut off or have an empty tank?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Must the household have exhausted their regular heating benefit?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Must renters with heating costs included in their rent have received an eviction notice?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Must heating/cooling be medically necessary?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Must the household have non-working heating or cooling equipment?  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| • Other?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Explanation for Other: Crisis Assistance can be provided to persons who have already lost service or are in immediate danger of losing service only under one of the following conditions, as defined in 10 TAC §6.301 (relating to Background and Definitions): |                                     |                                     |
| (1) Extreme Weather Conditions, with assistance provided within 48 hours;  |                                     |                                     |
| (2) Disaster, with assistance provided within 48 hours; or   |                                     |                                     |
| (3) Life Threatening Crisis, with assistance provided within 18 hours.   |                                     |                                     |
| ● Do you have additional/differing eligibility policies for:   |                                     |                                     |
| • Renters?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Renters living in subsidized housing?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| • Renters with utilities included in the rent?   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

NOTE: Per 10 TAC §6.309(i)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from client's rent.

Explanation for “yes” responses: The maximum benefit amount per household is \$12,600 per program year and could be reached if a household received up to \$1,800 in Crisis Assistance, \$1,800 in Utility Assistance, and a \$9,000 purchase, repair or replacement of a heating or cooling unit or crisis-related purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits. The initial assistance payment that would include arrears does not count towards the annual benefit cap for a household.

The amount of benefit/assistance that an applicant is eligible for is based on their level of household income. Per 10 TAC §6.309(e), Households with incomes 0-50% of Federal Poverty Income Guidelines (FPIG) have a maximum of \$1,800 for the Utility Assistance Component and the Crisis Assistance Component; Households with incomes more than 50% but at or below 75% FPIG have a maximum of \$1,500 per Component; Households with incomes more than 75% but at or below 150% FPIG have a maximum of \$1,200 per Component; and there is a maximum of up to \$9,000 for the purchase, service or repair of heating and cooling units, replacement of irreparable existing heating and cooling unit components, or the purchase of portable cooling and/or hearing units/window units/evaporative coolers/mini splits depending on the classification of the household as vulnerable or non-vulnerable and whether a crisis exists. Subrecipients should attempt to repair individual components of a system; if a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient can replace the component(s) in order to repair the heating or cooling system. The Department allows payment of 100% of a customer’s annual usage in one lump sum payment. See 10 TAC §6.309, §6.310, and §6.311 for details.

### **Determination of Benefits**

4.8 How do you handle crisis situations?

☒ Separate component

☐ Fast Track

☐ Other

4.9 If you have a separate component, how do you determine crisis assistance benefits?

☒ Amount to resolve crisis, up to a maximum of \$1,800

☒ Other

Heating and cooling equipment repair or replace up to \$9,000

### **Crisis Requirements, 2604(c)**

4.10 Do you accept applications for energy crisis assistance at sites that are geographically accessible to all households in the area to be served?

☒ Yes

☐ No

Explain: In addition to what is already stated in Section 2604(c)(3) of the LIHEAP Statute regarding the requirement that each Subrecipient accept applications at sites that are geographically accessible to all Households in the area to be served, 10 TAC §6.313(c) states “Subrecipient shall handle Reasonable Accommodation requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations).” 10 TAC §1.204 (b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.”

4.11 Do you provide individuals who have physical disabilities the means to:

■ Submit applications for crisis benefits without leaving their homes?

☒ Yes ☐ No If no, explain.

Applications can be mailed in. In some cases, applications may be completed online or the organization will go to the applicant’s home to take the application.

In addition to what is already stated in Section 2604(c)(3) of the LIHEAP Statute regarding the requirement that each Subrecipient accept applications at sites that are geographically accessible to all Households in the area to be served, 10 TAC §6.313(c) states “Subrecipient shall handle Reasonable Accommodation requests, in accordance with §1.204 of this title (relating to Reasonable Accommodations).” 10 TAC §1.204 (b) General Considerations in Handling of Reasonable Accommodations. An applicant, participant, or occupant who has a disability may request an accommodation and, depending on the program funding the property or activity and whether the accommodation requested is a reasonable accommodation, their request must be timely addressed.”

■ Travel to the sites at which applications for crisis assistance are accepted?

☐ Yes ☒ No If yes, explain.

If you answered “No” to both questions 4.11, please explain alternative means of intake to those who are homebound or physically disabled.

### **Benefit Levels, 2605(c)(1)(B)**

4.12 Indicate the maximum benefit for each type of crisis assistance offered.

Winter Crisis      \$ 0 maximum benefit

Summer Crisis      \$ 0 maximum benefit

Year-round Crisis      \$1,800 maximum benefit

4.13 Do you provide in-kind (e.g., blankets, space heaters, fans) and/or other forms of benefits?

☒ Yes ☐ No If yes, describe.

If a component(s) of the heating or cooling system cannot be repaired using parts, the Subrecipient and statewide or regional contractors can replace the component(s) in order to repair the heating or cooling system under the Utility Assistance Component for Vulnerable Households or Crisis Assistance Component for Non-Vulnerable Households. Where replacement is required, use of Energy Star heating and/or cooling

units must be prioritized. Manual J procedures will be used to confirm that the units are appropriately sized.

LIHEAP will allow home energy related expenditures as described in 10 TAC §6.310(c).

All Households experiencing a Life-Threatening Crisis may be eligible to receive portable cooling and/or heating units/window units/evaporative coolers/mini splits (portable electric heaters are allowable only as a last resort).

Under 10 TAC §6.310(c) Crisis Assistance Component, low income households may also be eligible for the following:

- 1) Emergency deliveries of fuel up to 250 gallons per crisis per Household including coverage for tank pressure testing;
- 2) Utility reconnection costs;
- 3) Blankets;
- 4) For Non-Vulnerable Populations, service and repair of existing heating and cooling units is allowed when the Household has an inoperable heating or cooling system or the system is not functioning according to its intended purpose;
- 5) For Households meeting the definition of Life-Threatening Crisis, purchase of portable cooling and/or heating units, window units, evaporative coolers, and mini splits is allowable;
- 6) Fans; and
- 7) Generators.

When Disasters result in energy supply shortages or other energy-related emergencies, eligible households may also receive assistance to cover the cost of temporary shelter or transportation.

For a complete description and more detail concerning these benefits and their eligibility requirements, refer to 10 TAC §6.310.

4.14 Do you provide for equipment repair or replacement using crisis funds?

☒ Yes ☐ No

4.15 Check appropriate boxes below to indicate type(s) of assistance provided:

Type of Assistance	Winter Crisis	Summer Crisis	Year-round Crisis
Heating system repair			X
Heating system replacement (only components of a central HVAC system)			X
Cooling system repair			X
Cooling system replacement (only components of a central HVAC system)			X
Wood stove purchase			
Pellet stove purchase			
Solar panel(s)			
Utility poles / Gas line hook-ups			
Other (Specify: Households which include a member of a Vulnerable Population with an inoperable heating or cooling unit may be eligible for service and repair of their existing heating or cooling unit. Purchase of a heating and/or cooling unit up to \$9,000 is allowable if a heating or cooling system is nonexistent. For Households who do not have a member of a Vulnerable Population, such assistance is limited to times when a Crisis exists as defined in 10 TAC §6.310(a). In a Life Threatening Crisis, all Households may be eligible to receive portable cooling and/or heating units/window units/evaporative coolers/mini splits (portable electric heaters are allowable only as a last resort).			X

4.16 Do any of the utility vendors you work with enforce a winter moratorium on shut offs? If you respond "Yes" to question 4.16, you must respond to question 4.17. ☒ Yes ☐ No

4.17 Describe the terms of the moratorium and any special dispensation received by LIHEAP clients during or after the moratorium period.

Specific to energy assistance clients, §25.483(i) of the Texas Public Utilities Commission rules provides that a Retail Electric Provider (REP) shall not authorize a disconnection for nonpayment of electric service to a delinquent residential customer for a billing period in which the REP receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment

to continue service provided that such pledge, letter of intent, purchase order, or other notification is received by the due date stated on the disconnection notice, and the customer, by the due date on the disconnection notice, either pays or makes payment arrangements to pay any outstanding debt not covered by the energy assistance provider. Additionally, the rule provides that if an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) (relating to Privacy of Customer Information), the REP shall extend the final due date on the disconnection notice, day for day, from the date the usage data was requested until it is provided; and that a REP shall allow at least 45 days for an energy assistance provider to honor a pledge, letter of intent, purchase order, or other notification before submitting the disconnection request to the TDU.

There are protections for several other categories of clients and situations applicable to LIHEAP clients served:

§25.483(g) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent Critical Care Residential Customer when that customer establishes that disconnection of service will cause some person at that residence to become seriously ill or more seriously ill.

§25.483(h) provides that a REP shall not authorize a disconnection for nonpayment of electric service at a permanent, individually metered dwelling unit of a delinquent customer when that customer has been designated as a Chronic Condition Residential Customer pursuant to 25.497 with noted rule exceptions.

§25.483(j) provides that a REP shall not authorize a disconnection for nonpayment of electric service for any customer in a county in which an extreme weather emergency occurs. A REP shall offer residential customers a deferred payment plan upon request by the customer that complies with the requirements of 25.480 (relating to Bill Payment and Adjustments) for bills that become due during the weather emergency. The term “extreme weather emergency” shall mean a day when:

(A) the previous day’s highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(B) the NWS issues a heat advisory for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county.

4.18 If you experience a natural disaster, do you intend to utilize LIHEAP crisis funds to address disaster related crisis situations?



Yes



No

Subrecipients are able to utilize LIHEAP for assistance during a Disaster in compliance with 10 TAC §6.310:

(d) When Disasters result in energy supply shortages or other energy-related emergencies or have lost service or are in immediate danger of losing service, CEAP will allow home energy related expenditures for:

(1) Temporary Shelter in the limited instances that supply of power to the Dwelling Unit is disrupted or in immediate danger of losing services causing a temporary evacuation.

(2) Cost to temporary Shelter or house individuals in hotel, apartments or other living situations in which homes have been destroyed or damaged when health and safety is endangered by loss of access to heating and cooling.



(3) Costs for transportation (e.g., cars, shuttles, buses) to move the individuals away from the crisis area to Shelters when health and safety is endangered by loss of access to heating and cooling.

## Section 5: WEATHERIZATION ASSISTANCE

### Eligibility, 2605(c)(1)(A), 2605(b)(2) – Assurance 2

5.1 Designate the income eligibility threshold used for the weatherization component:

#	Household Size	Eligibility Guidelines	Eligibility Threshold
1	All Household Sizes	USHHS Poverty Guidelines	150%
2		State	

5.2 Do you enter into an interagency agreement to have another government agency administer a **WEATHERIZATION component?** ☐ Yes ☒ No

5.3 If yes, name the agency. N/A

5.4 Is there a separate monitoring protocol for weatherization? ☒ Yes ☐ No

### **WEATHERIZATION** - Types of Rules

5.5 Under what rules do you administer LIHEAP weatherization? (Check only one.)

☐ Entirely under LIHEAP (not DOE) rules

☐ Entirely under DOE WAP (not LIHEAP) rules

☒ Mostly under LIHEAP rules with the following DOE WAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

☒ Income Threshold

☒ Weatherization of entire multi-family housing structure is permitted if at least 66% of units (50% in 2- & 4-unit buildings) are eligible units or will become eligible within 180 days.

☒ Weatherization of shelters temporarily housing primarily low-income persons (excluding nursing homes, prisons, and similar institutional care facilities).

☒ Other (describe):

- Adhere to language from the Consolidated Appropriations Act of 2021 that Paragraph (2) of Section 415(c) of the Energy Conservation and Production Act (42 USC 6865(c)) is amended to allow re-weatherization for a dwelling unit not previously weatherized using federal funds until the date that is 15 years after the date such previous weatherization has passed.

- 10 TAC Part 1, Chapter 6, Subchapter D, Weatherization Assistance Program, is one area where the LIHEAP funded weatherization program adheres to DOE regulations.
- TDHCA uses a priority list for LIHEAP households at 150% or below USHHS poverty income level. A Department approved LIHEAP Priority list or a DOE approved Priority List updated when applicable, which provides the prescribed method to be used by Subrecipients when addressing weatherization measures.
- Energy-related home repair: TDHCA will allow the use of LIHEAP weatherization funds for incidental repairs only if required to enable effective weatherization.
- If LIHEAP funds are included in a DOE unit, the energy audit, or applicable priority list(s), must be used to justify all measures.
- TDHCA will allow, with written permission, LIHEAP WAP funds to be used in the weatherization of DOE Identified HUD and USDA properties using DOE income calculation requirements and Income Determination (i.e., 200% Federal Poverty Income Guidelines).
- If Subrecipient leverages LIHEAP with any DOE weatherization funds, all federal and state rules and current Weatherization Program Notice (WPN) requirements will apply, including but not limited to: income calculation requirements as outlined in applicable DOE WPNs or updated Income Determination Notices in accordance with State Rules.

☐ Mostly under DOE WAP rules, with the following LIHEAP rule(s) where LIHEAP and WAP rules differ: (Check all that apply.)

- ☐ Income Threshold.
- ☐ Weatherization not subject to DOE WAP maximum statewide average cost per dwelling unit.
- ☐ Weatherization measures are not subject to DOE Savings to Investment Ratio (SIR) standards.
- ☐ Other (describe)

#### Eligibility, 2605(b)(5) – Assurance 5

- |  | <u>Yes</u>               | <u>No</u>                           |
|--|--------------------------|-------------------------------------|
| 5.6 Do you require an assets test?                             | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5.7 Do you have additional/differing eligibility policies for: |                          |                                     |
| • Renters?   | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Renters living in subsidized housing?                        | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| • Renters with utilities included in the rent?                 | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

5.8 Do you give priority in eligibility to:

- |  |                                     |                          |
|--|-------------------------------------|--------------------------|
| • Older Adults?                        | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Individuals with a disability?       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Young children?                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Households with high energy burdens? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| • Other?                               | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Explanation: Households with high energy consumption

Explanation for Yes responses:

10 TAC §6.406(c) states “Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.” The state will provide a written procedure to a statewide or regional contractor.

Subrecipients and statewide or regional contractors use a rating system which determines priority based on persons in Households who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

**Benefit Levels**

5.9 Do you have a maximum LIHEAP weatherization benefit/expenditure per household?

<u>Yes</u>	<u>No</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>

5.9a. If yes, what is the maximum? \$12,000

5.10 Do you use an Average Cost per Unit (ACPU)?

<u>Yes</u>	<u>No</u>
<input type="checkbox"/>	<input checked="" type="checkbox"/>

5.10a. If yes, what is ACPU amount? NA

NOTE: unless additional expenditure is authorized in writing by the Department.

**Types of Assistance, 2605(c)(1), (B) & (D)**

5.11 What LIHEAP weatherization measures do you provide? (Check all categories that apply.)

☒ Weatherization needs/assessments/audits

☒ Caulking and insulation

☒ Storm windows

☒ Furnace/heating system modifications/repairs

☒ Furnace replacement

☒ Cooling system modifications/repairs

☒ Water conservation measures

☒ Compact fluorescent light bulbs

☒ Energy related roof repair

☒ Major appliance repairs

☒ Major appliance replacement

☒ Windows/sliding glass doors

☒ Doors

☒ Water Heater

☒ Cooling system replacement

☐ Roof top solar

☐ Community solar projects

☒ Other (describe)

Solar screens or window film. Smart thermostats, incidental repairs up to \$500 only if required to enable effective weatherization; Window screens to help prevent exposure to the Zika virus for Households with pregnant women.

If an appropriate measurable savings in energy expenditures by Low-Income Households can be achieved, LIHEAP weatherization funds may be used for the installation of solar panels for eligible Households.

If any of the questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here.

## **Section 6: Outreach, 2605(b)(3) – Assurance 3, 2605(c)(3)(A)**

6.1 Select all outreach activities that you conduct that are designed to assure that eligible households are made aware of all LIHEAP assistance available:

- ☒ Place posters/flyers in local and county social service offices, offices of aging, Social Security offices, VA, etc.
- ☒ Publish articles in local newspapers or broadcast media announcements.
- ☒ Include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance.
- ☒ Mass mailing(s) to prior-year LIHEAP recipients.
- ☒ Inform low-income applicants of the availability of all types of LIHEAP assistance at application intake for other low-income programs.
- ☒ Execute interagency agreements with other low-income program offices to perform outreach to target groups.
- ☒ Web posting
- ☒ Email
- ☒ Texting
- ☒ Events
- ☒ Social Media
- ☒ Other (specify): LIHEAP Subrecipients are to conduct outreach related to the utility assistance program and other assistance provided with the LIHEAP grant. The Department encourages Subrecipients to conduct outreach through various methods to inform people without internet services about the LIHEAP utility assistance program. Entities to be informed include, but is not limited to, units of government, local non-profits, charitable organizations, and churches. Other ways that persons are to be informed is through utility vendors who include information in client bills about the LIHEAP utility assistance program and the State's phone number to contact if they need utility assistance. Some utility vendors may inform customers and persons who are pending disconnection or who have had their services disconnected about the LIHEAP provider serving their area or provide them with the State phone number to contact. LIHEAP Subrecipients also are to use social media and periodically run radio announcements and newspaper ads.

## **Section 7: Coordination, 2605(b)(4) – Assurance 4**

7.1 Describe how you will ensure that the LIHEAP program is coordinated with other programs available to low-income households (TANF, SSI, WAP, etc.)

- ☒ Joint application for multiple programs. Explanation: LIHEAP subrecipients have a single intake for their programs.

- ☒ Intake referrals to/from other programs. Explanation: Community Services Block Grant (CSBG) refers programs and other programs administered.
- ☐ One-stop intake centers
- ☐ Other – describe:

## Section 8: Agency Designation, 2605(b)(6) – Assurance 6

8.1 How would you categorize the primary responsibility of your State agency?

- ☒ Administration Agency
- ☐ Commerce Agency
- ☐ Community Services Agency
- ☐ Energy/Environment Agency
- ☐ Housing Agency
- ☐ Welfare Agency
- ☐ Other – describe:

## Alternate Outreach and Intake, 2605(b)(15) – Assurance 15

8.2 How do you provide alternate outreach and intake for **HEATING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.3 How do you provide alternate outreach and intake for **COOLING ASSISTANCE**?

Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

8.4 How do you provide alternate outreach and intake for **CRISIS ASSISTANCE**?

In instances of Disasters, subrecipients and statewide or regional contractors coordinate with other assistance organizations (shelters, Red Cross, etc.). Report of available services at various workgroup meetings with community stakeholders (disability, health services, homeless, etc), and presentation at area events.

Question 8.5	Heating	Cooling	Crisis	Weatherization
8.5a. Who determines client eligibility?	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments , CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Non-profits, Statewide or Regional Contractors
8.5b. Who processes benefit payments to gas and electric vendors?	Local governments, CAAs and Other	Local governments, CAAs and	Local governments , CAAs and	N/A

	Nonprofits, Statewide or Regional Contractors	Other Nonprofits, Statewide or Regional Contractors	Other Nonprofits, Statewide or Regional Contractors	
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<b>Question 8.5</b>	<b><u>Heating</u></b>	<b><u>Cooling</u></b>	<b><u>Crisis</u></b>	<b><u>Weatherization</u></b>
8.5c. Who processes benefit payments to bulk fuel vendors?	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments, CAAs and Other Nonprofits, Statewide or Regional Contractors	Local governments , CAAs and Other Nonprofits, Statewide or Regional Contractors	N/A
8.5d. Who performs installation of weatherization measures?	N/A	N/A	N/A	Local governments, CAAs and Other Nonprofits-most subcontract with local contractors, Statewide or Regional Contractors

Note for 8.5: In the USHHS-OLDC system where the State Plan is entered, it only allows states to select one type of entity. The Department will select Nonprofits; although we will also contract with Units of government and CAAs.

#### 8.6 What is your process for selecting local administering agencies?

The Department ensures that to the extent it is necessary to designate local administrative agencies in order to carry out the purposes of Title 42 U.S.C. §§8621, et seq. special consideration is given to any local public or private nonprofit agency which was receiving CSBG or LIHEAP funds.

(1) The Department before giving such special consideration, determines that the agency involved meets program and fiscal requirements established by law and by the Department; and

(2) if there is no such agency because of any change in the assistance furnished to programs for economically disadvantaged persons, then the Department gives special consideration in the designation of local administrative agencies to any successor agency which is operated in substantially the same manner as the predecessor agency which did receive funds for the fiscal year preceding the fiscal year for which the determination is made.

Currently, the Department administers all aspects of program delivery through subrecipients and statewide/regional contractors that have demonstrated they are operating the program in accordance with the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, et seq.), and Department rules. If subrecipients and statewide/regional contractors are successfully administering the program, the Department may offer to renew the contract.

However, in order to achieve full expenditure of funding, the Department may reallocate funds that have been voluntarily relinquished or deobligated in compliance with TAC rule §6.304. Additionally, if the State receives a large supplemental appropriation for LIHEAP, the Department may allocate some or all of the funds to a statewide or regional contractor.

If the Department determines that an organization is not administering the program satisfactorily, corrective actions are taken to remedy the problem. Thereafter, if a Subrecipient fails to administer the program correctly, the Department may proceed with the process provided for in Department rules of removing funds and reassign the service area or a portion to another existing Subrecipient or conduct solicitation or selection of a new Subrecipient in accordance with the Low-Income Home Energy Assistance Act of 1981. The affected Subrecipient may request a hearing in accordance with §2105.204 of the Texas Government Code.

However, the Department retains the right to go through a procurement process for some or all aspects of the LIHEAP program.

8.7 How many local administering agencies do you use? 35

8.8 Have you changed any local administering agencies from last year? ☐ Yes ☒ No

8.9 If so, why?

- ☐ Agency was in noncompliance with grantee requirements for LIHEAP
- ☐ Agency is under criminal investigation
- ☐ Added agency
- ☐ Agency closed
- ☐ Other – describe – voluntary relinquishment

Explanation: N/A

8.10 If a subrecipient is no longer providing LIHEAP, are you aware of prior-year LIHEAP funds being mismanaged or misspent? ☐ Yes ☒ No

8.10a If yes, please explain.

8.10b If you are aware, were other federal programs impacted such as CSBG, SSBG, Head Start, TANF, and Department of Energy Weatherization funding, etc.

8.10c If yes, please explain.

### **Section 9: Energy Suppliers, 2605(b)(7) – Assurance 7**

9.1 Do you make payments directly to home energy suppliers?

Heating ☒ Yes ☐ No

Cooling ☒ Yes ☐ No

Crisis ☒ Yes ☐ No

Are there exceptions? ☒ Yes ☐ No



If yes, describe: Per 10 TAC §6.309(i)(7), Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from client's rent.

9.2 How do you notify the client of the amount of assistance paid?

The administering Subrecipient/contractor informs them once the determination is made.

9.3 How do you assure that the home energy supplier will charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the amount of the payment?

Vendor agreements are used in all components. The Department provides Subrecipients and statewide or regional contractors with a Department approved Vendor Agreement to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.4 How do you assure that no household receiving assistance under this title will be treated adversely because of their receipt of LIHEAP assistance?

Vendor Agreements are used in all components. The Department provides Subrecipients and statewide or regional contractors with a Department approved Vendor Agreement to utilize. The document can be found at the Department's website at <https://www.tdhca.state.tx.us/community-affairs/ceap/guidance.htm>

9.5 Do you make payments contingent on unregulated vendors taking appropriate measures to alleviate the energy burdens of eligible households? ☐ Yes ☒ No. If so, describe the measures unregulated vendors may take. Attach a copy of the template statewide vendor agreement or a policy that indicates local agreements must adhere to statewide policies and assurances.

For Section 9, if any of the above questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here. N/A

## Section 10: Program, Fiscal Monitoring, and Audit, 2605(b)(10) – Assurance 10

10.1. How do you ensure good fiscal accounting and tracking of LIHEAP funds?

1. Review annual audits
2. Monitor fiscal records
3. Review current and prior year monthly expenditure and performance reports

10.1a. Provide your definitions of the following:

**Obligation:** Funds become obligated upon approval of an award to Subrecipient by the Department's Governing Board, unless the Department does not receive sufficient funding from the cognizant federal entity.

**Expenditures:** Funds that have been accrued or remitted for purposes of the award.

**Expenditure timeframe:** The contract time period.

**Administrative costs:** Staff salaries and fringe benefits and overhead costs (such as office space, supplies, equipment, communication costs, travel, etc.) related to staff performing general program and planning duties and not related to direct program service delivery. General program administration and program planning activities include, but are not limited to:

- outreach/targeting activities; program activities, processes, implementation, etc.; budgeting; establishing staff goals and objectives;
- Program personnel management
- Updating/maintaining vendor agreements
- Financial and Performance reporting; accounting processes
- General program work, work related to preparing monitoring responses

### Audit Process

10.2. Is your LIHEAP program audited annually under the Single Audit Act and OMB Circular A-133? ☒ Yes ☐ No

10.2a. if yes, describe your auditor selection process.

The State Auditor's Office (SAO) is responsible for carrying out the duties of the Single Audit and OMB A-133. The SAO currently outsources this portion of the statewide audit to the audit firm of Clifton Larson Allen (CLA).

10.3 Describe any audit findings rising to the level of material weakness or reportable condition cited in the A-133 audits, Grantee monitoring assessments, inspector general reviews, or other government agency reviews of the LIHEAP agency from the most recently audited federal fiscal year. (Document referenced: Statewide Single Audit Report for the Year Ended August 31, 2023 (issued Feb 2023 – Report No. 24-318)

Finding	Type	Brief Summary	Resolved?	Action Taken
2022-024	Significant Deficiency in Internal Control over Compliance and Noncompliance	<p>During our testing of special reporting for FFATA, we noted there is no review and approval process in place over the submitted reports to ensure accuracy and completeness.</p> <p>Additionally, we noted the following instances of noncompliance: TDHCA submits the Annual Report on Households Assisted by LIHEAP (Annual Report), which includes key line items in Section 1 and 2 of the report. During our testing of Annual Report submitted for Federal Fiscal Year 2021, we noted several variances between the Annual Report and supporting detail provided.</p>	<p>The household report portion of the internal control deficiency was resolved.</p> <p>The Department is still working on resolving the other internal control deficiencies.</p>	<p>Corrective Action Plan: For FFATA, Community Affairs Division (CAD)</p> <p><b>CAD Response:</b> The noted Reporting control deficiency is accurate. Community Affairs Division (CAD) is currently updating Standard Operating Procedure (SOP) to include two review and approval processes that will take place prior to the submission in the FSFR system. The two additional review and approval processes will be performed by the Team Lead, Laura White in CAD and Elizabeth Yevich in the Housing Resource Center (HRC). The two additional reviews will aid in the process to ensure accurate and timely submission of monthly FFATA reporting. An updated SOP will be in place by the March 2023 FFATA submission.</p> <p>Corrective Action Plan: The noted Reporting control deficiency is accurate. CAD is currently working with the Information System Division (IS) to correct issues identified in the data pulls to the summary sheets. CAD has identified that issues began when separating the information by the different grants types. In order to address the identified issues, CAD and IS will continue to correct the data queries and formulas to ensure accurate reporting is achieved.</p>

#### 10.4 Audits of Local Administering Agencies

What types of annual audit requirements do you have in place for local administering agencies/district offices?

☒ Local agencies/district offices are required to have an annual audit in compliance with Single Audit and OMB Circular A-133, 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).NOTE: Subrecipients will follow the audit requirements in 45 CFR 75 Subpart F, as applicable, and the requirements in the Texas Single Audit Act.

☐ Local agencies/district offices are required to have an annual audit (other than A-133, 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)).

10.4 (continued)

☒ Local agencies/district offices A-133, 2 CFR 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) or other independent audits are reviewed by Grantee as part of compliance process.

☒ Grant recipient conducts fiscal and program monitoring of local agencies/district offices.

☒ Local agencies and district offices are required to have an annual audit in compliance with Single Audit Act and OMB Circular A-133

#### Compliance Monitoring

10.5 Describe the Grantee's strategies for monitoring compliance with the Grantee's and Federal LIHEAP policies and procedures by:

Grantee employees:

- ☒ Internal program review
- ☒ Departmental oversight
- ☐ Secondary review of invoices and payments
- ☒ Other program review mechanisms are in place. Describe: Cross Division peer review of documents

Local Administering Agencies/District Offices:

- ☒ On-site evaluation
- ☐ Annual program review
- ☐ Monitoring through Central Database
- ☒ Desk reviews
- ☐ Client File Testing/Sampling
- ☒ Other program review mechanisms are in place. Describe: Desk review of 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal

Awards (Uniform Guidance); A review of the Subrecipient's resolution of prior monitoring or Single Audit reports is performed prior to awarding new contracts.

10.6 Explain, or attach a copy of your local agency monitoring schedule and protocol. Response: See attached monitoring schedule.

10.7 Describe how you select local agencies for monitoring reviews?

On-site monitoring visits and desk reviews are mechanisms used for in-depth investigation and overall assessment, respectively. The Department will conduct on-site monitoring reviews and desk reviews of contracts based on an assessment of risk of non-compliance with program requirements. Monitors review necessary program documents and financial records through desk reviews and on-site reviews. LIHEAP Subrecipients and statewide or regional contractors are monitored (for prior year funding) at least once every three years. This is a component of the risk assessment score. If a Subrecipient also has Community Service Block Grant funds, the LIHEAP monitoring may be done at the same time. Subrecipients and statewide or regional contractors that leverage LIHEAP funds with DOE funds for weatherization are subject to a programmatic, fiscal, and unit inspection review according to the DOE monitoring schedule (once a year). Contracts may also be selected for monitoring based on other factors, such as prior monitoring findings, issues noted in the Single Audit, complaints, and/or special requests.

10.8 How often is each local agency monitored? At least once every three years.

10.9 How many local agencies are currently on corrective action plans? (Number only) 0

If any of the above questions require further explanation or clarification that could not be made in the fields provided, attach a document with said explanation here.

## Section 11: Timely and Meaningful Public Participation, 2605(b)(12) – Assurance 12, 2605(c)(2)

11.1 How did you obtain input from the public in the development of your LIHEAP plan?

Check all that apply:

- ☐ Tribal Council meeting(s)
- ☒ Public Hearing(s)
- ☒ Draft Plan posted to website and available for comment
- ☒ Hard copy of plan is available for public view and comment
- ☒ Comments from applicants are recorded
- ☒ Request for comments on draft Plan is advertised
- ☐ Stakeholder consultation meeting(s)
- ☒ Comments are solicited during outreach activities
- ☐ Other, describe:

### Public Hearings, 2605(a)(2)

11.2 List the date(s) and location(s) that you held public hearing(s) on the proposed use and distribution of your LIHEAP funds?

Date	Event Description
------	-------------------

Tuesday, May 13, 2025, 5:30PM–6PM	Texas Department of Housing and Community Affairs 221 East 11 <sup>th</sup> Street, 1 <sup>st</sup> Floor Austin, TX 78701
Wednesday, May 14, 2025, 1:00PM-1:30PM	BakerRipley First Floor Education Center 3838 Aberdeen Way Houston, TX 77025
Wednesday, May 14, 2025, 1:00PM-1:30PM	Northside Community Center 1100 NW 18 <sup>th</sup> Str, Room R44133 Fort Worth, TX 76164
Thursday, May 15, 2025, 5:30PM-6PM	West Texas Opportunities 1415 East 2 <sup>nd</sup> Street Odessa, TX 79761

11.3 How many parties commented on your plan at the hearing(s)? 1

11.4 Summarize the comments you received at the hearing(s). Commenter recommends the Department retain pressure testing for propane gas tanks as an allowable activity for utility assistance in Sections 2.7, 3.7 and 4.13. Commenter points out that it was allowed in the 2025 LIHEAP Plan and prior versions, but was removed in the 2026 Plan. The basis for this recommendation is that propane companies will only fill a propane tank if the propane level is below a certain threshold due to health and safety regulations. It becomes a liability for propane companies if they do not test the tank pressure prior to filling. Clients would experience delays in utility assistance because the CEAP service provider would have to wait for the client to afford and pay for their own pressure testing prior to approving propane tank refills.

11.5 What changes did you make to your LIHEAP plan as a result of the comments received at the public hearing(s)? Tank pressure testing was added back into the Plan as a benefit in Sections 2.7, 3.7 and 4.13.

## Section 12: Fair Hearings, 2605(b)(13) – Assurance 13

12.1 How many fair hearings did the grantee have in the prior Federal fiscal year?  
None

12.2 How many of those fair hearings resulted in the initial decision being reversed? N/A

12.3 Describe any policy and/or procedural changes made in the last Federal fiscal year as a result of fair hearings? None

12.4 Describe your fair hearing procedures for households whose applications are denied and or not acted upon in a timely manner.

An Applicant requests a hearing with the Subrecipient and statewide or regional contractors initially. If not satisfied with the results of the Subrecipient's and statewide or regional contractor's hearing, the

Applicant then appeals to the Texas Department of Housing and Community Affairs to conduct a review of the subrecipient's decision. If still not satisfied, the applicant can then request a contested hearing under Tex. Gov't Code, Chapter 2001 which is conducted by the State Office of Administrative Hearings on behalf of the Department.

Subrecipient contracts include the following section:

### **APPEALS PROCESS**

In compliance with the LIHEAP Act, Subrecipient must provide an opportunity for a fair administrative hearing to individuals whose application for assistance is denied, terminated or not acted upon in a timely manner. Subrecipient must establish a denial of service complaint procedure in accordance with 10 TAC §6.8 of the State Rules. The rule states:

(b) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (b)(1) - (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipients shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turn-around).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

(c) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.

(d) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

- (e) The hearing under subsection (d) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient, for which the procedures are further described in §1.13, relating to Contested Case Hearing Procedures, of this title.
- (f) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

These requirements will also be incorporated into statewide or regional contractor Contracts.

- 12.5 When and how are applicants informed of these rights?  
Applicants are informed of their rights either by 1) informing them on the application itself, 2) handing them a document with such information at the time of application, 3) displaying posters at intake offices, or 4) providing them the information in the denial of LIHEAP assistance letter that is mailed to the applicant.

### **Section 13: Reduction of home energy needs, 2605(b)(16) – Assurance 16**

- 13.1 Describe how you use LIHEAP funds to provide services that encourage and enable households to reduce their home energy needs and thereby the need for energy assistance?  
N/A-The State does not use funds under Assurance 16.
- 13.2 How do you ensure that you don't use more than 5% of your LIHEAP funds for these activities?  
NA-The State does not use funds under Assurance 16.
- 13.3 Describe the impact of such activities on the number of households served in the previous Federal fiscal year.  
NA-The State does not use funds under Assurance 16.
- 13.4 Describe the level of direct benefits provided to those households in the previous Federal fiscal year.  
NA-The State does not use funds under Assurance 16.
- 13.5 How many households received these services?  
NA-The State does not use funds under Assurance 16.

### **Section 14: Leveraging Incentive Program, 2607A**

- 14.1 Do you plan to submit an application for the leveraging incentive program?  
☐ Yes ☒ No
- 14.2 Describe instructions to any third parties and/or local agencies for submitting LIHEAP leveraging resource information and retaining records. NA
- 14.3 For each type of resource and/or benefit to be leveraged in the upcoming year that will meet the requirements of 45 C.F.R. § 96.87(d)(2)(iii), describe the following:



Resource	What is the type of resource or benefit?	What is the source(s) of the resource?	How will the resource be integrated and coordinated with LIHEAP?
NA	NA	NA	NA

## Section 15: Training

15.1 Describe the training you provide for each of the following groups:

a. Grantee recipient Staff:

☒ Formal training on grantee policies and procedures

How often?

☐ Annually

☐ Biannually

☒ As needed

☐ Other – Describe:

☐ Employees are provided with policy manual

☒ Other – Describe:

Employees are provided with all the information necessary to administer the LIHEAP. The Department training team provides new staff with programmatic orientation training and are invited to observe and participate in Subrecipient trainings as well.

b. Local Agencies:

☒ Formal training conference

How often?

☒ Annually

☐ Biannually

☒ As needed

☒ Other – Describe: The Department offers a manager training for newly hired managers or Executive Directors, as needed, which is then followed up with individualized technical assistance. The Department hosts meetings and training events on an as needed basis with Subrecipients and statewide or regional contractors to conduct necessary training and/or make announcements. The Department collaborates with the Texas Association of Community Action Agencies to coordinate training for Subrecipients. Training for Subrecipients occurs at an annual conference sponsored by the Texas Association of Community Action Agencies each year. The Department provides a template for developing the Annual Service Delivery Plan and a guide for developing it. The Department develops data tools and trains agencies as needed on how to analyze their data to improve efficiency and productivity. Emails, Go-To-Webinars, MS Teams for virtual TTA, and phone calls are common communication means with which the Department trains, assists, and communicates with LIHEAP Subrecipients and statewide or regional contractors.

☒ On-site training

How often?

Annually

☐ Biannually

☒ As needed

☒ Other –

The Department identifies key areas for training needs based upon monitoring reports, new regulations, and Subrecipient and statewide or regional contractors requests. The Department has effective virtual training courses to address Subrecipient TTA needs. The Department provides training as needed to individual agencies and network wide trainings on a variety of topics such as: process mapping, production, data analysis, intake, client file documentation, weatherization assessments, audits, final inspections, working with contractors, reporting, and technical assistance for service delivery. Onsite training is provided as warranted. The Department also supplies Subrecipients with online resources, training centers, and conference information to obtain skills and certifications.

☐ Employees are provided with policy manual

☒ Other – Describe: The Department uses an online portal (i.e., Wufoo) that agencies use daily for quick responses to questions or for requesting training. As needed, the Department schedules meetings to provide information, training, and technical assistance to the local agencies. Emails, the online portal, Go-To-Webinar, MS Teams for virtual TTA, and phone calls are the common methods used by the Department to train, assist, and communicate with LIHEAP Subrecipients and statewide or regional contractors. The Department creates tools, guides, cheat sheets, and FAQs that are posted on program webpages. The Department hosts quarterly Go-To-Webinar calls for the LIHEAP Subrecipients to provide relevant training on an ongoing basis.

c. Vendors

☐ Formal training conference

How often?

☐ Annually

☐ Biannually

☐ As needed

☐ Other – Describe:

☒ Policies communicated through vendor agreements

☐ Policies are outlined in a vendor manual

☐ Other – Describe:

15.2 Does your training program address fraud reporting and prevention?

☒ Yes

☐ No

**Section 16: Performance Goals and Measures, 2605(b)**

16.1 Describe your progress toward meeting the data collection and reporting requirements of the four required LIHEAP performance measures. Include timeframes and plans for meeting these requirements and what you believe will be accomplished in the coming federal fiscal year.

The Department was able to meet the four LIHEAP performance measures.

The Department currently requires Subrecipients and statewide or regional contractors to upload data related to the four performance measures into our State reporting system. The Department has made this reporting a contractual requirement for all LIHEAP Subrecipients and statewide or regional contractors. The Department periodically reviews uploaded summary reports and offers technical assistance to Subrecipients and statewide or regional contractors who may not understand what to report or may not upload the data in a timely fashion.

The Department will review the outcomes of the performance data reports to determine any training needs or changes to programs design that are needed.

## **Section 17: Program Integrity, 2605(b)(10)**

### **17.1 Fraud Reporting Mechanisms**

- a. Describe all mechanisms available to the public for reporting cases of suspected waste, fraud, and abuse. Select all that apply.

- ☒ Online Fraud Reporting
- ☐ Dedicated Fraud Reporting Hotline
- ☒ Report directly to local agency/district office or Grantee office
- ☒ Report to State Inspector General or Attorney General
- ☒ Forms and procedures in place for local agencies/district offices and vendors to report fraud, waste, and abuse.
- ☐ Other – describe:

Note: TDHCA’s website has a webpage named “Report Fraud, Waste, and Abuse by TDHCA Management and Staff” directing persons who suspect fraud, waste, and abuse by TDHCA management and staff to report to the State Auditor’s Office at <https://sao.fraud.texas.gov/ReportFraud/>. Subrecipients are required to establish fraud, waste, and abuse procedures. The state will provide a fraud, waste, and abuse procedures to statewide or regional contractors.

- b. Describe strategies in place for advertising the above-referenced resources. Select all that apply.

- ☐ Printed outreach materials
- ☐ Posted in local administering agencies offices
- ☐ Addressed on LIHEAP application
- ☒ Website
- ☐ Other - Describe

## 17.2 Identification Documentation Requirements

- a. Indicate which of the following forms of identification are required or requested to be collected from LIHEAP applicants or their household members.

Type of Identification Collected	Collected from Whom?		
	Applicant Only	All Adults in HH	HH Members Seeking Assistance*
Social Security Card is photocopied and retained	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Social Security Number (without actual card)	Required <input type="checkbox"/>	Required <input type="checkbox"/>	Required <input type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>
Government-issued identification card (e.g.,: driver's license, state ID, Tribal ID, passport, etc.)	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>	Required <input checked="" type="checkbox"/>
	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>	Requested <input type="checkbox"/>

#	Other	Applicant Only Required	Applicant Only Requested	All Adults in House hold Required	All Adults in Household Requested	All Household Members Required	All Household Members Requested
1	Other: clients provide identification to the subrecipients and statewide or regional contractors at the time of application. See attachment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\*Households may include members who are not seeking assistance and may not be included in the household count. A live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household.

- b. Describe any exceptions to the above policies: NA

### 17.3 Citizenship/Legal Residency Verification

What are your procedures for ensuring LIHEAP recipients are U.S. citizens or qualified non-citizens who are eligible to receive LIHEAP benefits? Select all that apply.

- ☐ Clients sign an attestation of citizenship or U.S. Citizen or Qualified Non-Citizen
- ☐ Clients' submission of certain Social Security Administration cards is accepted as proof of U.S. Citizen or Qualified Non-Citizen
- ☒ Non-Citizens must provide documentation of immigration status
- ☒ Citizens must provide a copy of their birth certificate, naturalization papers, or passport
- ☒ Noncitizens are verified through the SAVE system
- ☐ Tribal members are verified through Tribal enrollment records/Tribal ID card
- ☒ Other – describe: U.S. Nationals will have to provide documentation of that status.

	Other	Applicant Only Required	Applicant Only Requested	All Adults in Household Required	All Adults in Household Requested	All Household Members Required	All Household Members Requested
1	Other: clients provide identification to the subrecipients and statewide or regional contractors at the time of application.					<input checked="" type="checkbox"/>	

### 17.4 Income Verification

What methods does your agency utilize to verify household income?

- ☒ Require documentation of income for all adult household members
- ☒ Pay stubs
- ☒ Social Security award letters
- ☐ Bank statements
- ☐ Tax statements
- ☒ Zero-income statements
- ☒ Unemployment Insurance letters
- ☒ Other – describe: Court Documents or government benefit statements as applicable.

- ☐ Computer data matches:
  - ☐ Income information matched against state computer system (e.g., SNAP, TANF)
  - ☐ Proof of unemployment benefits verified with state Department of Labor
  - ☐ Social Security income verified with SSA
  - ☐ Utilize state directory of new hires
- ☐ Other – describe:

### 17.5 Identification Verification

Describe what methods are used to verify the authenticity of identification documents provided by clients or household members. Select all that apply.

- ☐ Verify SSNs with Social Security Administration
- ☐ Match SSNs with death records from Social Security Administration or state agency
- ☐ Match SSNs with state eligibility/management system (e.g., SNAP, TANF)
- ☐ Match with state Department of Labor system
- ☐ Match with state and/or federal corrections system
- ☐ Match with state child support system
- ☐ Verification using private software (e.g., The Work Number)
- ☐ In-person certification by staff (for tribal grantees only)
- ☐ Match SSN/Tribal ID number with tribal database or enrollment records (for tribal grantees only)
- ☒ Other – describe:

Subrecipients or statewide/regional contractors verify the authenticity of identification documents provided by clients who are not U.S. citizens or nationals. That verification is made through the Systematic Alien Verification for Entitlements (SAVE) system.

#### 17.6 Protection of Privacy and Confidentiality

Describe the financial and operating controls in place to protect client information against improper use or disclosure.

- ☒ Policy in place prohibiting release of information without written consent
- ☒ Grant recipient LIHEAP database includes privacy/confidentiality safeguards
- ☒ Employee training on confidentiality for:
  - ☒ Grant recipient employees
  - ☒ local agencies/district offices
- ☐ Employees must sign confidentiality agreement
  - ☐ Grant recipient employees
  - ☐ local agencies/district offices
- ☒ Physical files are stored in a secure location
- ☒ Electronic files are protected in a secure location.
- ☒ Other – describe: Grantee contracts include the following section:

#### 17.6 Other – Describe:

#### 17.6 Protection of Privacy and Confidentiality

Describe the financial and operating controls in place to protect client information against improper use or disclosure.

Policy in place prohibiting release of information without written consent

Grantee LIHEAP database includes privacy/confidentiality safeguards

Employee training on confidentiality for:

Grantee employees

local agencies/district offices

Employees must sign confidentiality agreement

Physical files are stored in a secure location

## **RECORD KEEPING REQUIREMENTS**

Subrecipients and statewide or regional contractors acknowledge that any information created or exchanged with the State of Texas pursuant to this Contract, must be available in a format that is accessible by the public at no additional charge to the State of Texas. A request for public information shall be communicated to the Department's contact identified in this Contract, by the close of business on the following business day after the request is received. Subrecipient/Vendor shall not provide to the requestor any information that was written, produced, collected, assembled, or maintained under this Contract, but shall respond to the requestor that the request has been forwarded to the Department for processing. After gathering all information that is responsive to the request, but in no event later than five (5) business days after receiving the information request, Subrecipient/Vendor shall send the information to the Department and shall timely contact the Department if there will be any delay in sending the information request or responsive documents to the Department.

### **Texas Administrative Code, Title 10 Chapter 1, Subchapter D §1.409 requires that:**

(a) Client Records including Multifamily Development Owners. The Department requires subrecipient organizations to document client services and assistance. Subrecipient organizations must arrange for the security of all program-related computer files through a remote, online, or managed backup service. Confidential client files must be maintained in a manner to protect the privacy of each client and to maintain the same for future reference. Subrecipient organizations must store physical client files in a secure space in a manner that ensures confidentiality and in accordance with Subrecipient organization policies and procedures. To the extent that it is financially feasible, archived client files should be stored offsite from Subrecipient a headquarters, in a secure space in a manner that ensures confidentiality and in accordance with organization policies and procedures.

(b) Records of client eligibility must be retained for five (5) years starting from the date the Household activity is completed, unless otherwise provided in federal regulations governing the program.

(c) Other records must be maintained as described in the Contract or the LURA, and in accordance with federal or state law for the programs described in the Chapters of this Part.

These requirements will also be incorporated into statewide and regional contractor Contracts.

## **17.7 Verifying the Authenticity of Energy Vendors**

What policies are in place for verifying vendor authenticity?

- ☐ All vendors must register with the State/Tribe
- ☐ All vendors must supply a valid SSN or TIN/W-9 form
- ☒ Vendors are verified through energy bills provided by the household
- ☐ Grantee and/or local agencies/district offices perform physical monitoring of vendors

☐ Other – describe, and note any exceptions to policies above:

17.8 Benefits Policy – Gas and Electric Utilities

What policies are in place to protect against fraud when making benefit payments to gas and electric utilities on behalf of clients? Select all that apply.

- ☐ Applicants required to submit proof of physical residency
- ☒ Applicants must submit current utility bill
- ☐ Data exchange with utilities that verifies:
  - ☐ Account ownership
  - ☐ Consumption
  - ☐ Balances
  - ☐ Payment history
  - ☐ Account is properly credited with benefit
  - ☐ Other – describe:
- ☐ Centralized computer system/database tracks payments to all utilities
- ☐ Centralized computer system automatically generates benefit level
- ☒ Separation of duties between intake and payment approval
- ☐ Payments coordinated among other heating assistance programs to avoid duplication of payments
- ☒ Payments to utilities and invoices from utilities are reviewed for accuracy
- ☐ Computer databases are periodically reviewed to verify accuracy and timeliness of payments made to utilities
- ☐ Direct payment to households are made in limited cases only
- ☐ Procedures are in place to require prompt refunds from utilities in cases of account closure
- ☒ Vendor agreements specify requirements selected above, and provide enforcement mechanism
- ☐ Other – describe:

17.9 Benefits Policy — Bulk Fuel Vendors

What procedures are in place for averting fraud and improper payments when dealing with bulk fuel suppliers of heating oil, propane, wood, and other bulk fuel vendors? Select all that apply.

- ☐ Vendors are checked against an approved vendors list
- ☐ Centralized computer system/database is used to track payments to all vendors
- ☒ Clients are relied on for reports of non-delivery or partial delivery
- ☐ Two-party checks are issued naming client and vendor
- ☐ Direct payment to households are made in limited cases only
- ☐ Vendors are only paid once they provide a delivery receipt signed by the client
- ☐ Conduct monitoring of bulk fuel vendors
- ☐ Bulk fuel vendors are required to submit reports to the Grantee
- ☒ Vendor agreements specify requirements selected above, and provide enforcement mechanism
- ☐ Other – describe:

17.10 Investigations and Prosecutions

Describe the Grantee's procedures for investigating and prosecuting reports of fraud, and any sanctions placed on clients/staff/vendors found to have committed fraud. Select all that apply.

- ☒ Refer to state Inspector General
- ☒ Refer to local prosecutor or state Attorney General



- ☒ Refer to US DHHS Inspector General (including referral to OIG hotline)
- ☒ Local agencies/district offices or Grantee conduct investigation of fraud complaints from public
- ☐ Grantee attempts collection of improper payments. If so, describe the recoupment process.
- ☐ Clients found to have committed fraud are banned from LIHEAP assistance. For how long is a household banned?
- ☒ Contracts with local agencies require that employees found to have committed fraud are reprimanded and/or terminated
- ☒ Vendors found to have committed fraud may no longer participate in LIHEAP
- ☒ Other — describe: A Subrecipient and statewide or regional contractors may be referred to the Department's Enforcement Committee or proposed for debarment.

## **Section 18: Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions**

#### Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include

the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

#### **Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

#### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions**

##### **Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the

certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

#### **Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

☒ By checking this box, the prospective primary participant is providing the certification set out above.

## Section 19: Certification Regarding Drug-Free Workforce Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

### Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
3. For grantees other than individuals, Alternate I applies.
4. For grantees who are individuals, Alternate II applies.
5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).
8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of Subrecipients or subcontractors in covered workplaces).

## Certification Regarding Drug-Free Workplace Requirements

### Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about --(1)The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted -

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
- (B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

221 East 11<sup>th</sup> Street

Austin, Travis County, Texas, 78701

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

☒ By checking this box, the prospective primary participant is providing the certification set out above.

## Section 20: Certification Regarding Lobbying

The submitter of this application certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

☒ By checking this box, the prospective primary participant is providing the certification set out above.



## **REQUIRED ATTACHMENTS**

The following documents must be attached to this application:

- Assurances signature page (submitted as separate document)
- Designation letter for signature to Assurances is required if someone other than the Governor or Tribal Chairperson signs the Assurances. (submitted as separate document)
- Heating component benefit matrix. (Attachment 3)
- Cooling component benefit matrix. (Attachment 3)
- Local Agency Monitoring Schedule (Attachment 4)

## **Attachment 3**

### **Benefit Matrix**

Program rules found at 10 Texas Administrative Code, §6.309(e):

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=309](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=309) . .

All benefits are determined based on a sliding scale.

(e) Benefit determinations for the Utility Assistance Component and the Crisis Assistance Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this subsection:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed \$1,800 per Component;

(2) Households with Incomes more than 50% but at or below 75% of Federal Poverty Guidelines may receive an amount not to exceed \$1,500 per Component; and

(3) Households with Incomes more than 75% but at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed \$1,200 per Component; and

(f) Service and Repair of existing heating and cooling units: Households may receive up to \$9,000 for service and repair of existing heating and cooling units, replacement of irreparable existing heating and cooling unit components, when the Household has an inoperable heating or cooling system based on requirements in §6.310 and §6.311.

(g) Purchase of heating and cooling units. Households may receive up to \$9,000 for the purchase of a heating and cooling unit when a heating or cooling system is nonexistent based on requirements in §6.310 of this subchapter (relating to Crisis Assistance Component) for Non-Vulnerable Population Households and §6.311 of this subchapter (relating to Utility Assistance Component) for Vulnerable Population Households.

(h) Assistance with purchase of portable cooling and/or heating units, window units, evaporative coolers, and mini splits cannot exceed \$9,000. Refer to §6.310(c)(5) of this subchapter for requirements relating to purchase of these types of units.

## Attachment 4

### Monitoring Schedule for FY 2026

	SUBRECIPIENT	REVIEW TYPE	FY Date of Next Monitoring Review	DATE OF LAST FULL ONSITE REVIEW (IF APPLICABLE)
1	Alamo Area Council of Governments	On-Site	2026	December 2024
2	Aspermont Small Business Development Center, Inc.	On-Site	2025	December 2022
3	BakerRipley	On-Site	2025	June 2024
4	Bexar County Community and Development Programs	On-Site	2026	January 2023
5	Brazos Valley Community Action Programs	On-Site	2025	July 2024
6	City of Fort Worth Neighborhood Services Department	On-Site	2025	November 2023
7	City of Lubbock Community Development Department	On-Site	2025	August 2021
8	Combined Community Action, Inc.	On-Site	2026	October 2024
9	Community Action Corporation of South Texas	On-Site	2025	January 2024
10	Community Action Inc. of Central Texas	On-Site	2026	March 2023
11	Community Council of South Central Texas, Inc.	On-Site	2025	April 2024
12	Community Services Northeast Texas, Inc.	On-Site	2027	March 2024
13	Concho Valley Community Action Agency	On-Site	2026	October 2024
14	Cornerstone Community Action Agency	On-Site	2027	March 2024
15	County of Hidalgo Community Services Agency	On-Site	2027	August 2024
16	Crossroads Community Action	On-Site	2025	November 2024
17	Dallas County Health and Human Services	On-Site	2025	April 2024
18	Economic Action Committee of the Gulf Coast	On-Site	2026	January 2023
19	Economic Opportunities Advancement Corporation of Planning Region XI	On-Site	2025	November 2023
20	El Paso Community Action Program-Project BRAVO	On-Site	2025	April 2024
21	Greater East Texas Community Action Program	On-Site	2025	March 2024
22	Hill Country Community Action Association, Inc.	On-Site	2025	November 2023
23	Kleberg County Human Services	On-Site	2027	October 2024
24	Nueces County Community Action Agency	On-Site	2026	October 2024
25	Panhandle Community Services	On-Site	2025	July 2024
26	Pecos County Community Action Agency	On-Site	2027	April 2024
27	Rolling Plains Management Corporation	On-Site	2025	November 2023
28	South Plains Community Action Association, Inc.	On-Site	2025	February 2024
29	South Texas Development Council	On-Site	2025	October 2022
30	Texas Neighborhood Services	On-Site	2025	March 2022
31	Texoma Council Of Governments	On-Site	2025	May 2024
32	Travis County Health and Human Services	On-Site	2025	August 2024
33	Tri-County Community Action, Inc.	On-Site	2024	August 2024
34	Webb County Community Action Agency	On-Site	2028	January 2025
35	West Texas Opportunities, Inc.	On-Site	2025	August 2024
36	Yardi Systems, Inc. (2022-2023 Statewide Contractor)	On-Site	2026	February 2023



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #: 1039**

**Agenda Date: 6/12/2025**

**Agenda #: 14.**

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Presentation, discussion, and possible action on the 2026-2027 Community Services Block Grant State Plan and Awards

#### **RECOMMENDED ACTION**

**WHEREAS**, the Texas Department of Housing and Community Affairs (the Department) develops and submits a State Plan to the U.S. Department of Health and Human Services (USHHS) every other year to administer the Community Services Block Grant (CSBG);

**WHEREAS**, the Board approved a draft 2026-2027 CSBG State Plan (the Plan) on April 10, 2025, which was then made available for public comment and no comment was received; and

**WHEREAS**, the final 2026-2027 CSBG State Plan includes the awards to eligible entities of 2026 CSBG funds as recommended through the Previous Participation Review and Approval Process (PPRAP);

**NOW, therefore, it is hereby**

**RESOLVED**, that the Executive Director or his designee are hereby authorized, empowered, and directed, for and on behalf of this Board to submit the Plan to USHHS and upon USHHS approval of such Plan to contract for the awards represented in the Plan and in connection therewith to execute, deliver, and cause to be performed such amendments, documents, and other writings such as anticipated grant guidance on development of the Plan from USHHS or to make such decisions and non-substantive technical corrections as they or any of them may deem necessary or advisable to effectuate the foregoing.

#### **BACKGROUND**

The Department develops and submits a CSBG Plan every other year on or before September 1 to USHHS. The draft, approved by the Board on April 10, 2025, was released for public comment. The public comment period was open from April 25, 2025, to May 21, 2025, and four public hearings were held at four locations throughout the state between May 13-15, 2025, and no public comment was received.

As indicated in Section 7 of the Plan, 5% of the Department's CSBG allotment is allocated towards state administration expenses and 5% is allocated for discretionary activities. In addition to activities such as training and technical assistance, organizational capacity improvements, a network transition fund, disaster recovery, and Balance of State Continuum of Care homelessness support, the discretionary activities include NOFAs for MSFW and NA Populations Employment and Education Initiatives as well as a Reentry Assistance Program.

It should be noted that the Plan follows a template and series of required responses pre-determined by USHHS with character limitations and specific instructions. Also, the Plan has yet to be reviewed and approved by USHHS. In its review, it is common for USHHS to request corrections to the Plan. Staff recommends approval for staff to make such required changes to ensure USHHS approval.

The Previous Participation Rule (10 TAC, Chapter 1, Subchapter C, §1.302) requires a review of CSBG awards prior to recommendation to the Board. These CSBG awards are subject to this review and are listed in Attachment A. The review has been performed through the PPRAP and all awards in the Plan are recommended without conditions.

## ATTACHMENT A

### 2026-2027 CSBG ESTIMATED ALLOCATIONS

January 1, 2026-December 31, 2026

January 1, 2027-December 31, 2027

	ELIGIBLE ENTITY	2026 ALLOCATION	2027 ALLOCATION
1	Aspermont Small Business Development Center, Inc.	\$150,000	\$150,000
2	Brazos Valley Community Action Program	\$1,311,839	\$1,311,839
3	Cameron and Willacy Counties Community Projects, Inc.	\$901,855	\$901,855
4	City of Austin Health and Human Services Department	\$1,140,731	\$1,140,731
5	City of Fort Worth Neighborhood Services Department	\$1,808,343	\$1,808,343
6	City of San Antonio Department of Community Initiatives	\$2,346,842	\$2,346,842
7	Combined Community Action, Inc.	\$698,152	\$698,152
8	Community Action Corporation of South Texas	\$453,623	\$453,623
9	Community Action Inc. of Central Texas	\$341,788	\$341,788
10	Community Action Social Services and Education	\$153,364	\$153,364
11	Community Council of Greater Dallas	\$2,805,561	\$2,805,561
12	Community Council of South Central Texas, Inc.	\$857,122	\$857,122
13	Community Services of Northeast Texas, Inc.	\$436,850	\$436,850
14	Community Services, Inc.	\$1,712,760	\$1,712,760
15	Cornerstone Community Action Agency	\$163,286	\$163,286
16	Concho Valley Community Action Agency	\$225,074	\$225,074
17	Crossroads Community Action	\$299,607	\$299,607
18	Economic Action Committee of the Gulf Coast	\$150,000	\$150,000
19	Economic Opportunities Advancement Corporation of Planning Region XI	\$518,505	\$518,505
20	El Paso Community Action Program-Project BRAVO	\$1,319,346	\$1,319,346
21	Greater East Texas Community Action Program	\$918,046	\$918,046
22	Guadalupe Economic Services Corporation	\$444,140	\$444,140
23	Gulf Coast Community Services Association	\$6,198,022	\$6,198,022
24	Hidalgo County Community Services Agency	\$1,882,114	\$1,882,114
25	Hill Country Community Action Association, Inc.	\$598,993	\$598,993
26	Nueces County Community Action Agency	\$507,778	\$507,778
27	Panhandle Community Services	\$564,657	\$564,657
28	Pecos County Community Action Agency	\$150,000	\$150,000
29	Rolling Plains Management Corporation	\$474,448	\$474,448
30	South Plains Community Action Association, Inc.	\$270,118	\$270,118
31	South Texas Development Council	\$269,491	\$269,491
32	Southeast Texas Regional Planning Commission	\$517,279	\$517,279
33	Texas Neighborhood Services	\$467,089	\$467,089
34	Texoma Council of Governments	\$242,515	\$242,515
35	Tri-County Community Action, Inc.	\$380,486	\$380,486
36	Webb County Community Action Agency	\$482,505	\$482,505
37	West Texas Opportunities, Inc.	\$666,382	\$666,382
38	Opportunities for Williamson and Burnet Counties	\$376,737	\$376,737
	<b>TOTAL</b>	<b>\$33,205,448</b>	<b>\$33,205,448</b>

Note: All figures are estimates and based on 2025 allocations. Staff will proportionally revise the award amounts according to formula upon Congressional approval and receipt of grant notifications from the U.S. Department of Health and Human Services.

**STATE OF TEXAS FFY 2026 and FFY 2027  
COMMUNITY SERVICES BLOCK GRANT APPLICATION  
AND STATE PLAN**

**To be Submitted to  
U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**August 2025**

**by the**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

Street Address: 221 East 11th Street, Austin, TX 78701  
Mailing Address: PO Box 13941, Austin, TX 78711  
Main Number: 512-475-3800 Toll Free: 1-800-525-0657  
Email: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us) Web: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)

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## SECTION 1

### CSBG Administrative Information

**1.1.** Identify whether this is a one-year or a two-year plan.

Two Year Plan

1.1a. Provide the federal fiscal years this plan covers: 2026 and 2027

**1.2. Lead Agency and Authorized Official:** Update the following information in relation to the lead agency designated to administer CSBG in the State, as required by Section 676(a) of the CSBG Act. Information should reflect the responses provided on the Application for Federal Assistance, SF-424M.

Has the information regarding the state lead agency and authorized official changed since the last submission of the State Plan? ☐ Yes ☒ No

If yes, select the fields that have changed. [\[Check all the apply\]](#)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Lead Agency         | <input type="checkbox"/> Department Type | <input type="checkbox"/> Department Name |
| <input type="checkbox"/> Authorized Official | <input type="checkbox"/> Street Address  | <input type="checkbox"/> City            |
| <input type="checkbox"/> Zip Code            | <input type="checkbox"/> Office Number   | <input type="checkbox"/> Fax Number      |
| <input type="checkbox"/> Email Address       | <input type="checkbox"/> Website         |  |

**1.2a. Lead agency** [Texas Department of Housing and Community Affairs]

**1.2b. Cabinet or administrative department of this lead agency** [Check One and narrative where applicable]

- ☒ Community Affairs Department
- ☐ Community Services Department
- ☐ Governor's Office
- ☐ Health Department
- ☐ Housing Department
- ☐ Human Services Department
- ☐ Social Services Department
- ☐ Other, describe:

**1.2c. Cabinet or Administrative Department Name:** Provide the name of the cabinet or administrative department of the CSBG authorized official **[Community Affairs Division]**

**1.2d. Authorized official of the lead agency** **[Mr. Bobby Wilkinson, Executive Director]**

**Instructional note:** The authorized official could be the director, secretary, commissioner etc. as assigned in the designation letter (attached under item 1.3). The authorized official is the person indicated as authorized representative on the SF-424M and the official recipient of the Notice of Award per Office of Grant Management requirements.

**Name:** Bobby Wilkinson

**Title:** Executive Director

**1.2e.** Street address [**221 East 11<sup>th</sup> Street**]

**1.2f.** City [**Austin**]

**1.2g.** State [**Texas**]

**1.2h.** Zip [**78701**]

**1.2i.** Telephone number and extension [**512-475-3800**]

**1.2j.** Fax number [**512-475-3935**]

**1.2k.** Email address [**bobby.wilkinson@tdhca.state.tx.us**]

**1.2l.** Lead agency website [**www.tdhca.state.tx.us**]

- 1.3. Designation Letter:** Attach the state's official CSBG designation letter. A new designation letter is required if the chief executive officer of the state and/or designated agency has changed. (Attach a document.)

**Guidance:** The designation letter should be updated whenever there is a change to the designee.

**Instructional Note:** The letter should be from the chief executive officer of the State and include, at minimum, the designated State CSBG lead agency (office, department, or bureau) and title of the authorized official of the lead agency who is to administer the CSBG grant award.

Per state law, programmatic designations to a State Agency from the Governor remain in effect unless rescinded.

- 1.4. CSBG Point of Contact:** Provide the following in relation to the designated state CSBG point of contact. The state CSBG point of contact should be the person that will be the main point of contact for CSBG within the state.

Has the information regarding the state point of contact changed since the last submission of the State Plan? ☐ Yes ☒ No

If yes, select the fields that have changed. [\[Check all the apply\]](#)

- |  |   |   |                                     |
|--|---|---|-------------------------------------|
| <input type="checkbox"/> Agency Name   | <input type="checkbox"/> Point of Contact | <input type="checkbox"/> Street Address | <input type="checkbox"/> City       |
| <input type="checkbox"/> State         | <input type="checkbox"/> Zip Code         | <input type="checkbox"/> Office Number  | <input type="checkbox"/> Fax Number |
| <input type="checkbox"/> Email Address | <input type="checkbox"/> Website          |   |                                     |

**1.4a.** Agency name **[Texas Department of Housing and Community Affairs]**

**1.4b.** Point of Contact Name **[Michael DeYoung]**, Title: **Director, Community Affairs Division**

**1.4c.** Street address **[221 East 11<sup>th</sup> Street]**

**1.4d.** City **[Austin]**

**1.4e.** State **[Texas]**

**1.4f.** Zip Code **[78701]**

**1.4g.** Telephone Number **[512-475-2125]**

**1.4h.** Fax number **[512-475-3935]**

**1.4i.** Email Address **[michael.deyoung@tdhca.state.tx.us]**

**1.4j.** Agency Website **[www.tdhca.texas.gov]**

1.5 Provide the following information in relation to the State Community Action Association.

**There is currently a state Community Action Association within the state.**

☒ Yes ☐ No

**Has information regarding the state Community Action Association changed since the last submission of the State Plan?**

☐ Yes ☒ No

If yes, select the fields that have changed. [\[Check all the apply\]](#)

- |  |   |   |                                     |
|--|---|---|-------------------------------------|
| <input type="checkbox"/> Agency Name   | <input type="checkbox"/> Executive Director | <input type="checkbox"/> Street Address | <input type="checkbox"/> City       |
| <input type="checkbox"/> State         | <input type="checkbox"/> Zip Code           | <input type="checkbox"/> Office Number  | <input type="checkbox"/> Fax Number |
| <input type="checkbox"/> Email Address | <input type="checkbox"/> Website            | <input type="checkbox"/> RPIC Lead      |                                     |

**1.5a.** *Agency name: Texas Association of Community Action Agencies, Inc.*

**1.5b.** **Executive Director or Point of Contact** [\[Narrative, 50 characters each\]](#)

**Name** Amanda Shelton

**Title** Executive Director

**1.5c.** **Street Address** 1250 S Capital of Texas Highway Building 3, Ste 400

**1.5d.** **City:** Austin

- 1.5e. State: [Texas](#)
- 1.5f. Zip Code: 78746
- 1.5g. Telephone Number: 512-462-2555
- 1.5h. Fax Number
- 1.5i. Email Address: [amandashelton@taca.org](mailto:amandashelton@taca.org)
- 1.5j. State Association Website: <https://tacaatx.org/>
- 1.5k. State Association currently serves as the Regional Performance Innovation Consortia (RPIC) lead
- ☒ Yes ☐ No

## SECTION 2

### State Legislation and Regulation

- 2.1. CSBG State Legislation: State has a statute authorizing CSBG? ☒ Yes ☐ No
- 2.2. CSBG State Regulation: State has regulations for CSBG? ☒ Yes ☐ No
- 2.3. If yes was selected in item 2.1 or 2.2, attach a copy (or copies) of legislation and/or regulations or provide a hyperlink(s), as appropriate. **[Attach a document and/or provide a link] Link:**

Texas Government Code, Section 2105:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2105.htm>

Texas Government Code, Title 10 General Government, Subtitle G, Chapter 2306, Sections 2306.092 and 2306.097:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2306.htm>

Texas Administrative Code, 10 TAC, Chapter 1, Administration:

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=1](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=1)

Texas Administrative Code, 10 TAC, Chapter 2, Enforcement:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=4&ti=10&pt=1&ch=2](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=10&pt=1&ch=2)

Texas Administrative Code, 10 TAC, Chapter 6, Subchapter A, General Provisions:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sc h=A&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sc h=A&rl=Y)

Texas Administrative Code, 10 TAC, Chapter 6, Subchapter B, Community Services Block Grant:

[http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=6&sc h=B&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=6&sc h=B&rl=Y)

Texas Grant Management Standards 2.0:

<https://comptroller.texas.gov/purchasing/grant-management/>

**2.4. State Authority:** Select a response for each of the following items about the State statute and/or regulations authorizing CSBG:

**2.4a.** Authorizing Legislation: State legislature enacted authorizing legislation or amendments to an existing authorizing statute last federal fiscal year?

☐ Yes ☒ No

**2.4b.** State established or amended regulations for CSBG last federal fiscal year?

☒ Yes ☐ No

## SECTION 3

### State Plan Development and Statewide Goals

**3.1. CSBG Lead Agency Mission and Responsibilities:** Briefly describe the mission and responsibilities of the State agency that serves as the CSBG lead agency. **[Narrative:**

The mission of the Texas Department of Housing and Community Affairs is to administer its assigned programs efficiently, transparently, and lawfully and to invest its resources strategically and develop high quality affordable housing which helps Texas communities to thrive.

The Department accomplishes its mission largely by acting as a conduit for federal assistance for housing and community services. However, because several major housing programs require the participation of private investors and private lenders, TDHCA also operates as a housing finance agency.

Ensuring compliance with the many state and federal laws that govern housing programs is another important part of the Department's mission. This ensures the health and safety of TDHCA's housing portfolio and guarantees state and federal resources are expended in an efficient and effective manner.

TDHCA also serves as a financial and administrative resource that helps provide essential services and affordable housing opportunities to Texans who qualify for this assistance based on their income level. Additionally, the Department is a resource for educational materials and technical assistance for housing, housing related, and community services matters. **3.2. State Plan Goals:** Describe the State's CSBG-specific goals for State administration of CSBG under this State Plan.

**Guidance:** States should consider feedback from OCS, their eligible entities, and the ACSI survey completed by eligible entities when creating their State Plan goals.

**[Narrative:** The Agency’s Strategic Plan for Fiscal Years 2025-2029 includes the following measures related to CSBG:

Objective: Ease hardships and homelessness for 16% percent of the population of very low income persons each year.

Strategy 1: Administer poverty-related funds through a Network of Agencies.

Outcome Measures:

% of Eligible Population that Received Homeless & Poverty Related Assistance

% of Persons Assisted that Achieve Incomes above Poverty Level

Output Measures:

1. Number of persons assisted that achieve incomes above poverty level
2. Number of persons assisted by the Community Services Block Grant Program

**Instructional Note:** For examples of “goals,” see State Accountability Measure 1Sa(i).

**Note:** This information is associated with State Accountability Measure 1Sa(i) and may pre-populate the State’s Annual Report, Module 1, Item B.1.

**3.3. State Plan Development:** Indicate the information and input the State accessed to develop this State Plan.

**3.3a. Analysis of state-level tools [Check all that applies and provide additional information where applicable]**

- ☒ State Performance Indicators and/or National Performance Indicators (NPIs)
- ☒ U.S. Census data
- ☒ State performance management data (e.g., accountability measures, ACSI survey information, and/or other information from annual reports)
- ☒ Monitoring Visits/Assessments
- ☐ Tools Not Identified Above (specify) (Narrative, 500 characters) Describe:

**[Narrative, 2500 characters]**

**3.3b. Analysis of local-level tools [Check all that applies and provide additional information where applicable]**

- ☐ Eligible Entity Community Needs Assessments

- ☐ Eligible Entity Community Action Plans
- ☒ Public Hearings/Workshops
- ☐ Tools Not Identified Above (e.g. state required reports) (specify) Narrative (500 character max)

**3.3c. Consultation with** [Check all that applies and provide additional information where applicable]

- ☒ Eligible Entity (e.g., meetings, conferences, webinars; not including the public hearing)
- ☐ State Association for State Community Services Programs (NASCSPP) association
- ☐ Community Action Partnership (NCAP)
- ☐ Community Action Program Legal Services (CAPLAW)
- ☐ CSBG Tribal Training and Technical Assistance (T/TA) provider
- ☐ Regional Performance Innovation Consortium (RPIC)
- ☐ Association for Nationally Certified ROMA Trainers (ANCRT)
- ☐ Federal CSBG Office
- ☒ Organizations not identified above (specify) **[Narrative:** The Department invites consultation with partners and stakeholders through our Executive Board Meeting, intra-agency councils, workgroups, and public hearings. State employees also attend state association conferences and Board meetings.]

**3.4. Eligible Entity Involvement**

**3.4a. State Plan Development:** Describe the specific steps the State took in developing the State Plan to involve the eligible entities. **[Narrative:** Prior to the development of the State Plan, the Department sent an e-mail to the eligible entities and the State Association to offer an initial opportunity to provide comments on the plan. Additionally, the State included CSBG eligible entities and the State Association in the development of the Plan and the use of CSBG funds by providing the eligible entities and the State Association with the draft Plan prior to presenting it to the TDHCA Governing Board. The plan was then presented to the Department's Board so that it could be released as the draft Plan for an official public comment period. This period provided the eligible entities and the State Association with a third opportunity to comment on the Plan. There were also four public hearings held in different regions of the state, two during business hours and two after business hours, to provide input to the Plan. ]

**Note:** This information is associated with State Accountability Measures 1Sa(ii) and may pre-populate the State's annual report form.

***If this is the first year filling out the automated State Plan, skip the following question.***



- 3.4b. Performance Management Adjustment:** Describe how has the State adjusted its State Plan development procedures under this State Plan, as compared to previous State plans, in order to 1) encourage eligible entity participation and 2) ensure the State Plan reflects input from eligible entities? Any adjustment should be based on the State’s analysis of past performance in these areas, and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is not making any adjustments, provide further detail.

[The State considered the 2025 ACSI Survey results in developing the Plan. One of the areas of feedback was that eligible entities asked to be able to provide input on the CSBG State Plan prior to development of the Plan, including a live or virtual presentation of the Plan. Prior to beginning revisions, the Department sends an e-mail to the eligible entities and the State Association to offer an initial opportunity to provide comments on the plan. The Department also releases a copy of the draft Plan to the network of eligible entities prior to it being approved by the TDHCA Governing Board and released for public comment. Although it is too late to implement a presentation of the Plan either virtually or in person at the annual TACAA conference as suggested in the ACSI Survey results, the Department will implement such prior to the development of the 2028-2029 Plan in order to capture more input from the network. Finally, the State will always consider input from the Network even when it is outside the timeframe for development of this Plan.]

**Note:** This information is associated with State Accountability Measures 1Sb(i) and (ii) and may pre-populate the State’s annual report form.

- 3.5. Eligible Entity Overall Satisfaction:** Provide the State’s target for eligible entity Overall Satisfaction during the performance period: **Year One [78] Year Two [\_78\_]**

**Instructional Note:** The State’s target score will indicate improvement or maintenance of the States’ Overall Satisfaction score from the most recent American Customer Survey Index (ACSI) survey of the State’s eligible entities.

**Note:** Item 3.5 is associated with State Accountability Measure 8S and may pre-populate the State’s annual report form.

## SECTION 4

### CSBG Hearing Requirements

- 4.1. Public Inspection:** Describe the steps taken by the State to disseminate this State Plan to the public for review and comments prior to the public hearing, *pending scheduling and conducting hearings* as required under Section 676(e)(2) of the Act. **[Narrative:** The Draft Application and State Plan was made available for review at the April 10, 2025, meeting of the TDHCA Governing Board. Subsequently, a public comment period occurred from April 25, 2025, through May 21,

2025, whereby input into the Plan could be provided. The State held four public hearings, two during business hours and two after business hours in different regions of the state. The draft Plan was also posted on the Department’s website on April 11, 2025, and a link to the website posting was published in the *Texas Register* on April 25, 2025. Both the Department’s website and the *Texas Register* publication announced the public comment period and the public hearing information.]

**4.2. Public Notice/Hearing:** Describe how the State ensured there was sufficient time and statewide distribution of notice of the public hearing(s) to allow the public to comment on the State Plan, as required under 676(a)(2)(B) of the CSBG Act. **[Narrative:** The State posted notice of the public hearings and the public comment period on the Department’s website April 11, 2025. CSBG eligible entities and the State Association were also notified by e-mail that same day. Notice of Public Hearings and the Public Comment period were also published in the *Texas Register* on April 25, 2025.]

**4.3. Public and Legislative Hearings:** In the table below, specify the date(s) and location(s) of the public and legislative hearing(s) held by the designated lead agency for this State Plan, as required under Section 676(a)(2)(B) and Section 676(a)(3) of the Act.

**Instructional Note: A public hearing is required for each new submission of the State Plan.** The date(s) for the public hearing(s) must have occurred in the year prior to the first Federal fiscal year covered by this plan. Legislative hearings are held at least every three years, and must have occurred within the last three years prior to the first federal fiscal year covered by this plan.

Date	Location	Type of Hearing [Select an option]	If a Combined Hearing was held confirm that the public was invited.
<b>Legislative Hearings:</b>  House Appropriations Committee on February 24, 2025	Texas House of Representatives House Appropriations Committee Meeting Texas State Capitol, Room E2.036 Austin, Texas  Texas Senate	<div> <input type="checkbox"/> Public </div> <div> <input checked="" type="checkbox"/> Legislative </div> <div> <input type="checkbox"/> Combined </div>	<div> <input type="checkbox"/> </div>



## SECTION 5

### CSBG Eligible Entities

- 5.1. CSBG Eligible Entities:** In the table below, list each eligible entity in the State, and indicate public or private, the type(s) of entity, and the geographical area served by the entity. (This table should include every CSBG Eligible Entity to which the State plans to allocate 90 percent funds, as indicated in the table in item 7.2. Do not include entities that only receive remainder/discretionary funds from the State or tribes/tribal organizations that receive direct funding from OCS under Section 677 of the CSBG Act.)

	<b>CSBG Eligible Entity</b>	<b>Public or Nonprofit</b>	<b>Type of Agency</b>	<b>CSBG Counties Served</b>
1	Aspermont Small Business Development Center, Inc.	Nonprofit	CAA	Haskell, Jones, Kent, Knox, Stonewall, Throckmorton
2	Austin, City of, Health and Human Services Department	Public	Local Government	Travis
3	Brazos Valley Community Action Programs	Nonprofit	CAA	Brazos, Burleson, Chambers, Grimes, Leon, Liberty, Madison, Montgomery, Robertson, Walker, Waller, Washington
4	Cameron and Willacy Counties Community Projects, Inc.	Nonprofit	CAA	Cameron, Willacy
5	Cornerstone Community Action Agency	Nonprofit	CAA	Brown, Callahan, Coleman, Comanche, Eastland, McCulloch, Runnels
6	Combined Community Action, Inc.	Nonprofit	CAA	Austin, Bastrop, Colorado, Fayette, Lee, Fort Bend, Wharton
7	Crossroads Community Action	Nonprofit	CAA	Aransas, Calhoun, De Witt, Goliad, Gonzales, Jackson, Lavaca, Refugio, Victoria
8	Community Action Corporation of South Texas	Nonprofit	CAA	Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, San Patricio
9	Community Action Inc. of Central Texas	Nonprofit	CAA	Blanco, Caldwell, Hays
10	Community Action Social Services & Education	Nonprofit	CAA	Maverick
11	Community Council of South Central Texas, Inc.		CAA	Atascosa, Bandera, Brewster, Comal, Culberson, Dimmit, Edwards, Frio, Gillespie,

	<b>CSBG Eligible Entity</b>	<b>Public or Nonprofit</b>	<b>Type of Agency</b>	<b>CSBG Counties Served</b>
		Nonprofit		Guadalupe, Hudspeth, Jeff Davis, Karnes, Kendall, Kerr, Kinney, LaSalle, Live Oak, McMullen, Medina, Presidio, Real, Uvalde, Val Verde, Wilson, Zavala
12	Community Services of Northeast Texas, Inc.	Nonprofit	CAA	Bowie, Camp .Cass, Delta, Franklin, Hopkins, Lamar, Marion, Morris, Rains, Red River, Titus
13	Community Services, Inc.	Nonprofit	CAA	Anderson, Collin, Denton, Ellis, Henderson, Hunt, Kaufman, Navarro, Rockwall, Van Zandt
14	Concho Valley Community Action Agency	Nonprofit	CAA	Coke, Concho, Crockett, Irion, Kimble, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green
15	Community Council of Greater Dallas	Nonprofit	CAA	Dallas
16	Economic Action Committee of the Gulf Coast	Nonprofit	CAA	Matagorda
17	Economic Opportunities Advancement Corporation of Planning Region XI	Nonprofit	CAA	Bosque, Falls, Freestone, Hill, Limestone, McLennan
18	El Paso Community Action Program-Project BRAVO	Nonprofit	CAA	El Paso
19	Fort Worth, City of, Neighborhood Services Department	Public	Local Government	Tarrant
20	Greater East Texas Community Action Program	Nonprofit	CAA	Angelina, Cherokee, Gregg, Houston, Nacogdoches, Polk, Rusk, San Jacinto, Smith, Trinity, Wood
21	Gulf Coast Community Services Association	Nonprofit	CAA	Harris, Brazoria, Galveston
22	Hidalgo County Community Services Agency	Public	Local Government	Hidalgo
23	Hill Country Community Action Association, Inc.	Nonprofit	CAA	Bell, Coryell, Hamilton, Lampasas, Llano, Mason, Milam, Mills, San Saba
24	Guadalupe Economic Services Corporation	Nonprofit	CAA	Lubbock

	<b>CSBG Eligible Entity</b>	<b>Public or Nonprofit</b>	<b>Type of Agency</b>	<b>CSBG Counties Served</b>
25	Nueces County Community Action Agency	Nonprofit	CAA	Nueces
26	Panhandle Community Services	Nonprofit	CAA	Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallum, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler
27	Pecos County Community Action Agency	Nonprofit	CAA	Crane, Pecos, Terrell
28	Rolling Plains Management Corporation	Nonprofit	CAA	Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Mitchell, Montague, Taylor, Shackelford, Stephens, Wichita, Wilbarger, Young
29	San Antonio, City of, Department of Community Initiatives	Public	Local Government	Bexar
30	South Plains Community Action Association, Inc.	Nonprofit	CAA	Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lynn, Motley, Terry, Yoakum
31	South Texas Development Council	Public	Local Government	Jim Hogg, Starr, Zapata
32	Southeast Texas Regional Planning Commission	Public	Local Government	Hardin, Jefferson, Orange
33	Texas Neighborhood Services	Nonprofit	CAA	Erath, Hood, Johnson, Palo Pinto, Parker, Somervell, Wise
34	Texoma Council of Governments	Public	Local Government	Cooke, Fannin, Grayson
35	Tri-County Community Action, Inc.	Nonprofit	CAA	Harrison, Jasper, Newton, Panola, Sabine, San Augustine, Shelby, Tyler, Upshur
36	Webb County Community Action Agency	Public	Local Government	Webb
37	West Texas Opportunities, Inc.	Nonprofit	CAA	Andrews, Borden, Dawson, Ector, Fisher, Gaines, Glasscock, Howard, Loving, Martin, Midland, Nolan, Reeves, Scurry, Upton, Ward, Winkler

	<b>CSBG Eligible Entity</b>	<b>Public or Nonprofit</b>	<b>Type of Agency</b>	<b>CSBG Counties Served</b>
38	Opportunities for Williamson and Burnet Counties	Nonprofit	CAA	Burnet, Williamson

**Note:** Table 5.1. pre-populates the Annual Report, Module 1, Table C.1.

**5.2.** Total number of CSBG eligible entities:   38   **[This will automatically update based on chart in 5.1]**

**5.3. Changes to Eligible Entities List:** Has the list of eligible entities under item 5.1 changed since the State’s last State Plan submission? If yes, briefly describe the changes.

☒ Yes ☐ No **[If yes is selected – Narrative:** In May 2023, CSBG eligible entity Big Bend Community Action Committee, Inc. (BBCAC) voluntarily relinquished its CSBG Eligible Entity status, thereby leaving Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties without an Eligible Entity to provide poverty prevention services. On March 22, 2024, the Governor approved the designation of Community Council of South Central Texas to serve as the CSBG Eligible Entity for Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties.

Additionally, there were 2 eligible entity name changes since the 2024-2025 CSBG State Plan: 1) Central Texas Opportunities, Inc changed their name to Cornerstone Community Action Agency and 2) Community Action Committee of Victoria, Texas changed their name to Crossroads Community Action. At the time we submitted the 2024-2025 CSBG State Plan, we included notice of such and were preparing to release a Request for Applications for a CSBG Eligible Entity to provide CSBG services in the counties that had been served by BBCAC. On September 23, 2023, the Texas Department of Housing and Community Affairs’ Governing Board approved the staff recommendation to recommend that the Governor designate Community Council of South Central Texas (CCSCT) as the Eligible Entity for Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio counties. On March 22, 2024, the Governor of Texas signed the designation letter. ]

**Instructional Note: Limited Purpose Agency** refers to an eligible entity that was designated as a limited purpose agency under title II of the Economic Opportunity Act of 1964 for fiscal year 1981, that served the general purposes of a community action agency under title II of the Economic Opportunity Act, that did not lose its designation as a limited purpose agency under title II of the Economic Opportunity Act as a result of failure to comply with that Act and that has not lost its designation as an eligible entity under the CSBG Act.

**Instructional Note: 90 percent funds** are the funds a State provides to eligible entities to carry out the purposes of the CSBG Act, as described under Section 675C of the CSBG Act. A State must provide “no less than 90 percent” of their CSBG allocation, under Section 675B, to the eligible entities.

## SECTION 6

### Organizational Standards for Eligible Entities

**Note:** Reference IM 138, *State Establishment of Organizational Standards for CSBG Eligible Entities*, for more information on Organizational Standards. Click [HERE](#) for IM 138.

- 6.1. Choice of Standards:** Confirm whether the state will implement the CSBG Organizational Standards Center for Excellence (COE) organization standards (as described in IM 138) or an alternative set during the federal fiscal year(s) of this planning period. (Select one)

- ☒ COE CSBG Organizational Standards Center of Excellence  
☐ Modified Version of COE CSBG Organizational Standards  
☐ Alternative set of organizational standards

**Note:** Item 6.1. pre-populates the Annual Report, Module 1, Item D.1.

- 6.1a. Modified Organizational Standards:** In the case that the state is requesting to use modified COE-developed organizational standards, provide the proposed modification for the FFY of this planning period including the rationale. [\[Narrative, 2500 characters\]](#) [The state has administrative rules, the Texas Administrative Code (TAC), to address state requirements and implement the organizational standards under the TAC. The rule was put into place in January 2016, as amended on January 1, 2025. Minor modifications to the TAC included the state law requirement that eligible entities follow the Texas Grant Management Standards and the State of Texas Single Audit Circular, unless there has been a federal exemption. Additionally, where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation or bylaws, as needed to comply with state law. ]

- 6.1b. Alternative Organizational Standards:** If using an alternative set of organizational standards, attach the complete list of alternative organizational standards. [\[Attachment \(as applicable\)\]](#)

- 6.1c. Alternative Organizational Standards:** If using an alternative set of organizational standards: 1) provide any changes from the last set provided during the previous State Plan submission; 2) describe the reasons for using alternative standards; and 3) describe how they are at least as rigorous as the COE- developed standards.

☒ There were no changes from the previous State Plan submission [\[If not selected, provide a narrative, 2500 characters\]](#)

Provide reason for using alternative standards [\[Narrative, 2500 characters\]](#)

Describe rigor compared to COE-developed Standards [\[Narrative, 2500 characters\]](#)



**6.2. Implementation:** Check the box that best describes how the State officially adopt(ed) organizational standards for eligible entities in the State in a manner consistent with the State’s administrative procedures act? If “Other” is selected, provide a timeline and additional information, as necessary. **[Check all that applies and narrative where applicable]**

- ☒ Regulation
- ☐ Policy
- ☒ Contracts with eligible entities
- ☐ Other, describe: **[Narrative, 2500 characters]**

**6.3. Organizational Standards Assessment:** Describe how will the State will assess eligible entities against organizational standards this federal fiscal year(s).? **[Check all that applies]**

- ☐ Peer-to-peer review (with validation by the State or State-authorized third party)
- ☐ Self-assessment (with validation by the State or State-authorized third party)
- ☐ Self-assessment/peer review with State risk analysis
- ☐ State-authorized third party validation
- ☐ Regular, on-site CSBG monitoring
- ☒ Other (desk and monitoring reviews)

**6.3a. Assessment Process:** Describe the planned assessment process.

**[Narrative:**

The Texas Department of Housing and Community Affairs assesses eligible entities’ compliance with organizational standards by using a software tool which allows eligible entities to upload documents to substantiate compliance with organizational standards. It allows eligible entities to upload documents throughout the federal fiscal year, except during the time period after the submission deadline has passed (i.e., September 30) at which time the Department reviews the documents to assess compliance. Eligible entities can log into their account and see which organizational standards they have met and not met and are sent any related comments via email and are permitted five days to cure unmet standards.

The assessment of organizational standards occurs at the end of the federal fiscal year after which all eligible entities have uploaded their documentation showing compliance with each of the organizational standards. If an eligible entity does not upload any documentation or the proper documentation by the deadline (i.e., September 30 of each year), then that entity will be placed in a “not met” category for the particular organizational standard and given five days to cure all unmet organizational standards to reverse the “not met” for any standards that are cured.

The Department places a high emphasis on Organizational Standards and staff are available to provide technical assistance throughout the year. In the event that an eligible entity does not meet a standard, the Department will determine whether that entity requires intensive technical assistance to meet the standard(s) and what other steps are necessary. Department staff will continue to provide technical

assistance and, if necessary, develop a Technical Assistance Plan or Quality Improvement Plan with the entity until the standards have been met.]

- 6.4. Eligible Entity Exemptions:** Will the State make exceptions in applying the organizational standards for any eligible entities due to special circumstances or organizational characteristics (as described in IM 138)? ☐ Yes ☒ No

**Guidance:** You will only need to respond to the following question if you responded “yes” to 6.4.

- 6.4a.** Provide the specific eligible entities the state will exempt from meeting organizational standards and provide a description and a justification for each exemption. Total Number of Exempt Entities: **[Narrative: No eligible entities are exempt.]**

CSBG Eligible Entity	Description/Justification

- 6.5. Performance Target:** Provide the percentage of eligible entities that the State expects to meet all the state-adopted organizational standards for the FFY(s) of this planning period. **[Insert a percentage. 40%]**

**Note: Note:** Item 6.5. is associated with State Accountability Measures 6Sa and pre-populates the Annual Report, Module 1, Table D.2.

## SECTION 7

### State Use of Funds

#### Eligible Entity Allocation (90 Percent Funds) [Section 675C(a) of the CSBG Act]

**7.1 Formula:** Select the method (formula) that best describes the current practice for allocating CSBG funds to eligible entities. **[Check one and narrative where applicable]**

- ☐ Historic
- ☒ Base + Formula
- ☐ Formula Alone
- ☐ Formula with Variables
- ☐ Hold Harmless + Formula
- ☐ Other **[Narrative: ]**

**7.1a. Formula Description:** Describe the current practice for allocating CSBG funds to eligible entities. [\[Narrative, \(4000 characters\)\]](#). The Department distributes CSBG funds to CSBG eligible entities based on a distribution formula which incorporates the most recent U.S. Census Bureau Decennial Census and data from the American Community Survey (ACS) for information on persons at 125% of poverty; a \$50,000 base; a \$150,000 floor; 98% weighted factor for poverty population; and a 2% weighted factor for the inverse ratio of population density. The formula is applied as follows: each eligible entity receives a base award; then the weighted factors of poverty population and population density are applied to the state's balance of the 90% funds. If the base and application of the weighted factors do not yield sufficient funds for the minimum floor per entity, then the minimum floor amount is reserved for each of those CSBG eligible entities under the floor figure. Then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities. Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent ACS 5 year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.]

**7.1b.** Does the State statutory or regulatory authority specify the terms or formula for allocating the 90 percent funds among eligible entities? ☒ Yes ☐ No

**7.2. Planned Allocation:** Specify the percentage of your CSBG planned allocation that will be funded to eligible entities and in accordance to the "not less than 90 percent funds" requirement as

described under Section 675C(a) of the CSBG Act. In the table, provide the planned allocation for each eligible entity receiving funds for the fiscal year(s) covered by this plan.

**The estimated allocations are based on FY 2025 CSBG funding levels.**

	<b>CSBG Eligible Entity</b>	<b>Estimated 2026 Allocation</b>	<b>Estimated 2027 Allocation</b>
1	Aspermont Small Business Development Center, Inc.	150,000	150,000
2	Brazos Valley Community Action Programs	1,311,839	1,311,839
3	Cameron and Willacy Counties Community Projects, Inc.	901,855	901,855
4	City of Austin Health and Human Services Department	1,140,731	1,140,731
5	City of Fort Worth Neighborhood Services Department	1,808,343	1,808,343
6	City of San Antonio Department of Community Initiatives	2,346,842	2,346,842
7	Combined Community Action, Inc.	698,152	698,152
8	Crossroads Community Action	299,607	299,607
9	Community Action Corporation of South Texas	453,623	453,623
10	Community Action Inc. of Central Texas	341,788	341,788
11	Community Action Social Services and Education	153,364	153,364
12	Community Council of Greater Dallas	2,805,561	2,805,561
13	Community Council of South Central Texas, Inc.	857,122	857,122
14	Community Services of Northeast Texas, Inc.	436,850	436,850
15	Community Services, Inc.	1,712,760	1,712,760
16	Concho Valley Community Action Agency	225,074	225,074
17	Cornerstone Community Action Agency	163,286	163,286
18	Economic Action Committee of the Gulf Coast	150,000	150,000
19	Economic Opportunities Advancement Corporation of Planning Region XI	518,505	518,505
20	El Paso Community Action Program-Project BRAVO	1,319,346	1,319,346
21	Greater East Texas Community Action Program	918,046	918,046
22	Guadalupe Economic Services Corporation	444,140	444,140
23	Gulf Coast Community Services Association	6,198,022	6,198,022
24	Hidalgo County Community Services Agency	1,882,114	1,882,114
25	Hill Country Community Action Association, Inc.	598,993	598,993

	<b>CSBG Eligible Entity</b>	<b>Estimated 2026 Allocation</b>	<b>Estimated 2027 Allocation</b>
26	Nueces County Community Action Agency	507,778	507,778
27	Opportunities for Williamson and Burnet Counties	376,737	376,737
28	Panhandle Community Services	564,657	564,657
29	Pecos County Community Action Agency	150,000	150,000
30	Rolling Plains Management Corporation	474,448	474,448
31	South Plains Community Action Association, Inc.	270,118	270,118
32	South Texas Development Council	269,491	269,491
33	Southeast Texas Regional Planning Commission	517,279	517,279
34	Texas Neighborhood Services	467,089	467,089
35	Texoma Council of Governments	242,515	242,515
36	Tri-County Community Action, Inc.	380,486	380,486
37	Webb County Community Action Agency	482,505	482,505
38	West Texas Opportunities, Inc.	666,382	666,382
	<b>Total</b>	<b>33,205,448</b>	<b>33,205,448</b>

**Note:** This information pre-populates the state’s Annual Report, Module 1, Table E.2.

**7.3. Distribution Process:** Describe the specific steps in the State’s process for distributing 90 percent funds to the eligible entities and include the number of days each step is expected to take. Please include information about State legislative approval or other types of administrative approval (such as approval by a board or commission). **[Narrative:** The Texas State Legislature meets biennially during which time the budgets of all state agencies are considered. The CSBG budget is included in the review and appropriation of the Department’s overall budget. Prior to obtaining approval from its Governing Board to release funding contracts, the Department conducts an internal Previous Participation Review and Approval Process of the individual funding contracts for the eligible entities. After approval, the Department posts an agenda seven days prior to a monthly Board meeting to include an item seeking approval of the CSBG State Plan, which includes obtaining Board approval to release funding contracts to the eligible entities. The Department distributes funding utilizing an electronic contract and reporting system. Upon receipt of Notice of Grant Award from USHHS, the Department generates contracts to allocate the 90% pass-through funding to the CSBG eligible entities. This process can take up to 30 days.]

**7.3a. Distribution Method:** Select the option below that best describes the distribution method the state uses to issue CSBG funds to eligible entities:

- ☒ Reimbursement
- ☒ Advance
- ☐ Hybrid
- ☐ Other [Narrative, 4000 characters]

**7.4. Distribution Timeframe:** Does the State plan make funds available to eligible entities no later than 30 calendar days after OCS distributes the Federal award?

☐ Yes    ☒ No

**7.4a. Distribution Consistency:** If no, describe State procedures to ensure funds are made available to eligible entities consistently and without interruption. **[Narrative:** The Department will make the funds available within 30 calendar days after Federal and State authority was provided, with the exception of the 1<sup>st</sup> quarter because of the State's CSBG contract year beginning January 1<sup>st</sup>.]

**Note:** Item 7.4 is associated with State Accountability Measure 2Sa and may pre-populate the State's annual report form.

***If this is the first year filling out the automated State Plan, skip the following question.***

**7.5. Distribution of Funds Performance Management Adjustment:** Describe the state's strategy for improving grant and/or contract administration procedures under this State Plan as compared to past plans? Any improvements should be based on analysis of past performance and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is not making any improvements, provide further detail. **[Narrative:** Because of feedback in the past from the network of eligible entities and an analysis of internal standard operating procedures, the State strives to improve its internal contract administration process and legal Department review process to ensure that the CSBG contracts are executed prior to the start date of the contract year. The State is always open to input from the network regarding its contract administration process.]

**Note:** This information is associated with State Accountability Measure 2Sb and may pre-populate the State's annual report form.

#### **Administrative Funds** [Section 675C(b)(2) of the CSBG Act]

**7.6. Allocated Funds:** Specify the percentage of your CSBG planned allocation for administrative activities for the FFY(s) covered by this State Plan? Enter percentage. **[5%]**

**Note:** This information pre-populates the state's Annual Report, Module 1, Table E.4.

**7.7. State Staff:** Provide the number of staff positions to be funded in whole or in part with CSBG funds for the FFY(s) covered by this State Plan?

**[12.9] year one [12.9] year two**

**7.8. State FTEs:** Provide the number of state Full Time Equivalents (FTEs) that will be funded with CSBG funds for the FFY covered by this State Plan? **[12.9] year one [12.9] year two**

**Use of Remainder/Discretionary Funds** [Section 675C(b) of the CSBG Act]

**7.9. Remainder/Discretionary Funds Use:** Does the State have remainder/discretionary funds as described in Section 675C(b) of the CSBG Act? ☒ Yes ☐ No

If yes was selected, describe how the State plans to use remainder/discretionary funds in the table below.

**Note:** This response will link to the corresponding assurance, item 14.2.

**Instructional Note:** The assurance under 676(b)(2) of the Act (item 14.2 of this State Plan) specifically requires a description of how the State intends to use remainder/discretionary funds to “support innovative community and neighborhood-based initiatives related to the purposes of [the CSBG Act].” Include this description in row “f” of the table below and/or attach the information.

If a funded activity fits under more than one category in the table, allocate the funds among the categories. For example, if the State provides funds under a contract with the State Community Action Association to provide training and technical assistance to eligible entities and to create a statewide data system, the funds for that contract should be allocated appropriately between row 7.9a. and 7.9 row c. If allocation is not possible, the State may allocate the funds to the main category with which the activity is associated.

**Note:** This information is associated with State Accountability Measures 3Sa and pre-populates the State’s Annual Report, Module 1, Table E.7.

Remainder of Discretionary Fund Uses (See 675C(b)(1) of the CSBG Act)	Year One Planned \$	Year One Planned %	Year Two Planned \$	Year Two Planned %	Brief description of services/activities
a. Training and Technical Assistance to eligible entities	\$150,000	8.57%	\$150,000	8.57%	T&TA provided by staff or an outsourced provider in areas such as ROMA, Org Standards, Case Management,



Remainder of Discretionary Fund Uses (See 675C(b)(1) of the CSBG Act)	Year One Planned \$	Year One Planned %	Year Two Planned \$	Year Two Planned %	Brief description of services/activities
					Board, Reporting, community action plans, needs assessments, strategic planning, data analysis, and other areas as requested.
b. Coordination of State-operated programs and/or local programs	\$0		\$0		
c. Statewide coordination and communication among eligible entities	\$0		\$0		
d. Analysis of distribution of CSBG funds to determine if targeting greatest need (briefly describe)	\$0		\$0		
e. Asset building programs (briefly describe)	\$0		\$0		
f. Innovative programs/activities by eligible entities or other neighborhood groups (briefly describe)	\$0		\$0		
g. State charity tax credits (briefly describe)	\$0		\$0		
h. Other activities specify (see below for details)	\$1,700,000	91.43%	\$1,700,000	91.43%	See notes below
<b>Totals</b>	<b>\$1,850,000</b>	<b>100%</b>	<b>\$1,850,000</b>	<b>100%</b>	

h. Other Activities. Specify: The planned uses may change as directed by the Governing Board. Expected uses: 1) \$50,000 towards Organizational Capacity Improvements to assist eligible entities in improving

their organizational performance including, but not limited to, efforts to meet organizational standards such as the development of Community Needs Assessments and Strategic Plans, staff compensation to attract qualified employees and reduce turnover, training for staff to become certified ROMA trainers, equipment, software, or repairs); 2) \$400,000 towards a Reentry Assistance Program which will allow nonprofit and local government organizations with established experience in serving the reentry population, to assist previously incarcerated individuals obtain rental housing through landlord incentives, security deposits and other reentry activities related to housing; 3) \$100,000 towards the provision of training and technical assistance services through an outside provider to assess eligible entity operations and provide training and technical assistance; 4) \$50,000 towards a Network Transition Fund which helps CSBG eligible entities with transitional expenses when they absorb other CSBG services areas; 5) \$300,000 towards Migrant and Seasonal Farm Worker and Native American Populations Employment and Education Initiatives; 6) \$750,000 towards a Disaster Recovery Fund; and 7) \$50,000 towards the provision of training and technical assistance related to homelessness in the Balance of State Continuum of Care and related statewide homelessness initiatives.

As a result of this State Plan being approved by the TDHCA Governing Board, the Requests for Applications and awards for the Organizational Capacity Improvements will be released by Department staff without further Board approval.

If any of the categories above are not fully expended during the contract term the Department may reprogram the unexpended funds to other discretionary categories that it determines are best suited to receive the funds at the time or to the network of eligible entities to be used for CSBG eligible activities.

If funding to the State from HHS is less than projected in the first or second year, the reduced amount of the discretionary funds will be first taken from the Organizational Capacity Improvements activity and then reduced proportionally among the other discretionary categories.

If funding is more than projected in the first or second year, some of the increased amount of the discretionary funds will be given to the Reentry Assistance Program, and may also be programmed into other discretionary categories that are best suited to receive the funds at the time or to the network of eligible entities to be used for CSBG eligible activities.

**7.10. Remainder/Discretionary Funds Partnerships:** Select the types of organizations, if any, the State intends to work with (by grant or contract using remainder/discretionary funds) to carry out some or all of the activities in table 7.9. **[Check all that apply and narrative where applicable]**

- ☐ The State Directly Carries Out All Activities (No Partnerships)
- ☐ The State Directly Carries Out Some Activities (No Partnerships)
- ☒ CSBG eligible entities (up to 38) (if checked, provide the expected number of CSBG eligible entities to receive funds)
- ☐ Other community-based organizations
- ☐ State Community Action association
- ☐ Regional CSBG technical assistance provider(s)
- ☒ National technical assistance provider(s)

- ☒ Individual consultant(s)
- ☒ Tribes and Tribal Organizations
- ☒ Other **[Migrant and Seasonal Farm Worker Organizations, Homelessness Organization, Reentry Organizations]**

**Note:** This response will link to the corresponding CSBG assurance, item 14.2.

***If this is the first year filling out the automated State Plan, skip the following question.***

- 7.11. Use of Remainder/Discretionary Funds Performance Management Adjustment:** Describe any adjustments the state will make to the use of remainder/discretionary funds under this State Plan as compared to past State Plans? Any adjustment should be based on the State's analysis of past performance, and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is not making any adjustments, provide further detail. **[Narrative:**

The Department anticipates a slight increase in CSBG funding for 2026 and 2027 as compared to the 2024 and 2025 CSBG State Plan. Within the Other Activities category the State will: 1) Continue to fund a Reentry Assistance Program to assist previously incarcerated individuals obtain housing at \$400,000; 2) Maintain the amount allocated to Organizational Capacity Improvements and Training & Technical Assistance Services through an Outside Provider; 4) Remove the amount allocated to the Housing Voucher Program Support Fund; 5) Increase the amount allocated to the Disaster Recovery Fund; 6) Decrease the amount allocated to the Balance of State Continuum of Care T&TA and Related Homeless Initiatives from \$75,000 to \$50,000; and 7) make no changes to the amount allocated to the Network Transition Fund and Migrant and Seasonal Farmworker and Native American Populations Employment and Education Initiatives.

If funding is less or more than projected, reductions/increases will be implemented as described in Section 7.9.

**Note:** This information is associated with State Accountability Measures 3Sb, and may pre-populate the State's annual report form.

## SECTION 8

### State Training and Technical Assistance

- 8.1. Training and Technical Assistance Plan:** Describe the State's plan for delivering CSBG-funded training and technical assistance to eligible entities under this State Plan by completing the table

below. The T/TA plan should include all planned CSBG-funded T/TA activities funded through the administrative or remainder/discretionary funds of the CSBG award (as reported in Section 7). The CSBG T/TA plan should include training and technical assistance conducted directly by the state or through partnerships (as specified in 8.3). Add a row for each activity: indicate the timeframe; whether it is training, technical assistance, or both; and the topic. Add a row for each activity: indicate the timeframe; whether it is training, technical assistance or both; and the topic. (CSBG funding used for this activity is referenced under item 7.9(a), Use of Remainder/Discretionary Funds.)

**Note:** 8.1 is associated with State Accountability Measure 3Sc and pre-populates the State's Annual Report, Module 1, Table F.1..

Fiscal Year (Y) Quarter (Q) / Timeframe	Training (T), Technical Assistance (TA), or Both (B)	Topic	Brief Description of Other
FY1 - Q1	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, CA, SP, M, CM, NPI	Department staff provides technical assistance as identified by our T&TA Plan that was developed by the state office, state association, and RPIC. The T&TA plan was developed from eligible entity requests, monitoring reports, workgroups, surveys, and performance analysis. The State has an on-line system to request T&TA or to submit questions for TA. T&TA is conducted by the following means: on-site and virtual training, conferences, regional training series, webinars, teleconferences, workshops, videos, Best Practices, FAQs, and online tools/resources. Training is customized to the needs of the eligible entity. ROMA is embedded into all trainings, guidance, and materials. CM training is provided on-site and/or via virtual trainings. Individualized TA for CM will be provided as a continuation to CA trainings and guides previously provided. GTB trainings are provided when requested, along with online Board training resources. TA on reporting is provided monthly by Department reporting staff and performance analysis is provided by trainers. F, OS-G, OS-US, T&TA will be provided as requested and as needed;

<b>Fiscal Year (Y) Quarter (Q) / Timeframe</b>	<b>Training (T), Technical Assistance (TA), or Both (B)</b>	<b>Topic</b>	<b>Brief Description of Other</b>
			although aspects of each are incorporated into trainings as appropriate. CA, SP, CSD, M, TA will be provided as needed. Training and Technical Assistance Services through a third party will be provided to entities identified as “at-risk”.
FY1 - Q2	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY1 – Q3	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY1 – Q4	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY2 – Q1	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY2 – Q2	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY2 – Q3	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1
FY2 – Q4	B	F, GTB, OS-G, OS-US, CSD, R, ROMA, M, CM, NPI	Same as FY1-Q1

**Topic:**

- Fiscal (F)
- Governance/Tripartite Boards (GTB)
- Organizational Standards-General (OS-G)
- Organizational Standards (OS-US)– for eligible entities with unmet standards on Technical Assistance Plans or Quality Improvement Plans
- Correcting Significant Deficiencies Among Eligible Entities (CSD)

- Reporting (R)
- ROMA
- Community Assessment (CA)
- Strategic Planning (SP)
- Monitoring (M)
- Communications (C)
- Technology (T)
- National Performance Indicators (NPI)
- Other – Case Management (CM)

**8.1a. Training and Technical Assistance Budget:** The planned budget for the training and technical assistance (as indicated in the Remainder/Discretionary Funds table in item 7.9): **[150,000]**

**8.1b. Training and Technical Assistance Collaboration:** Describe how the state will collaborate with the State Association and other stakeholders in the planning and delivery of training and technical assistance? [Narrative, 2500 characters]: The Department consistently collaborates with the state association, the eligible entity network, and RPIC to try and consider the most effective ways to plan and deliver training and technical assistance. The Department uses information from eligible entity requests, monitoring reports, workgroups, surveys, and performance analysis, from within the state network and the state association to drive T&TA topics and implementation. Additionally, the Department hosts quarterly calls with the eligible entity network and Department staff is available to lead sessions at the state association's annual conference. Feedback from outside sources is key in developing T&TA assistance, so the Department is always available for additional feedback to improve effective training sessions and materials.

***If this is the implementation year for organizational standards, skip question 8.2.***

**8.2. Organizational Standards Technical Assistance:** Does the State have Technical Assistance Plans (TAPs) in place for all eligible entities with unmet organizational standards, if appropriate?

☒ Yes ☐ No (The Department reviews all submitted documentation of Organizational Standards, and provides technical assistance and detailed guidance for all standards that are not met. The Department continues to train and assist the network of eligible entities which, as a whole, are still in the process of putting systems in place to achieve Organizational Standards compliance, and maintain applicable documentation on a regular and timely basis enabling them to upload related documents throughout the year. Improvements are made each succeeding year.

Eligible entities who meet 30%-69.99% of Organizational Standards will be required to work with the Department to develop a TAP which will include targeted training and technical assistance and a timeframe for the entity to meet the standards. Failure to show progress in meeting TAP targets may result in an entity being placed on a QIP. Eligible entities who achieve 70%-99.99% will be provided with technical assistance with the goal of achieving 100% compliance in the following year. Eligible entities who have met less than 30% of the Organizational Standards in consecutive years may be placed on a Quality Improvement Plan, which will establish a timeframe and benchmarks for improvement. Additionally, any entity not showing progress in

meeting Organizational Standards for three consecutive years may also result in an entity being placed on a QIP. Failure to show progress in meeting QIP targets as well as significant and repetitive issues identified in monitoring reviews may result in the State proceeding to take additional actions including termination of CSBG funding per CSBG Information Memorandum 116 and state rules.

**8.2a. Address Unmet Organizational Standards:** Describe the state's plan to provide T/TA to eligible entities to ensure they address unmet Organizational Standards. [\[Narrative, 2500 characters\]](#):

The Department reviews all submitted documentation of Organizational Standards and provides technical assistance and detailed guidance for all standards that are not met. The Department has resources readily available to train and assist the network of eligible entities with compliance with Organizational Standards and with guidance on how to maintain applicable documentation and provides such on a regular and timely basis. The goal is that improvements are made each succeeding year.

**Note:** 8.2 is associated with State Accountability Measure 6Sb. The State should put a TAP in place to support eligible entities with one or more unmet organizational standards (as needed).

**8.3. Training and Technical Assistance Organizations:** Indicate the types of organizations through which the State intends to provide training and/or technical assistance as described in item 8.1, and briefly describe their involvement? (Check all that apply.) **[Check all that applies and narrative where applicable]**

- ☐ All T/TA is conducted by the state
- ☐ CSBG eligible entities (if checked, provide the expected number of CSBG eligible entities to receive funds) **[Narrative]**
- ☐ Other community-based organizations
- ☒ State Community Action association
- ☒ Regional CSBG technical assistance provider(s)
- ☒ National technical assistance provider(s)
- ☒ Individual consultant(s)
- ☐ Tribes and Tribal Organizations
- ☐ Other **[Narrative, 1,000 characters]** ]

***If this is the first year filling out the automated State Plan, skip the following question.***

**8.4. CSBG-Funded T/TA Performance Management Adjustment:** Describe adjustments the state made to the training and technical assistance plan under this State Plan as compared to past plans? Any adjustment should be based on the State's analysis of past performance, and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is

not making any adjustments, provide further detail. **[Narrative:** Texas has developed its T/TA Plan in partnership with the state association and RPIC (as laid out in the T/TA Template). Texas has increased network input through workgroups, and online T&TA surveys/evaluations. The training staff tracks all performance/expenditures, T&TA needs, and provides EEs with data analysis, TAPs, and other needs. The State uses the ACSI Survey results when developing the Joint State TTA Plan with the State Association. The most recent ACSI Survey results available are from the 2025 Survey. Starting in March 2025, the training team made changes to its network quarterly call agenda to include CSBG matters along with CEAP. Prior to 2025, the quarterly call only covered CEAP topics. Additionally, the training team provides training presentations at the annual TACAA conference to address topics which are of concern to the Department and the network.

]

**Note:** This information is associated with State Accountability Measures 3Sd and may pre-populate the State's annual report form.

## SECTION 9

### State Linkages and Communication

**Note:** This section describes activities that the State may support with CSBG remainder/discretionary funds, described under Section 675C(b)(1) of the CSBG Act. The State may indicate planned use of remainder/discretionary funds for linkage/communication activities in Section 7, State Use of Funds, items 7.9(b) and (c).

**9.1. State Linkages and Coordination at the State Level:** Describe the linkages and coordination at the State level that the State intends to create or maintain to ensure increased access to CSBG services to low-income people and communities under this State Plan and avoid duplication of services (as required by the assurance under Section 676(b)(5)). Describe or attach additional information as needed. **[Check all that apply from the list below and provide a Narrative.** The Department administers the CSBG grant along with LIHEAP and Weatherization, and all are administered by the Community Affairs Division. The Department also administers the State's housing programs.

The Department is the administrative agency for the Texas Inter-Agency Council for the Homeless (TICH). The TICH membership includes representatives from the Governor's Office, Texas Department of Family and Protective Services, Texas Education Agency, Texas Workforce Commission, Health and Human Services Commission, Texas Department of Criminal Justice, Texas Department of Juvenile Justice, Texas Homeless Network, Texas Veterans Commission, Texas Department of State Health Services, and other housing and homeless advocacy organizations. The Department will continue to strengthen its collaboration with the Texas



Workforce Commission to facilitate improved coordination with local Workforce Boards and eligible entities. The Department chairs the TICH. At the May 21, 2024, meeting, the TICH was provided information about the CSBG program and the eligible entities across the state.

The Department also chairs the State's Housing and Health Services Coordination Council which is composed of several State agencies including the Texas Department of Health and Human Services Commission, Texas Department of State Health Services, Texas Department of Agriculture, Office of Rural Affairs, Texas State Affordable Housing Corporation, and the Texas Veterans Commission. At the May 15, 2024, meeting, the HHSCC was provided information about the CSBG program and the eligible entities across the state.

As a participating member of the State of Texas Reentry Task Force, TDHCA gives periodic updates on the status of the CSBG-D Reentry Program.

**Note:** This response will link to the corresponding CSBG assurance, item 14.5. In addition, this item is associated with State Accountability Measure 7Sa and pre-populates the State's Annual Report , Module 1, Item G.1.

- ☒ State Low Income Home Energy Assistance Program (LIHEAP) office
- ☒ State Weatherization office
- ☐ State Temporary Assistance for Needy Families (TANF) office
- ☐ Head Start State Collaboration offices
- ☐ State public health office
- ☐ State education department
- ☒ State Workforce Innovation and Opportunity Act (WIOA) agency
- ☐ State budget office
- ☐ Supplemental Nutrition Assistance Program (SNAP)
- ☐ State child welfare office
- ☒ State housing office
- ☐ Other

- 9.2. State Linkages and Coordination at the Local Level:** Describe the linkages and coordination at encouraging partnerships and collaborations at the state level with public and private sector organizations, to assure the effective delivery and coordination of CSBG services to transform low-income communities and avoid duplication of services (as required by assurances under Section 676(b)(5) – (6)). **[Narrative:** The Department administers the CSBG in a state whose territory is both vast and varied. As such, the Department's strategy centers on ensuring local coordination through the local service providers. The Department requires CSBG eligible entities to coordinate funds and services at the local level. The Community Action Plan from each entity has to describe the eligible entities' coordination efforts with city, county, schools, non-profits, and other local or regional organizations. CSBG eligible entities coordinate services and work to avoid duplication of services with other providers. CSBG eligible entities are encouraged to participate in local social service and homeless coalitions whose goal is to coordinate services. The Department has stressed the importance of CSBG eligible entities coordinating with WIOA agencies to assist persons to obtain employment and other benefits through WIOA and have

their Community Action Plan provide information on how they work with WIOA. To assist in this coordination, the Department will continue to build upon the working relationship with the Texas Workforce Commission (TWC) and obtain from TWC contact data for local Workforce Development Boards throughout the state and encourage eligible entities to contact the local workforce boards and their contractors who operate services and programs in order to be able to link CSBG clients to available WIOA programs so that their employment and education needs can be better served. This coordination effort will also be of benefit to WIOA in helping them target persons most in need.]

**Note:** This response will link to the corresponding CSBG assurances, items 14.5 and 14.6. and pre-populates the Annual Report, Module 1, Item G.2.

### **9.3. Eligible Entity Linkages and Coordination**

**9.3a State Assurance of Eligible Entity Linkages and Coordination:** Describe how the State will assure that the eligible entities will partner and collaborate with public and private sector organizations to assure the effective delivery of CSBG services to low-income people and communities and avoid duplication of services (as required by the assurance under Section 676(b)(5)). Attach additional information as needed. **[Narrative:** The State requires CSBG eligible entities to coordinate funds at the local level. Their Community Action Plan has to describe their coordination efforts with city, county, schools, non-profits, and other organizations. CSBG eligible entities coordinate services and work to avoid duplication of services with other providers. Most CSBG eligible entities participate in local social service and homeless coalitions whose goal is to coordinate services.]

**Note:** This response will link to the corresponding CSBG assurance, item 14.5 and pre-populates the Annual Report, Module 1, Item G.3a.

**9.3b State Assurance of Eligible Entity Linkages to Fill Service Gaps:** Describe how the eligible entities will develop linkages to fill identified gaps in the services, through the provision of information, referrals, case management, and follow-up consultations, according to the assurance under Section 676(b)(3)(B) of the CSBG Act. **[Narrative:** The Department requires a Community Action Plan be submitted annually, which includes a section wherein eligible entities describe any gaps in services, and their strategy to address those gaps. If a gap is not currently being addressed or not being sufficiently addressed, eligible entities are to develop and implement a strategy to work with other organizations in their local communities to address the gaps in services. ]

**Note:** This response will link to the corresponding CSBG assurance, item 14.3b. and pre-populates the Annual Report, Module 1, Item G.3b.

**9.4. Workforce Innovation and Opportunity Act (WIOA) Employment and Training Activities:** Does the State intend to include CSBG employment and training activities as part of a WIOA Combined State Plan, as allowed under the Workforce Innovation and Opportunity Act (as required by the assurance under Section 676(b)(5) of the CSBG Act)?

☐ Yes ☒ No

**Note:** This response will link to the corresponding CSBG assurance, item 14.5.

**9.4a WIOA Combined Plan:** If the State selected “yes” under item 9.4, provide the CSBG-specific information included in the State’s WIOA Combined Plan. This information includes a description of how the State and the eligible entities will coordinate the provision of employment and training activities through statewide and local WIOA workforce development systems. This information may also include examples of innovative employment and training programs and activities conducted by community action agencies or other neighborhood-based organizations as part of a community antipoverty strategy. **[Narrative, 2500 Characters]**

**9.4b. Employment and Training Activities:** If the State selected “no” under item 9.4, describe the coordination of employment and training activities, as defined in Section 3 of WIOA, by the State and by eligible entities providing activities through the WIOA system. **[Narrative:** In 2021, the State began to have virtual meetings with management at the Texas Workforce Commission to develop a plan to better coordinate CSBG and WIOA programs at the State level in order to help facilitate coordination at the local level between CSBG eligible entities and local Workforce Boards and their contractors. In the fall of 2022, the Texas Workforce Commission adopted revisions to their State rules to require that Workforce Boards engage with all required local partners, including CSBG eligible entities with employment and training programs. This was to begin no later than then end of 2023.

The Department has also obtained from the Texas Workforce Commission the contact names and contact information for local Workforce Boards and provided such to CSBG eligible entities and encourages them to establish formal relationships with their regional WIOA providers and the Workforce Board contractors so that they can better coordinate services and collaborate to assist persons to transition out of poverty. Texas has twenty-eight Workforce Development Boards serving the State’s two-hundred and fifty-four counties.

Each Workforce Board determines how to administer the WIOA grants and selects their contractors to provide employment training and education. Therefore, close working relationships should be established at the local level by each CSBG eligible entity with both the Workforce Boards and their contractors, especially eligible entities who have employment and training programs. The State is available, upon request, to facilitate any CSBG eligible entity’s collaborative efforts with their local WIOA office. As part of the Community Action Plan, eligible entities will continue to provide information related to employment and training activity coordination with their local WIOA office. Additional information on WIOA in Texas can be found at <https://twc.texas.gov/>

**9.5. Emergency Energy Crisis Intervention:** Describe how the State will assure, where appropriate, that emergency energy crisis intervention programs under title XXVI (relating to Low-Income Home Energy Assistance) are conducted in each community in the State, as required by the

assurance under Section 676(b)(6) of the CSBG Act). **[Narrative:** The Department administers the LIHEAP grant, which funds the Comprehensive Energy Assistance Program (CEAP). The CEAP provides utility assistance to low-income persons and includes an energy crisis component. LIHEAP also supports the Department's weatherization program. The majority of the CSBG eligible entities administer both the CEAP and weatherization programs. The Department programs a portion of CSBG discretionary funds for assistance in the case of declared natural disasters. The funds may be used to provide emergency energy crisis intervention and meet other emergency needs.]

**Note:** This response will link to the corresponding CSBG assurance, item 14.6.

- 9.6. State Assurance: Faith-based Organizations, Charitable Groups, Community Organizations:** Describe how the State will assure local eligible entities will coordinate and form partnerships with other organizations, including faith-based organizations, charitable groups, and community organizations, according to the State's assurance under Section 676(b)(9) of the CSBG Act. **[Narrative:** Annually, CSBG eligible entities must submit a Community Action Plan to the Department. As part of the plan, CSBG eligible entities describe the organizations with which they coordinate services including faith-based organizations, charitable groups, and community organizations. Close coordination and referral takes place with these organizations. Training further reinforces this coordination.]

**Note:** this response will link to the corresponding assurance, item 14.9

- 9.7 Coordination of Eligible Entity 90 Percent Funds with Public/Private Resources:** Describe how the eligible entities will coordinate CSBG 90 percent funds with other public and private resources, according to the assurance under Section 676(b)(3)(C) of the CSBG Act. **[Narrative:** Annually, CSBG eligible entities must submit a Community Action Plan to the Department. As part of the plan, CSBG eligible entities describe the organizations with which they coordinate services, including private and public organizations. Many of the CSBG eligible entities obtain either in-kind assistance or funds from local governments to support the programs that they administer, including donations of space in local government facilities to be utilized by eligible entities to provide CSBG supported services. ]

**Note:** this response will link to the corresponding assurance, item 14.3c.

- 9.8. Coordination among Eligible Entities and State Community Action Association:** Describe State activities for supporting coordination among the eligible entities and the State Community Action Association. **[Narrative:** The Department works closely with the state association, the Texas Association of Community Action Agencies (TACAA). The Department meets with the association and their board to discuss ways that the Department can better meet the needs of the eligible entities. The Department receives their input on the development of the CSBG State Plan, training and technical assistance needs, rule revisions, among other issues. The state association holds an annual conference for CSBG eligible entities and the Department provides staff to present training to CSBG eligible entities. When

necessary, the Department also works with TACAA to form CSBG work groups to help the Department develop strategies on key issues. It should be noted that because not all eligible entities are members of TACAA, the Department ensures that all non-member eligible entities are included in all opportunities. ] **Note:** This information will pre-populate the Annual Report, Module 1, Item G.5.

**9.9 Communication with Eligible Entities and the State Community Action Association:** In the table below, describe the State’s plan for communicating with eligible entities, the State Community Action Association, and other partners under this State Plan.

For any topic that is not applicable, select *Not Applicable* under Expected Frequency.

**Communication Plan**

Topic	Expected Frequency	Format (drop down)	Brief Description of “Other”
Upcoming Public and/or Legislative Hearings	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Daily</li> <li><input type="checkbox"/> Weekly</li> <li><input type="checkbox"/> Twice-Monthly</li> <li><input type="checkbox"/> Monthly</li> <li><input type="checkbox"/> Quarterly</li> <li><input type="checkbox"/> Semi-Annually</li> <li><input type="checkbox"/> Annually</li> <li><input checked="" type="checkbox"/> Other (Periodically)</li> </ul>	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Newsletter</li> <li><input type="checkbox"/> Mailing</li> <li><input type="checkbox"/> Meetings/Presentation</li> <li><input type="checkbox"/> Blog</li> <li><input checked="" type="checkbox"/> Email</li> <li><input checked="" type="checkbox"/> Website</li> <li><input type="checkbox"/> Social Media</li> <li><input type="checkbox"/> Other</li> </ul>	
State Plan Development	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Daily</li> <li><input type="checkbox"/> Weekly</li> <li><input type="checkbox"/> Twice-Monthly</li> <li><input type="checkbox"/> Monthly</li> <li><input type="checkbox"/> Quarterly</li> <li><input type="checkbox"/> Semi-Annually</li> <li><input type="checkbox"/> Annually</li> <li><input checked="" type="checkbox"/> Other (Periodically)</li> </ul>	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Newsletter</li> <li><input type="checkbox"/> Mailing</li> <li><input type="checkbox"/> Meetings/Presentation</li> <li><input type="checkbox"/> Blog</li> <li><input checked="" type="checkbox"/> Email</li> <li><input checked="" type="checkbox"/> Website</li> <li><input type="checkbox"/> Social Media</li> <li><input checked="" type="checkbox"/> Other (public hearings)</li> </ul>	<b>Texas Government Code 2105 requires four public hearings.</b>
Organizational Standards Progress	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Daily</li> <li><input type="checkbox"/> Weekly</li> <li><input type="checkbox"/> Twice-Monthly</li> <li><input type="checkbox"/> Monthly</li> <li><input type="checkbox"/> Quarterly</li> <li><input type="checkbox"/> Semi-Annually</li> </ul>	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Newsletter</li> <li><input type="checkbox"/> Mailing</li> <li><input type="checkbox"/> Meetings/Presentation</li> <li><input type="checkbox"/> Blog</li> <li><input checked="" type="checkbox"/> Email</li> <li><input type="checkbox"/> Website</li> </ul>	

Topic	Expected Frequency	Format (drop down)	Brief Description of "Other"
	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Annually</li> <li><input type="checkbox"/> Other (Periodically)</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Social Media</li> <li><input checked="" type="checkbox"/> Other</li> </ul>	
State Accountability Measures Progress	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Daily</li> <li><input type="checkbox"/> Weekly</li> <li><input type="checkbox"/> Twice-Monthly</li> <li><input type="checkbox"/> Monthly</li> <li><input type="checkbox"/> Quarterly</li> <li><input type="checkbox"/> Semi-Annually</li> <li><input type="checkbox"/> Annually</li> <li><input checked="" type="checkbox"/> Other (Periodically)</li> </ul>	<ul style="list-style-type: none"> <li><b>Dropdown Options:</b></li> <li><input type="checkbox"/> Newsletter</li> <li><input type="checkbox"/> Mailing</li> <li><input type="checkbox"/> Meetings/Presentation</li> <li><input type="checkbox"/> Blog</li> <li><input checked="" type="checkbox"/> Email</li> <li><input type="checkbox"/> Website</li> <li><input type="checkbox"/> Social Media</li> <li><input type="checkbox"/> Other</li> </ul>	
Community Needs Assessments/Community Action Plans	<b>Dropdown Options:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Daily</li> <li><input type="checkbox"/> Weekly</li> <li><input type="checkbox"/> Twice-Monthly</li> <li><input type="checkbox"/> Monthly</li> <li><input type="checkbox"/> Quarterly</li> <li><input type="checkbox"/> Semi-Annually</li> <li><input checked="" type="checkbox"/> Annually</li> <li><input type="checkbox"/> Other (Periodically)</li> </ul>	<ul style="list-style-type: none"> <li><b>Dropdown Options:</b></li> <li><input type="checkbox"/> Newsletter</li> <li><input type="checkbox"/> Mailing</li> <li><input type="checkbox"/> Meetings/Presentation</li> <li><input type="checkbox"/> Blog</li> <li><input checked="" type="checkbox"/> Email</li> <li><input checked="" type="checkbox"/> Website</li> <li><input type="checkbox"/> Social Media</li> <li><input type="checkbox"/> Other</li> </ul>	

- 9.10. Feedback to Eligible Entities and State Community Action Association:** Describe how the State will provide feedback to local entities and State Community Action Associations regarding performance on State Accountability Measures. **[Narrative:** The Department will, within 60 calendar days of receiving feedback from OCS, provide eligible entities and the State Association, via an e-mail communication, the results of the ACSI Survey. The Department will also provide a synopsis of key concerns identified by eligible entities. The Department will also communicate with the State Association to discuss survey results and develop a plan to address concerns.]

**Note:** This information is associated with State Accountability Measure 5S(iii) and will pre-populate the Annual Report, Module 1, Item G.6.

- 9.11. Communication Plan Performance Management Adjustment:** Describe any adjustments to the Communication plan in this State Plan as compared to past plans. Any adjustment should be based on the State's analysis of past performance, and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is not making any adjustments, provide further detail. **[Narrative:** The Department continually assesses the need to form workgroups with either the State Association or with eligible entities or both in order to receive input to rules, plans, guidance, or T&TA needs. Other ways the Department obtains the Network's input is through surveys and e-mail communications. One of the comments in the most recent ACSI survey (2025) was the need for the Department to include CSBG topics in the T&TA Quarterly Calls. In response to that input the T&TA section now holds a combined CEAP and CSBG quarterly training virtual call to address concerns and topics important to the eligible entities. The Department strives to keep the network of eligible entities informed and up to date.]

**Note:** This information is associated with State Accountability Measures 7Sb; this response may pre-populate the State’s annual report form.

## SECTION 10

### Monitoring, Corrective Action, and Fiscal Controls

#### Monitoring of Eligible Entities (Section 678B(a) of the CSBG Act)

- 10.1.** Specify the proposed schedule for planned monitoring visits including: full on-site reviews; on-site reviews of newly designated entities; follow-up reviews – including return visits to entities that failed to meet State goals, standards, and requirements; and other reviews as appropriate.

This is an estimated schedule to assist States in planning. States may indicate “no review” for entities the State does not plan to monitor in the performance period.

**Note:** This information is associated with State Accountability Measure 4Sa(i); this response pre-populates the Annual Report, Module 1, Table H.1.

**Guidance:** Monitoring that is specific to organizational standards should be referenced within Section 6, Item 6.3a.

#### Monitoring Schedule

CSBG Eligible Entity	Review Type	Target Date FY25-FY26(Quarter) (Note: the dates may change based on risk)	Date of Last Full Onsite Review (if applicable)	Brief Description of “Other”
El Paso Community Action program, Project BRAVO, Inc.	Full on-site	FY27Q3	April 6, 2024	Risk Based and can change accordingly
Panhandle Community Services	Full on-site	FY25Q1	July 6, 2021	Risk Based and can change accordingly
Brazos Valley Community Programs	Full on-site	FY26Q3	February 13, 2023	Risk Based and can change accordingly
Rolling Plains Management Corp.	Full on-site	FY26Q2	October 30, 2023	Risk Based and can change accordingly
Combined Community Action, Inc.	Full on-site	FY27Q3	October 7, 2024	Risk Based and can change accordingly
Hidalgo County Community Services Agency	Full on-site	FY27Q4	August 14, 2024	Risk Based and can change accordingly
Community Action Social Services and Education	Full on-site	FY27Q3	August 26, 2024	Risk Based and can change accordingly
South Texas Development Council	Full on-site	FY25Q3	December 12, 2022	Risk Based and can change accordingly

<b>CSBG Eligible Entity</b>	<b>Review Type</b>	<b>Target Date FY25-FY26(Quarter) (Note: the dates may change based on risk)</b>	<b>Date of Last Full Onsite Review (if applicable)</b>	<b>Brief Description of “Other”</b>
Gulf Coast Community Services Association	No Review	FY28Q1	January 21, 2025	Risk Based and can change accordingly
Austin, City of, Health and Human Service Department	Full on-site	FY25Q3	November 2021	Risk Based and can change accordingly
Community Council of Greater Dallas	Full on-site	FY27Q2	November 4, 2024	Risk Based and can change accordingly
Crossroads Community Action (previously Community Action Committee of Victoria, Texas)	Full on-site	FY26Q3	July 10, 2023	Risk Based and can change accordingly
Cameron and Willacy Counties Community Projects, Inc.	Full on-site	FY27Q1	April 17, 2023	Risk Based and can change accordingly
Tri-County Community Action, Inc.	Full on-site	FY27Q2	April 12, 2024	Risk Based and can change accordingly
Community Services, Inc.	Full on-site	FY27Q3	May 2, 2023	Risk Based and can change accordingly
Pecos County Community Action Agency	Full on-site	FY27Q4	April 23, 2024	Risk Based and can change accordingly
Economic Opportunities Advancement Corp of PR XI	Full on-site	FY27Q3	November 13, 2023	Risk Based and can change accordingly
Texas Neighborhood Services	Full on-site	FY25Q3	March 28, 2022	Risk Based and can change accordingly
Aspermont Small Business Development Center, Inc.	Full on-site	FY25Q3	December 5, 2022	Risk Based and can change accordingly
West Texas Opportunities, Inc.	Full on-site	FY28Q2	August 5, 2024	Risk Based and can change accordingly
Greater East Texas Community Action Program	Full on-site	FY25Q3	July 6, 2022	Risk Based and can change accordingly
Southeast Texas Regional Planning Commission	Full on-site	FY27Q3	May 15, 2023	Risk Based and can change accordingly
City of San Antonio Department of Community Initiatives	Full on-site	FY26Q2	March 6, 2023	Risk Based and can change accordingly
Cornerstone Community Action Agency	Full On-site	FY27Q3	April 16, 2024	Risk Based and can change accordingly
Concho Valley Community Action Agency	Full On-site	FY27Q4	February 12, 2024	Risk Based and can change accordingly
Community Action Inc. of Central Texas	Full On-site	FY26Q1	March 27, 2023	Risk Based and can change accordingly
Community Services of Northeast Texas, Inc.	Full On-site	FY24Q1	April 15, 2024	Risk Based and can change accordingly
South Plains Community Action Association, Inc.	No Review	FY27Q4	October 28, 2024	Risk Based and can change accordingly



CSBG Eligible Entity	Review Type	Target Date FY25-FY26(Quarter) (Note: the dates may change based on risk)	Date of Last Full Onsite Review (if applicable)	Brief Description of "Other"
City of Fort Worth Neighborhood Services Department	Full On-site	FY26Q2	November 6, 2022	Risk Based and can change accordingly
Economic Action Committee of the Gulf Coast	Full on-site	FY26Q3	January 23, 2023	Risk Based and can change accordingly
Webb County Community Action Agency	Full on-site	FY28Q1	January 6, 2025	Risk Based and can change accordingly
Opportunities for Williamson and Burnet Counties	Full on-site	FY27Q3	April 14, 2024	Risk Based and can change accordingly
Community Action Corporation Of South Texas	Full on-site	FY27Q3	January 29, 2024	Risk Based and can change accordingly
Community Council of South Central Texas, Inc.	Full on-site	FY27Q1	April 22, 2024	Risk Based and can change accordingly
Guadalupe Economic Services Corporation	Full on-site	FY25Q4		Initial monitoring review
Hill Country Community Action Association, Inc.	Full on-site	FY25Q3	September 10, 2021	Risk Based and can change accordingly
Nueces County Community Action Agency	Full on-site	FY27Q2	October 15, 2024	Risk Based and can change accordingly
Texoma Council of Governments	Full on-site	FY25Q3	December 3, 2021	Risk Based and can change accordingly

\* If the eligible entity removal process is complete, the Department will conduct a close-out monitoring within 90 days.

**10.2. Monitoring Policies:** Provide a copy of State monitoring policies and procedures by attaching and/or providing a hyperlink. [Refer to Attachment A - The FY2025 and FY2026 monitoring schedule is aggregate in nature. The schedule is created on an at-risk assessed basis determined every quarter. The schedule is maintained on the Compliance Subrecipient Monitoring Tracking Database and Performance Records. The proposed schedule above can change each quarter depending on risk.]

**10.3. Initial Monitoring Reports:** According to the State's procedures, by how many calendar days must the State disseminate initial monitoring reports to local entities? [It is the Department's goal to submit CSBG monitoring reports within 30 calendar days from the last day of the monitoring visit. However, if extenuating circumstances are present, the CSBG monitoring report will be submitted within 60 days of the completion of the monitoring review with the exception of those few reports requiring executive and legal review due to deficiencies.]

**Note:** This item is associated with State Accountability Measure 4Sa(ii) and may pre-populate the State's annual report form.

**Corrective Action, Termination and Reduction of Funding and Assurance Requirements** (Section 678C of the Act)

**10.4. Closing Findings:** Are State procedures for addressing eligible entity findings/deficiencies, and the documenting of closure of findings included in the State monitoring policies attached under 10.2? ☒ Yes ☐ No

**10.4a. Closing Findings Procedures:** If no, describe State procedures for addressing eligible entity findings/deficiencies, and the documenting of closure of findings. **[Narrative, 2500 characters]**

**10.5. Quality Improvement Plans (QIPs):** Provide the number eligible entities currently on QIPs, if applicable. **[0 ]**

**Note:** The QIP information is associated with State Accountability Measures 4Sc.

**10.6. Reporting of QIPs:** Describe the State's process for reporting eligible entities on QIPs to the Office of Community Services within 30 calendar days of the State approving a QIP? **[Narrative: The Department will contact the Office of Community Services either by phone or through e-mail to inform them of eligible entities on a Quality Improvement Plan.]**

**Note:** This item is associated with State Accountability Measure 4Sa(iii)).

**10.7. Assurance on Funding Reduction or Termination:** the State assures that received CSBG funding the previous fiscal year will not have its funding terminated or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in Section 678C(b) per Section 678C(b)(8) of the CSBG Act." ☒ Yes ☐ No

**Note:** This response will link with the corresponding assurance under item 14.8.

#### **Policies on Eligible Entity Designation, De-designation, and Re-designation**

**10.8. Eligible Entity Designation:** Does the State CSBG statute and/or regulations provide for the designation of new eligible entities? ☒ Yes ☐ No

**10.8a. New Designation Citation:** If yes, provide the citation(s) of the law and/or regulation. If no, describe State procedures for the designation of new eligible entities. **[Narrative: Texas Administrative Code**

10 TAC §6.208

[http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=208](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=208) ]

**10.8b. New Designation Procedures:** If no, describe state procedures for the designation of new eligible entities and how the procedures were made available to eligible entities and the public. **[Narrative: ]**

**10.9. Eligible Entity Termination:** Does the state CSBG statute and/or regulations provide for termination of eligible entities? ☒ Yes ☐ No Choose an item.

**10.9a. Termination Citation:** If yes, provide the citation(s) of the law and/or regulation. [Narrative,

10 TAC §1.411

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=1&rl=411](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=1&rl=411)

10 TAC §2.203

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=2&rl=203](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=2&rl=203) ]

10 TAC §2.204

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=2&rl=204](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=2&rl=204)

**10.9b. Termination Procedures:** If no, describe state procedures for termination of new eligible entities and how the procedures were made available to eligible entities and the public. [Narrative, 4000 characters]

**10.10.** Does the State CSBG statute and/or regulations provide for de-designation of an existing eligible entities? ☒ Yes ☐ No

**10.10a.** If yes, provide the citation(s) of the law and/or regulation. If no, describe State procedures for de-designation of new eligible entities. [Narrative: Texas Administrative Code:

10 TAC §1.411

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=1&rl=411](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=1&rl=411)

10 TAC §2.203

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=2&sch=B&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=2&sch=B&rl=Y)

10 TAC §2.204

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=2&rl=204](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=2&rl=204)

10 TAC §6.208

[http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=208](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=208)

**10.10.** Does the State CSBG statute and/or regulations specify a process the State CSBG agency must follow to re-designate an existing eligible entity? ☒ Yes ☐ No

**10.10a.** If yes, provide the citation(s) of the law and/or regulation. If no, describe State procedures for re-designation of existing eligible entities. **[Narrative:** Texas Administrative Code

10 TAC §1.411

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=1&rl=411](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=1&rl=411)

10 TAC §2.203

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=2&sch=B&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=2&sch=B&rl=Y)

10 TAC §6.208

[http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=208](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=208)

**10.10b. Re-Designation Procedures:** If no, describe state procedures for re-designation of existing eligible entities and how the procedures were made available to eligible entities and the public. **[Narrative, 4000 characters ]**

## **Fiscal Controls and Audits and Cooperation Assurance**

**10.11. Fiscal Controls and Accounting:** Describe how the State's fiscal controls and accounting procedures will a) permit preparation of the SF-425 Federal fiscal reports (FFR) and b) permit the tracing of expenditures adequate to ensure funds have been used appropriately under the block grant, as required by Block Grant regulations applicable to CSBG at 45 CFR 96.30(a). **[Narrative:** All expenditures are recorded in the Department's PeopleSoft accounting system. Indexes, grant numbers and fund numbers allow for identification of charges to a specific grant and cost categories. Policies and Procedures are in place to ensure compliance with statutes and regulations. Independent annual financial audit and single audit are performed for the Department.

Every draw is reviewed by program staff upon submittal by contractor localities. All drawdowns must be consistent within the most current approved budget. Draws are then processed by accountants and approved by senior accountant or team leader. Back up to support draws are reviewed during on site monitoring.

The general ledger is the source for the SF-425 Federal fiscal reports. They are prepared by the grant accountant, reviewed by the financial team leader and approved by management prior to submittal. Reports are prepared according to program rules and regulations.]

**10.12. Single Audit Management Decisions:** Describe State procedures for issuing management decisions for eligible entity single audits, as required by Block Grant regulations applicable to CSBG at 45 CFR 75.521. **[Narrative:** The Department requires each eligible entity to complete an Audit Certification form within 60 days from the end of the Entity’s fiscal year. This is used to determine if a Single Audit is required. Upon receipt of the Single Audit, a review is completed to determine if the packet submitted is complete and all opinions are provided. If the audit contains findings, it is reviewed and discussed by the director of Internal Audit, the Director of Compliance, the Director of Subrecipient Monitoring and staff to determine the appropriate steps to address any CSBG issues identified in the audit report or management letter. The Department may issue correspondence to the entity, identifying applicable corrective action measures and/or requiring support documentation addressing program deficiencies. The entity will be provided a time frame to respond to the correspondence.

Except for non-discretionary CSBG funds, the Department will not execute new contracts with the entity until issues with the single audit are resolved, unless the issue is a late audit submittal and the entity has provided documentation of an extension received from the federal cognizant agency.]

**Note:** This information is associated with State Accountability Measure 4Sd.

**10.13. Assurance on Federal Investigations:** The State “permit and cooperate with Federal investigations undertaken in accordance with Section 678D” of the CSBG Act, as required by the assurance under Section 676(b)(7) of the CSBG Act? ☒ Yes ☐ No

**Note:** This response will link with the corresponding assurance, item 14.7

**10.13a. Federal Investigations Policies:** Are state procedures for permitting and cooperating with federal investigations included in the state monitoring policies attached under 10.2? ☒ Yes ☐ No

**10.14. Monitoring Procedures Performance Management Adjustment:** Describe any adjustments to monitoring procedures in this State Plan as compared to past plans? Any adjustment should be based on the State’s analysis of past performance, and should consider feedback from eligible entities, OCS, and other sources, such as the public hearing. If the State is not making any adjustments, provide further detail. **[Narrative:** The Department closely reviewed the responses to the 2025 ACSI Survey related to monitoring and the Department’s Director of Subrecipient Monitoring continues to make concerted efforts to maintain a good working relationship with CSBG eligible entities. The Director ensures that monitoring staff receive directives and audit training as the need arises. Staff meetings are held regularly to promote consistency and increase knowledge between the monitoring staff. Community Affairs Training and Technical Assistance staff receive all monitoring reports from compliance monitors and work closely with each other

so that training and technical assistance staff can provide eligible entities follow-up tips and resources to address findings or concerns identified in the monitoring reports. ]

**Note:** This item is associated with State Accountability Measure 4Sb and may pre-populate the State's annual report form.

## SECTION 11

### Eligible Entity Tripartite Board

- 11.1. Tripartite Board Verification:** Verify which of the following measures are taken to ensure that the State verifies CSBG Eligible Entities are meeting Tripartite Board requirements under Section 676B(a)(2) of the CSBG Act? **[Check all that applies and narrative where applicable]**

- ☐ Attend Board meetings
- ☒ Organizational Standards Assessment
- ☒ Monitoring
- ☒ Review copies of Board meeting minutes
- ☐ Track Board vacancies/composition
- ☒ Other: [The Department reviews board rosters and Board member election/selection material. We also get information on board vacancies on their CSBG Monthly Performance Report. Through CSBG organizational standards reviews, we get information on board vacancies/composition also. Lastly, Department staff attends some Board meetings of entities.]

- 11.2. Tripartite Board Updates:** Provide how often does the State requires eligible entities (which are not on TAPs or QIPs) to provide updates regarding their Tripartite Boards. This includes but is not limited to copies of meeting minutes, vacancy alerts, changes to bylaws, low-income member selection process, etc. **[Select one and provide a narrative where applicable]** regarding their Tripartite Boards?

- ☒ Annually
- ☐ Semiannually
- ☐ Quarterly
- ☐ As It Occurs
- ☒ Monthly
- ☒ Other [Information concerning board vacancies and new hires must be received by the Department within 30 days of such occurrence. Eligible entities must also report board vacancies by sector in its CSBG Monthly Performance Reports. Organizational Standards, a yearly requirement, also indicates board vacancies and composition. ]

- 11.3. Tripartite Board Representation Assurance:** Describe how the State will verify that eligible entities have policies and procedures by which individuals or organizations can petition for

adequate representation on an eligible entity's Tripartite Board as required by the assurance under Section 676(b)(10) of the CSBG Act.. **[Narrative:** The Department has instituted a rule, in the Texas Administrative Code, that requires an entity to have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation on the board of the eligible entity.]

**Note:** This response will link with the corresponding assurance, item 14.10.

- 11.4. Tripartite Board Alternative Representation:** Does the State permit public eligible entities to use, as an alternative to a Tripartite Board, "another mechanism specified by the State to assure decision-making and participation by low-income individuals in the development, planning, implementation, and evaluation of programs" as allowed under Section 676B(b)(2) of the CSBG Act.

☒ Yes ☐ No

- 11.4a.** If yes, describe the mechanism used by public eligible entities as an alternative to a Tripartite Board. **[Narrative:** Public agencies have advisory boards and develop bylaws for the advisory board.

Texas Administrative Code, Chapter 6, Subchapter B, Community Services Block Grant, RULE §6.210 Board Structure, states the following related to public organizations:

- "(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) above. The advisory board is the only alternative mechanism for administration the Department has specified."

The "alternative mechanism" is an "advisory board" and Public Organizations who utilize an advisory board must ensure that the advisory board meets the requirements of having 1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. 2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member. And 3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

## SECTION 12

### Individual and Community Income Eligibility Requirements

**12.1. Required Income Eligibility:** What is the income eligibility threshold for services in the State?  
[Check one item below.]

- ☒ 125% of the HHS poverty line
- ☐ X % of the HHS poverty line (fill in the threshold): \_\_\_\_\_% [insert up to a 3 digit percentage]
- ☐ Varies by eligible entity [Narrative: ]

**12.1a.** Describe any State policy and/or procedures for income eligibility, such as treatment of income and family/household composition. **[Narrative:** The Department's administrative rule, TAC Rule §6.4, states the following: "(a) Eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein (some forms of income may qualify the Household as Categorically Eligible for assistance in §6.2(b)(3), however Categorical Eligibility does not determine the level of benefit, which is determined through the Income Determination process). Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Gross income is to be used, not net income, except that from non-farm or farm self-employment net receipts must be used (i.e., receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses), and net income from gambling or lottery winnings."

The TAC RULE §6.4 identifies types of income sources that are excluded.

- (b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.
- (c) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.
- (d) Identify all income sources, not on the excluded list, for income calculation.
  - (1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period (e.g., for a teacher paid only nine months a



year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

- (2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.
- (3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:
  - (A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);
  - (B) Weekly wages by 52;
  - (C) Bi-weekly wages (paid every other week) by 26;
  - (D) Semi-monthly wages (paid twice each month) by 24; and
  - (E) Monthly wages by 12.
  - (F) One-time employment income should be added to the total after the income has been annualized.
- (4) Except where a more frequent period is required by federal regulation, re-certification of income eligibility must occur at least every twelve months.

For the complete rule see attachment.

- 12.2. Income Eligibility for General/Short Term Services:** Describe how the state ensures eligible entities generally verify eligibility for those services with limited in-take procedures (where individual income verification is not possible or practical), how does the State ensure eligible entities generally verify income eligibility for services? An example of these services is emergency food assistance. **[Narrative:** Subrecipients must maintain income documentation for a direct service funded with CSBG funds. If proof of income is unobtainable they can utilize a Declaration of Income Statement. Per TAC RULE §6.4 (f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).
- 12.3. Community-targeted Services:** Describe how the state ensures eligible entities' services target and benefit low-income communities for those services that provide a community-wide benefit (e.g., development of community assets/facilities, building partnerships with other organizations). **[Narrative:** The Department's Texas Administrative Code Rule §6.206 (d) Services to Poverty Population require that services be provided equitably in the CSBG service area (county/counties served). Also, in their Community Action Plan they must identify how the services proposed address the top five needs identified in their Community Action Plan. The state

issues guidance on development of the Community Action Plan. If they are not planning to address one of the top five needs, they must provide an explanation as to why they are not.

## SECTION 13

### Results Oriented Management and Accountability (ROMA) System

- 13.1. Performance Measurement System:** Identify the performance measurement system that the State and all eligible entities use, as required by Section 678E(a) of the CSBG Act and the assurance under Section 676(b)(12) of the CSBG Act? **[Check one]**

**Note:** This response will also link to the corresponding assurance, item 14.12.

- ☒ The Results Oriented Management and Accountability (ROMA) System
- ☐ Another performance management system that meets the requirements of Section 678E(b) of the CSBG Act
- ☐ An alternative system for measuring performance and results

- 13.1a. ROMA Description:** If ROMA was selected in item 13.1, attach and/or describe the State's written policies, procedures, or guidance documents on ROMA. **[Attachment and Narrative:**

The Department has incorporated ROMA principles in the areas of reporting, community action plans, strategic planning, community needs assessments, goal/target setting, case management, and Board trainings. Entities report monthly on outcomes for family, agency and community goals identified in their community action plan. These reports are then used to evaluate entity performance. An outcome matrix, tracking incremental change, is used as part of case management services; along with tools for capturing outcomes. TDHCA has three NCRA's and the State Association has one NCRA and Eligible Entities have one NCRA. Eligible entities now have 7 NCRTs on staff and there are 50 NCRIs. All Eligible Entities have been provided "Intro to ROMA" training and have access to a ROMA trainer. Refer to State requirements at

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=206](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=206)

- 13.1b. Alternative System Description:** If ROMA was not selected in item 13.1, describe the system the State will use for performance measurement. **[Narrative:** The Department will employ the ROMA System as described above.

- 13.2. Outcome Measures:** Indicate and describe the outcome measures the State will use to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization, as required under Section 676(b)(12) of the CSBG Act? **[Narrative:** The State assigns eligible entities a goal for the number of persons to transition out of poverty (TOP) each year. TOP is defined as the household achieving an income above 125% FPIG. The State has

issued requirements related to the systems that must be in place to assist households to TOP, refer to

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=10&pt=1&ch=6&rl=206](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=10&pt=1&ch=6&rl=206)

The CSBG monthly performance report includes a section where CSBG entities report the number of persons working to TOP and the number of persons that successfully TOP. Eligible Entities are to target their CSBG resources to assist persons to transition out of poverty and move towards self-sufficiency consistent with identified gaps in need. The entities' efforts in self-sufficiency, family stability, and community revitalization are reported using the NPIs in their CSBG monthly performance report.]

**Note:** This response will also link to the corresponding assurance, item 14.12.

- ☒ CSBG National Performance Indicators (NPIs)
- ☐ NPIs and others
- ☒ Others

**13.3. Eligible Entity Support:** Describe how does the State supports the eligible entities in using ROMA or alternative performance measurement system? **[Narrative:** The Department has designed the CSBG training curriculum with a focus on ROMA principals. The Department has three NCRAs. The state association has also assisted CSBG eligible entities in helping some of their staff to become Certified ROMA trainers/implementers/advocates. All trainings provided to entities are ROMA-focused and the Department's ROMA Certified staff members are available to provide training and technical assistance. Results achieved compared to the CAP Plan are evaluated for the impact on implementation processes, re-assessment activities, and future plans. Entities can request training and technical assistance at any time and can submit questions on-line or can contact staff by phone or e-mail. The Department has developed a ROMA Case Management Workflow that aligns the processes of case management to ROMA. The Department sets aside CSBG Discretionary funds to be used for Organizational Capacity Improvements which can be used to pay for the costs of staff to become NCRT/NCRI/NCRAs or to obtain training to retain their NCRT or NCRI certifications. Using the new Virtual Intro to ROMA course, the ROMA group is working toward being able to offer regional Intro to ROMA courses on an annual basis to new staff.]

**Note:** The activities described under item 13.3 may include activities listed in "Section 8: Training and Technical Assistance." If so, mention briefly, and/or cross-reference as needed. This response will also link to the corresponding assurance, item 14.12.

**13.4. Eligible Entity Use of Data:** Describe how is the State intends to validate that the eligible entities are using data to improve service delivery? **[Narrative:** The Department assigns each CSBG eligible entity a goal for the number of persons to transition out of poverty each program year. At the end of the program year, the Department reviews their performance and entities that did not meet their assigned goal are asked to provide a plan of action to improve performance. The Department also reviews the eligible entities' CSBG Performance Report each month and their

end of the year final report. The Department does acknowledge that quite a few entities find it challenging to design and carry out community initiatives, as many just entered into this level of work. The Department will continue to provide technical assistance to entities to improve their performance through data analysis, process mapping, and training materials. To assist with data use the Department provides the network with links to data sources that may be useful to them, such as the American Community Survey Institute and the Community Action Partnership's Community Needs Assessment Online Tool.]

**Note:** This response will also link to the corresponding assurance, item 14.12.

### **Community Action Plans and Needs Assessments**

- 13.5. Community Action Plan:** Describe how the State will secure a Community Action Plan from each eligible entity, as a condition of receipt of CSBG funding by each entity, as required by Section 676(b)(11) of the CSBG Act. **[Narrative:** The Department develops Community Action Plan Requirements and guidance and posts this information to our website at <https://www.tdhca.state.tx.us/community-affairs/csbg/additional-requirements.htm>. Annually, CSBG eligible entities must submit a Community Action Plan. Staff reviews the CAP and provides technical assistance to eligible entities on improvements. ]

**Note:** This response will link to the corresponding assurance, item 14.11.

- 13.6. Community Needs Assessment:** Describe how the State will assure that each eligible entity includes a community needs assessment for the community served (which may be coordinated with community needs assessments conducted by other programs) in each entity's Community Action Plan, as required by Section 676(b)(11) of the CSBG Act. **[Narrative:** Every three years, CSBG eligible entities must complete and submit a Community Needs Assessment (CNA). The State provides forms and guidance on how to conduct a CNA and on the required areas to be addressed in their CNA document. As part of the CNA, they must identify at least the top 5 needs in their service area based on their community assessment.

Annually, CSBG eligible entities must submit a Community Action Plan (CAP). Every third year, the CAP must be completely revised to incorporate the latest CNA results. The two years following the initial year of the CAP, they provide updates to any changes and primarily revise their performance targets for NPIs and SRVs and community initiatives. In the first year of the CAP, they must include their top 5 needs and identify the organizations providing the service or strategy to address the need, the services or strategies that will address the need, the NPIs that will be reported on, and the county(ies). They also include information on the gaps in services, the county where it exists, how they will address the gaps, names of partners they will work with and how the partner will help meet the gaps in services. SRVs and NPIs with targets are linked to one of the top 5 needs if applicable.

**Note:** this response will link to the corresponding assurance, item 14.11.

## **SECTION 14**

### **CSBG Programmatic Assurances and Information Narrative**

#### **(Section 676(b) of the CSBG Act)**

#### **14.1 Use of Funds Supporting Local Activities**

##### ***CSBG Services***

**14.1a. 676(b)(1)(A):** Describe how the State will assure “that funds made available through grant or allotment will be used –

- (A) to support activities that are designed to assist low-income families and individuals, including families and individuals receiving assistance under title IV of the Social Security Act, homeless families and individuals, migrant or seasonal farmworkers, and elderly low-income individuals and families, and a description of how such activities will enable the families and individuals--
  - (i) to remove obstacles and solve problems that block the achievement of self-sufficiency (particularly for families and individuals who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act);
  - (ii) to secure and retain meaningful employment;
  - (iii) to attain an adequate education with particular attention toward improving literacy skills of the low-income families in the community, which may include family literacy initiatives;
  - (iv) to make better use of available income;
  - (v) to obtain and maintain adequate housing and a suitable living environment;
  - (vi) to obtain emergency assistance through loans, grants, or other means to meet immediate and urgent individual and family needs;
  - (vii) to achieve greater participation in the affairs of the communities involved, including the development of public and private grassroots partnerships with local law enforcement agencies, local housing authorities, private foundations, and other public and private partners to –
    - (I) document best practices based on successful grassroots intervention in urban areas, to develop methodologies for widespread replication; and
    - (II) strengthen and improve relationships with local law enforcement agencies, which may include participation in activities such as neighborhood or community policing efforts;

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). The CAP outlines their proposed activities. Staff reviews the CAP Plan and ensures that the activities supported are eligible uses of CSBG funds and meet the noted assurances.]

##### ***Needs of Youth***

**14.1b. 676(b)(1)(B)** Describe how the State will assure “that funds made available through grant or allotment will be used –

(B) to address the needs of youth in low-income communities through youth development programs that support the primary role of the family, give priority to the prevention of youth problems and crime, and promote increased community coordination and collaboration in meeting the needs of youth, and support development and expansion of innovative community-based youth development programs that have demonstrated success in preventing or reducing youth crime, such as--

- (i) programs for the establishment of violence-free zones that would involve youth development and intervention models (such as models involving youth mediation, youth mentoring, life skills training, job creation, and entrepreneurship programs); and
- (ii) after-school child care programs;

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). The CAP outlines their proposed activities. Staff reviews the CAP Plan and ensures that the activities supported are eligible uses of CSBG funds. The Department requires that entities provide a referral to the Texas Attorney General’s Office for families for whom child support might be a needed resource.]

#### ***Coordination of Other Programs***

**14.1c. 676(b)(1)(C)** Describe how the State will assure “that funds made available through grant or allotment will be used –

(C) to make more effective use of, and to coordinate with, other programs related to the purposes of this subtitle (including State welfare reform efforts)

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). The CAP outlines their proposed activities. The CAP also includes several forms that address funding coordination, coordination with WIOA Programs, referrals to Child Support Office, and participation in social service coalitions. Staff reviews the CAP Plan and ensures that the activities supported are eligible uses of CSBG funds.]

#### **State Use of Discretionary Funds**

**14.2 676(b)(2)** Describe “how the State intends to use discretionary funds made available from the remainder of the grant or allotment described in section 675C(b) in accordance with this subtitle, including a description of how the State will support innovative

community and neighborhood-based initiatives related to the purposes of this subtitle.”

**Note:** The Department describes this assurance under “State Use of Funds: Remainder/Discretionary,” items 7.9-7.11.

**[No response; links to items 7.9 and 7.10.]**

### **Eligible Entity Service Delivery, Coordination, and Innovation**

**14.3. 676(b)(3)** “Based on information provided by eligible entities in the State, a description of...”

#### ***Eligible Entity Service Delivery System***

**14.3a. 676(b)(3)(A)** Describe “the service delivery system, for services provided or coordinated with funds made available through grants made under 675C(a), targeted to low-income individuals and families in communities within the State;

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). The CAP includes a description of the service delivery system, the counties served, the facilities where services are available, and information regarding how the eligible entity conducts outreach and delivers services in counties where service centers are not available. The CAP also describes how the eligible entity coordinates funds with other organizations. ]

#### ***Eligible Entity Linkages – Approach to Filling Service Gaps***

**14.3b. 676(b)(3)(B)** Describe “how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and follow-up consultations.”

**Note:** The Department describes this assurance in the State Linkages and Communication section, item 9.3b.

**[No response; links to 9.3b.]**

#### ***Coordination of Eligible Entity Allocation 90 Percent Funds with Public/Private Resources***

**14.3c. 676(b)(3)(C)** Describe how funds made available through grants made under 675C(a) will be coordinated with other public and private resources.”

**Note:** The Department describes this assurance in the State Linkages and Communication section, item 9.7.

**[No response; links to 9.7]**

***Eligible Entity Innovative Community and Neighborhood Initiatives, Including Fatherhood/Parental Responsibility***

**14.3d. 676(b)(3)(D)** Describe “how the local entity will use the funds [made available under 675C(a)] to support innovative community and neighborhood-based initiatives related to the purposes of this subtitle, which may include fatherhood initiatives and other initiatives with the goal of strengthening families and encouraging parenting.”

**Note:** The description above is about eligible entity use of 90 percent funds to support these initiatives. States may also support these types of activities at the local level using state remainder/discretionary funds, allowable under Section 675C(b)(1)(F). In this State Plan, the Department indicates funds allocated for these activities under item 7.9(f).

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). As part of the CAP, entities must complete a document which provides information regarding any innovative community and neighborhood-based initiatives related to the purpose of CSBG, which may include fatherhood initiatives and other initiatives which strengthen families and encourage effective parenting. A limited number of CSBG eligible entities have reported these types of initiatives. The Department will continue to work with CSBG eligible entities to promote these initiatives if such gaps are identified in their CAP. As the Department identifies information on webinars or funding opportunities related to this area, the Department shares this information with CSBG eligible entities. ]

**Eligible Entity Emergency Food and Nutrition Services**

**14.4. 676(b)(4)** Describe how the State will assure “that eligible entities in the State will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals.”

**[Narrative:** The Department requires CSBG eligible entities to submit an annual Community Action Plan (CAP). As part of the CAP, entities must complete a document which provides information related to how the CSBG eligible entity will provide, on an emergency basis, for the provision of such supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals. Most CSBG eligible entities work with either a local food pantry or the food bank to provide food in these circumstances. If there are no other resources available, then CSBG funds are utilized to provide nutritional support. ]

**State and Eligible Entity Coordination/linkages and Workforce Innovation and Opportunity Act Employment and Training Activities**

**14.5. 676(b)(5)** Describe how the State will assure “that the State and eligible entities in the State will coordinate, and establish linkages between, governmental and other social services



programs to assure the effective delivery of such services, and [describe] how the State and the eligible entities will coordinate the provision of employment and training activities, as defined in section 3 of the Workforce Innovation and Opportunity Act, in the State and in communities with entities providing activities through statewide and local workforce development systems under such Act.”

**Note:** The Department describes this assurance in the State Linkages and Communication section, items 9.1-9.4b.

**[No response; links to items 9.1-9.4b]**

#### **State Coordination/Linkages and Low-income Home Energy Assistance**

- 14.6. 676(b)(6)** Provide “an assurance that the State will ensure coordination between antipoverty programs in each community in the State, and ensure, where appropriate, that emergency energy crisis intervention programs under title XXVI (relating to low-income home energy assistance) are conducted in such community.”

**Note:** The Department describes this assurance in the State Linkages and Communication section, items 9.2 and 9.5.

**[No response; links to 9.2 and 9.5]**

#### **Federal Investigations**

- 14.7. 676(b)(7)** Provide “an assurance that the State will permit and cooperate with Federal investigations undertaken in accordance with section 678D.”

**Note:** The Department addresses this assurance in the Fiscal Controls and Monitoring section, item 10.13.

**[No response; links to 10.13]**

#### **Funding Reduction or Termination**

- 14.8. 676(b)(8)** Provide “an assurance that any eligible entity in the State that received funding in the previous fiscal year through a community services block grant made under this subtitle will not have its funding terminated under this subtitle, or reduced below the proportional share of funding the entity received in the previous fiscal year unless, after providing notice and an opportunity for a hearing on the record, the State determines that cause exists for such termination or such reduction, subject to review by the Secretary as provided in section 678C(b).”

**Note:** The Department addresses this assurance in the Fiscal Controls and Monitoring section, item 10.7.

**[No response; links to 10.7]**

## **Coordination with Faith-based Organizations, Charitable Groups, Community Organizations**

- 14.9. 676(b)(9)** Describe how the State will assure “that the State and eligible entities in the State will, to the maximum extent possible, coordinate programs with and form partnerships with other organizations serving low-income residents of the communities and members of the groups served by the State, including religious organizations, charitable groups, and community organizations.”

**Note:** The Department describes this assurance in Section 9 the State Linkages and Communication section, under 9.6.

**[No response; links to 9.6]**

## **Eligible Entity Tripartite Board Representation**

- 14.10. 676(b)(10)** Describe how “the State will require each eligible entity in the State to establish procedures under which a low-income individual, community organization, or religious organization, or representative of low-income individuals that considers its organization, or low-income individuals, to be inadequately represented on the board (or other mechanism) of the eligible entity to petition for adequate representation.”

**Note:** The state describes this assurance in Section 11 Eligible Entity Tripartite Board section, under 11.3

**[No response; links to item 11.3]**

## **Eligible Entity Community Action Plans and Community Needs Assessments**

- 14.11. 676(b)(11)** Provide “an assurance that the State will secure from each eligible entity in the State, as a condition to receipt of funding by the entity through a community services block grant made under this subtitle for a program, a community action plan (which shall be submitted to the Secretary, at the request of the Secretary, with the State plan) that includes a community-needs assessment for the community served, which may be coordinated with community-needs assessments conducted for other programs.”

**[No response; links to items 13.5 and 13.6]**

## **State and Eligible Entity Performance Measurement: ROMA or Alternate system**

- 14.12. 676(b)(12)** Provide “an assurance that the State and all eligible entities in the State will, not later than fiscal year 2001, participate in the Results Oriented Management and Accountability System, another performance measure system for which the Secretary facilitated development pursuant to section 678E(b), or an alternative system for measuring performance and results that meets the requirements of that section, and [describe] outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization.”

**Note:** The Department describes this assurance in the ROMA section, items 13.1- 13.4.

**[No response; links to 13.1-13.4]**

**Validation for CSBG Eligible Entity Programmatic Narrative Sections**

**14.13. 676(b)(13)** Provide “information describing how the State will carry out the assurances described in this section.”

**Note:** The Department provides information for each of the assurances directly in section 14 or in corresponding items throughout the State Plan, which are included as hyperlinks in section 14.

**[No response for this item]**

☒ By checking this box, the State CSBG authorized official is certifying the assurances set out above.

## **SECTION 15**

### **Federal Certifications**

**The box after each certification must be checked by the State CSBG authorized official.**

#### **15.1 Lobbying**

##### ***Certification for Contracts, Grants, Loans, and Cooperative Agreements***

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all entities shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

##### ***Statement for Loan Guarantees and Loan Insurance***

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.

Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

☒ By checking this box, the State CSBG authorized official is providing the certification set out above.

## **15.2 Drug-Free Workplace Requirements**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645 (a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

### ***Certification Regarding Drug-Free Workplace Requirements*** (Instructions for Certification)

- (1) By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.
- (2) The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.
- (3) For grantees other than individuals, Alternate I applies.
- (4) For grantees who are individuals, Alternate II applies.
- (5) Workplaces under grants, for grantees other than individuals, need to be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.
- (6) Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).
- (7) If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

- (8) Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

*Controlled substance* means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

*Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

*Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

*Employee* means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

#### ***Certification Regarding Drug-Free Workplace Requirements***

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an ongoing drug-free awareness program to inform employees about - -
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will - -

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency in writing, within 10 calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted - -
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code) **[Narrative:**

**Texas Department of Housing and Community Affairs**

**221 East 11<sup>th</sup> Street**

**Austin, Travis County, Texas 78701-2410]**

☐ Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

- (a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;
- (b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central

point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

☒ By checking this box, the State CSBG authorized official is providing the certification set out above.

### **15.3 Debarment**

#### ***CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS***

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - -

Primary Covered Transactions

Instructions for Certification

- (1) By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- (2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- (3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- (4) The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (6) The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4,



debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

- (7) The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusive-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.
- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

### ***Certification Regarding Debarment, Suspension, and Other Responsibility Matters - -***

#### **Primary Covered Transactions**

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
  - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### ***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - - Lower Tier Covered Transactions***

#### **Instructions for Certification**

- (1) By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- (4) The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that

its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

- (5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- (6) The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (7) The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- (9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (10) Except for transactions authorized under paragraph five of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - - Lower Tier Covered Transactions***

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

☒ By checking this box, the State CSBG authorized official is providing the certification set out above.

**15.4 Environmental Tobacco Smoke**

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 per day and/or the imposition of an administrative compliance order on the responsible entity by signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

☒ By checking this box, the State CSBG authorized official is providing the certification set out above.

## **ATTACHMENTS**

**Attachment A**  
**Response to Question 10.2 Monitoring Policies**

**Compliance Division**

**Subrecipient Monitoring Section**

**Standard Operating Procedures**

**1.0 Risks and Control Objectives**

- 1.1** The risks associated with not having an SOP for Assignments and Risk Assessments and the control objectives to ensure that those risks are minimized, are illustrated in the following table:

<b>Risks</b>	<b>Control Objectives</b>
The risks associated with not having an SOP for monitoring procedures are that that monitoring reviews may not be conducted or be conducted in a consistent manner and within the requirements of the Department and/or Federal requirements.	This SOP will minimize the risks described by providing a comprehensive process for a monitoring risk assessment, monitoring assignment and for the completion of monitoring reports and responses.

**2.0 Policy**

- 2.1** It is the requirement of the Texas Department of Housing and Community Affairs and its Compliance Division to perform monitoring functions of federal and state funds, in a consistent manner that is compliant with Department and Funding source requirements. The Chief of Compliance oversees three (3) monitoring sections within the Compliance Division, one (1) of which is the Compliance Subrecipient Monitoring section. The Compliance Subrecipient Monitoring director oversees the section of employees that monitor the programs that are administered by the Community Affairs Division, Single Family, and Home and Homelessness Programs Divisions of the Department.

**3.0 General**

- 3.1** Abbreviations
- A. Texas Department of Housing and Community Affairs – Department
  - B. Community Affairs Division – CAD
  - C. Community Development Block Grant - CDBG
  - D. Compliance Division - Compliance

- E. Compliance Division Subrecipient Monitoring Section - CMSM
- F. Compliance Subrecipient Monitoring Director – CMSM Director
- G. Subrecipient Monitor – Compliance Monitor or Monitor
- H. Community Affairs Division program awardees (Non-profit corporations, Counties, Cities, Council of Government’s) – Subrecipient
- I. Weatherization Assistance Program – WAP
- J. Comprehensive Energy Assistance Program – CEAP
- K. Community Services Block Grant - CSBG
- L. Department of Energy – DOE
- M. Emergency Solutions Grant – ESG
- N. HOME Investments Partnership – HOME
- O. Homeless Housing and Services Program – HHSP
- P. Housing Trust Fund – HTF
- Q. Low Income Housing and Energy Assistance Program – LIHEAP
- R. LIHEAP Weatherization Assistance Program – LI-WAP
- S. National Housing Trust Fund – NHTF
- T. Neighborhood Stabilization Program – NSP
- U. Quality Control Inspector - QCI

### 3.2 Purpose

- A. This SOP describes the Department’s methodology for monitoring Subrecipients.
- B. To comply with Department rules on the administration on program funds.
- C. To comply with Federal Funding source requirements for administering program funds.
- D. It establishes consistent processes and procedures when monitoring CAD programs.
- E. Monitoring activities are planned to focus on areas of highest risk and to help ensure the most effective use of monitoring resources.
- F. To ensure the CMSM Compliance Monitors completed monitoring reports and responses within a designated time frame to ensure Subrecipients address any corrective actions in a timely manner.
- G. To ensure monitoring responses are reviewed to ensure corrective actions were completed.

## 4.0 Responsibilities

- 4.1 The CMSM section is responsible for ensuring the CEAP, CSBG, ESG, HOME, HHSP, HTF, Ending Homelessness, CDBG, Multifamily Direct HOME Loans, NHTF, NSP and WAP programs (DOE and LIHEAP) are administered and funds are expended in accordance with contract provisions and applicable State and Federal rules, regulations, policies, and related statutes.
- 4.2 The CMSM Director will ensure a monitoring schedule is developed that identifies the Subrecipients that are to be monitored.
- 4.3 According to individual program requirements and/or standards, the CMSM section will develop a list of specific compliance requirements to be reviewed. The section will also develop a methodology to review each compliance requirement consistently.
- 4.4 The CMSM section will perform the respective monitoring to determine Subrecipient compliance.
- 4.5 The CMSM monitors will notify the CMSM Director and/or Chief of Compliance if a finding or concern of fraud, waste and/or abuse were noted during a Subrecipient's monitoring.
- 4.6 Within 30 days of the completion of the monitoring, the CMSM section will develop a report or correspondence, for the Subrecipient, reflecting the results of the monitoring.
- 4.7 The CMSM section will address the Subrecipient's response to the report and/or close out the monitoring process.
- 4.8 The CMSM section will notify and work with the CAD Training section to address any findings consistent within the Subrecipient network.

## **5.0 Subrecipient Monitoring Selection**

- 5.1 The CMSM section will complete a Subrecipient monitoring review schedule, at least quarterly each year. The schedule will identify the quarter in which the Subrecipient will be monitored.
- 5.2 The CMSM section utilizes the most efficient use of its travel and monitoring budget, as its methodology in developing the Subrecipient monitoring review schedule. The schedule takes into account the program contract periods and may require Compliance Monitors to review multiple programs during the review.
- 5.3 The Department's schedule is used as a planning tool and is subject to change. The CMSM Section may encounter situations that arise and cause Subrecipients to be monitored in a different month or more frequently than what is identified in the schedule. These situations may include:
  - 1. Subrecipient who may not or have not met the minimum on-site monitoring threshold.
  - 2. There is low production in the program(s) selected for monitoring.



3. Monitor(s) attempt to schedule a monitoring and provides proposed monitoring dates. However, the Subrecipient is unable to accommodate the monitoring during the proposed dates.
  4. The Department receives fraud, waste and/or abuse concerns against a Subrecipient.
  5. The Department receives a credible complaint against a Subrecipient.
- 5.4 As needed, the CMSM will also factor in the results of a Subrecipient's prior monitoring review and/or Single Audit findings when determining the monitoring schedule. Subrecipient's with prior and/or repetitive monitoring and/or Single Audit findings are a priority to be monitored.
- 5.5 At a minimum:
- A. DOE (July-June) and LIHEAP WAP (Jan. – Dec.) Subrecipients will be monitored at least once each year;
  - B. LIHEAP Subrecipients will be monitored at least once every three (3) years (Triennial).
  - C. CSBG Subrecipients will be monitored at least once every three (3) years (Triennial).

## **6.0 Determining Compliance Requirements**

- 6.1 The CMSM section will review Subrecipient's compliance with program requirements, contract provisions and Federal, State, local government rules and regulations.
- A. The CMSM section will determine compliance on specific contract provisions, rules, regulations and/or program requirements are most applicable to be reviewed or required to be reviewed by the funding source. The CMSM section will verify if the Subrecipients have complied with the requirements. The CMSM section will utilize a monitoring tool (instrument) that identifies the areas of compliance that will be reviewed. The monitoring tool will have a methodology to reflect the process used to determine compliance of each selected contract provision, rule, regulation and/or requirement.
  - B. The monitoring tool will be in electronic format and the CMSM section will enter the selected compliance requirements into the document.
  - C. The monitoring tool will be maintained in the Department's monitoring software (Teammate).
- 6.2 The monitoring tool and the list of compliance requirements that are to be reviewed may be revised, updated, or changed from period to period due to program, legislative and/or budget changes.

- A. The listed monitoring tool is reviewed on a continual basis, during the federal fiscal year or Subrecipient program year (as applicable), to account for changes in rules and/or program requirements.

## **7.0 Monitoring Announcement**

- 7.1 After it has been determined which Subrecipients will be monitored, the CMSM Director will assign monitors, to the Subrecipients who will be monitored. The CMSM Director will determine the method of distributing the Subrecipients to the Monitors.
- 7.2 After a review of risk factors utilized in previous risk assessments the following factors have been identified by staff consensus as the set of indicators that most accurately present the highest degree of program and fiscal risk:
- ◇ Program Activity Type
  - ◇ Number of months remaining on the contract;
  - ◇ Time Since Most Recent Monitoring Evaluation of the elapsed length of time since a Subrecipient has received an on-site visit or desk review;
  - ◇ Results of previous on-site visit(s) and/or desk review;
  - ◇ Total Funds Budgeted – Evaluation of the total amount of funds awarded to a Subrecipient;
  - ◇ Total Funds Committed – Evaluation of the percentage of funds committed to the projects of the contract(s);
  - ◇ Total Cumulative Draws – Evaluation of the percentage of contract funds drawn;
  - ◇ Match obligation for contract;
  - ◇ Set-aside Type;
  - ◇ Construction Activities – A review to determine if subrecipient’s performing activities with a construction component have incurred Davis-Bacon Labor Standards requirements; and
  - ◇ Details of any reported complaints (internal and external).

Risk Factors may be revised, updated, or changed from period to period due to program, legislative, or budget changes. *The Risk Factors utilized may also be governed or restricted by constraints inherent in the architecture of the central data base system. It may not be 100% accurate or cost-effective to include some risk factors because of this constraint. An example is Single Audit Status.*

Other Risk Factors may include:

- ◇ Multiple funding sources for a contract;
- ◇ Significant gaps between expected and actual results of previous contracts;
- ◇ Multiple contracts for an individual subrecipient; and
- ◇ Instability in the management environment.

- 7.3 The Monitor will contact each of the assigned Subrecipients and schedule future on-site monitoring. The Monitor will make every attempt to provide the Subrecipient with a minimum of 30 days' notice prior to the monitoring review.
- A. On occasions, the monitoring may occur with fewer than 30 days' notice. Situations that may warrant a monitoring occurring with fewer than 30 days' notice include:
1. The Subrecipient notifies the Department that it is not able to be monitored the proposed week and chooses the monitoring date.
  2. The Department receives credible fraud, waste and/or abuse concerns against a Subrecipient requiring little to no notice of the monitoring.
  3. The Department receives a credible complaint against a Subrecipient requiring little to no notice of the monitoring.
- 7.4 After the monitoring date has been confirmed, the Monitor will complete a Monitoring Announcement letter.
- 7.5 When the announcement letter has been completed, the document will be scanned and saved to the Subrecipient's respective Monitoring file within the computerized Monitoring Software.
- 7.6 The scanned version will be emailed to the Subrecipient. If applicable, a copy of the announcement letter will be sent to appropriate individuals.
- 7.7 The Monitoring Announcement letter should be sent to the Subrecipient as soon as the monitoring dates have been set, but no less than two (2) weeks prior to the monitoring.
- 7.8 In some instances a Monitoring Announcement letter may be submitted less than two (2) weeks from the scheduled monitoring. This may occur when 7.2 A (1) is met.
- 7.9 In some instances a Monitoring Announcement letter may not be submitted to the Subrecipient prior to the monitoring. This may occur when 7.2 A (2) and (3) are met.

### **8.0 Performing the On-site Monitoring**

- 8.1 The CMSM section will utilize electronic monitoring tool to review the selected compliance requirements and to document the Subrecipients compliance with the specific requirement.
- 8.2 If the appropriate Subrecipient staff is available, the Monitor will have an Entrance Conference prior to the start of the monitoring. In the Entrance Conference the Monitor will provide a brief summary of the on-site monitoring process and/or the on-site monitoring plan. The Monitor will

also utilize this time to answer Subrecipient questions that are specific to the monitoring and/or the programs.

- 8.4 After the Entrance conference, the Monitor will review the compliance requirements and perform the methodology to determine compliance with the selected requirements. The monitor will complete each question and section of the selected compliance requirements on electronic testing documents. The CMSM section will document the reason for the inability to verify any of the selected compliance requirements.

A. Weatherization Assistance Program ("WAP") Monitorings may be performed as a Full Monitoring or as a Unit Inspection.

a. A Full WAP Monitoring will consist of the Compliance Monitor performing a review to determine compliance with Financial and Expenditure requirements, Administrative requirements, client eligibility requirements and performing an inspection of weatherized units.

b. Unit Inspection monitoring consists of the Compliance Monitor(s) reviewing weatherization client files for compliance and eligibility requirements and performing an inspection of the weatherized units.

c. Client file reviews and Unit Inspections will vary according to the funding source used to weatherize the unit. When units are weatherized with LIHEAP funding only, the Compliance Monitor(s) will review the weatherized work based on an established Priority Rating sheet. When units are weatherized with DOE funding only, or with DOE and LIHEAP funds, the Compliance Monitor(s) will review the weatherized work based on an approved Energy Audit. Compliance Monitors will be required to have all applicable field tests performed during the Unit Inspection. The Compliance Monitor(s) may supervise a Subrecipient's performance of the field test. The Compliance Monitor(s) must document the results of the field tests.

d. The Compliance Monitor will utilize the following as a guide when determining the number of units to inspect. The actual number of units inspected will vary according to the number of QCI staff employed by the Subrecipient and the process the Subrecipient follows for their Assessments and Final Inspections.

- a. When a Compliance Monitor is conducting a monitoring visit, in which the Subrecipient has limited QCI staff therefore the same QCI staff will perform more than one function in the unit, the Compliance Monitor(s) will perform a minimum of:
- i. Ten percent (10%) unit inspections of the total units completed

- b. When a Compliance Monitor is conducting a monitoring visit, in which the Subrecipient has multiple QCI staff therefore the QCI staff performing the final inspection will not perform any other function in the unit, Compliance Monitor(s) will perform a minimum of:
  - i. Five percent (5%) unit inspections of the total units completed

e. The CMSM Section will be required to monitor a minimum of 5% of all completed weatherized units (at the time of the monitoring) that are funded by DOE and inspected by a QCI who was not involved in the assessment of the weatherized unit. The CMSM Section will monitor a minimum of 10% of all completed weatherized units (at the time of the monitoring) that were inspected by a QCI that was involved in the assessment of the weatherized unit. The CMSM section will utilize the monitoring tracking database to track the number of units that have been inspected. The Department will also review Monthly Expenditure Reports to track the number of total completed units and will adjust the monitoring schedule to ensure that it meets the minimum number of units inspected.

- a. A Compliance Monitor may not be able to monitor the minimum number of weatherized units if:
  - i. the Subrecipient does not have enough completed weatherized units;
  - ii. the geographical location of the weatherized homes prohibits the ability to inspect units;
  - iii. inclement weather persists.

#### B. Community Services Block Grant

- 1. A CSBG Monitoring review will consist of the Compliance Monitor performing a review to determine compliance with Financial and Expenditure requirements, Administrative requirements and client eligibility requirements.
- 2. The monitoring tool's methodology identifies the minimum number of expenditures and client files to review.

#### C. Comprehensive Energy Assistance Program

- 1. A CEAP Monitoring review will consist of the Compliance Monitor performing a review to determine compliance with Financial and Expenditure requirements, Administrative requirements and client eligibility requirements.
- 2. The monitoring tool's methodology identifies the minimum number of expenditures and client files to review.

8.5 When the respective methodology is not enough to determine compliance, the Monitor(s) will make every effort to determine if the requirement is compliant. This may require the Monitor(s) to perform additional testing, request additional information or clarification from Subrecipient staff and/or request assistance from peer Monitors, CA Division staff, the CMSM Director or the Chief of Compliance.

- 8.6 The Monitor will obtain and maintain the appropriate documentation to justify any finding, disallowed and/or questioned cost.
- 8.7 The Monitor will notify the CA Trainers of the Subrecipient's need for Training and/or Technical Assistance if necessary.
- 8.8. If the Monitor(s) is unable to complete the monitoring during the specified period, the Monitor(s) must notify the CMSM Director of the circumstance(s) that resulted in the inability to complete the monitoring. The CMSM Director will determine the appropriate course of action to complete the monitoring. The Monitor must notify the Subrecipient that additional time is required to complete the monitoring and of the course of action that was determined by the CMSM Director. The inability to complete the monitoring and the course of action must be documented in the computerized Monitoring Software or the Monitoring Instrument.
- 8.9 Time permitting and if the appropriate Subrecipient staff are available, the Monitor will make every attempt to provide the Subrecipient with an on-site Exit Conference. The Exit Conference is intended to explain, to the Subrecipient, the preliminary results of the monitoring. In some situations the Subrecipient may be provided a few days to submit documentation, if the documentation was not readily available during the onsite visit. In this situation, an Exit conference may not be conducted on-site.
- 8.10 If an on-site exit conference cannot be completed, the Monitor will schedule an Exit conference via conference call. The call will typically occur within 5 business days from the last day the monitoring.
- 8.11 The Monitor(s) will create electronic copies of all applicable monitoring documents and/or Finding support documentation obtained during the review. The Monitor will save the electronic copies to the monitoring file within the computerized Monitoring Software.

## **9.0 Monitoring Report**

- 9.1 The Monitor(s) will be required to develop a report, detailing the results of the monitoring. Each Monitoring Report will contain general program information and/or a brief description of the monitoring process that was performed. If applicable, the monitoring report will contain:
  - A. Finding/Deficiency (CSBG only)
    - 1 A brief and concise description of the lack of compliance of a specific program requirement;
    - 2. A brief description of the program requirement;
    - 3. A description of any disallowed or questioned cost; and

4. The respective reference for program compliance.
- B. Action Required for a Finding/Deficiency
1. A brief requirement for the Subrecipient to meet;
  2. A requirement for the Subrecipient to complete a specific action to resolve the finding;
  3. A requirement for the Subrecipient to provide a reimbursement, documents, an assurance and/or a response to the monitoring report.
- C. If there were findings or deficiencies of noncompliance, a 30 calendar day corrective action deadline. If there were no Findings or Required Action, the Monitoring Report will reflect that no response is required and that the Monitoring Review is considered closed.
- D. A Concern
1. A brief and concise description of the lack of compliance of a specific program requirement;
  2. A brief description of the program requirement;
  3. The respective reference for program compliance.
- E. Action Required for a Concern
1. A brief requirement for the Subrecipient to meet;
  2. A requirement for the Subrecipient to complete a specific action to resolve the Concern;
- F. Observation
1. A brief and concise description of the policy, practice or procedure observed through the course of monitoring that may lead to a lack of compliance of a specific program requirement.
- 9.2 Monitors are expected to, on average, complete monitoring letters within 30 calendar days from the last day of the onsite visit. However, DOE-WAP monitoring letters must be completed within 30 calendar days.
- 9.3 The Monitor(s) will make an electronic copy of the Monitoring Report and save the copy to the Subrecipient's respective monitoring file within the computerized Monitoring Software. The scanned version will be emailed. A hard copy report will be mailed to the Subrecipient if email is not an option.
- 9.4 At a minimum, the Monitor will e-mail the Monitoring Report to the Subrecipient and a copy of the report to the Subrecipient's Board Chair or the assigned Board representative.
- 9.5 The date the monitoring report is considered complete and submitted to the Subrecipient, is when the report is emailed to the Subrecipient.

## **10.0 Response to the Monitoring Report**

- 10.1 The Subrecipient will be provided a 30 day corrective action period which can be extended for good cause by the Chief of Compliance.
- 10.2 The Monitor(s) is responsible for tracking corrective action due dates. If the Department has not received the Subrecipient's response, the Monitor(s) will submit a letter to the Subrecipient, notifying them of the delinquent response. The Monitor will document that a letter was sent to the Subrecipient, in the "Notes" area of the Monitoring Tracking System.
- 10.3 If the Subrecipient's response is submitted as a paper document, the Monitor will make an electronic copy of the response. The Monitor will then save the copy to the Subrecipient's respective Monitoring File within the electronic software.
- 10.4 The Monitor(s) will review the Subrecipient's response to the report for compliance with the specific Finding's required action and program rules, regulations and requirements.
- 10.5 Within 45 business days of the receipt of the response, the Monitor(s) will provide correspondence to the Subrecipient addressing each Finding and/or required action. For each Finding, the monitor(s) will:
  - A. Briefly state the Finding that occurred;
  - B. The Subrecipient's response and/or documentation;
  - C. Any concern or question posed in the Subrecipient's response;
  - D. The results of the Department's review of the response and/or documentation;
  - E. Necessary information to address the Subrecipient's concern or question;
  - F. If the response and/or documentation is acceptable to resolve the Finding;
  - G. If the Finding is resolved;
  - H. If applicable, the Finding is closed;
    - i. A Finding will not be considered resolved, but closed when the Department believes the Subrecipient's required action is not obtainable. The Subrecipient will no longer be required to complete the required action.
    - ii. The Department should consider the efforts the Subrecipient made to resolve the Finding.



iii. A “Closed” Finding will not be used on the Required Action of a Subrecipient to reimburse the Department for disallowed expenditures.

I. If applicable, the additional required action to resolve the Finding.

- 10.6 The Monitor(s) will make an electronic copy of the document addressing the Subrecipient’s response to the report. The Monitor will save the copy to the Subrecipient’s respective monitoring file in the computerized Monitoring Software. The scanned version will be emailed to the Subrecipient. If applicable, a copy of the document will be sent to appropriate individuals.
- 10.7 If the Subrecipient’s response did not resolve the Findings and/or required actions of the monitoring report, the Monitor(s) will keep abreast of the Subrecipient’s 30 day response period. If the Department has not received the Subrecipient’s response, the Monitor(s) will submit a letter to the Subrecipient, notifying them of the delinquent response. The Monitor will document that a letter was sent to the Subrecipient, in the Monitoring Tracking System.
- 10.8 When the Subrecipient submits the response from 10.7, the Monitor(s) will continue at 10.2 of the Monitoring SOP. If the Monitor completes Section 10.5 of the SOP and determines the Subrecipient’s response to Finding(s) to remain unresolved, the Monitor will continue with 10.6 and 10.7 of the SOP. However, unless prior approval from the Chief of Compliance, the original Corrective Action deadline is not amended. The Subrecipient must resolve the Finding(s) as soon as possible. If the Department has not received the Subrecipient’s response, the Monitor(s) will submit a letter to the Subrecipient, notifying them of the delinquent response. The Monitor will document that a letter was sent to the Subrecipient, in the Monitoring Tracking System.
- 10.9 Similarly, when the Subrecipient submits the response from 10.8, the Monitor(s) will continue at 10.2 of the Monitoring SOP. If the Monitor completes Section 10.5 of the SOP and determines the Subrecipient’s response to Finding(s) to remain unresolved, the CMSM Director will notify the Chief of Compliance. The Chief of Compliance may determine if the matter should be referred to the Department’s Enforcement Committee in accordance with Department Rules and SOPs.
- 10.10 If a Subrecipient has submitted its second response and is still not able to comply with the required action(s), the Monitor(s) will note in its subsequent correspondence that the Subrecipient is able to request a meeting with the Department’s Compliance committee. The Subrecipient may request the committee to review the validity of the Finding or to appeal the required action.

- A. The Subrecipient must include in its subsequent response that it request a meeting with the Compliance committee.
- B. Once the request has been received, the Department will follow the rules and the SOP's pertaining to the Compliance committee.

APPROVAL:

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***Earnest Hunt***  
***Compliance Subrecipient Monitoring Director***

***1/16/2025***



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1053**

**Agenda Date: 6/12/2025**

**Agenda #: 15.**

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Presentation, discussion, and possible action on the approval of a loan for 2910 Motley Senior Living

**TO BE POSTED  
NOT LATER THAN  
THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

File #: 1026

Agenda Date: 6/12/2025

Agenda #: 16.

Presentation, discussion and possible action regarding a waiver of 10 TAC §11.101(b)(1)(A)(vii) of the Qualified Allocation Plan (QAP) relating to the percentage of efficiency and/or one-bedroom units for Lofts at Creekview.

#### **RECOMMENDED ACTION**

**WHEREAS**, the Department received a request for a waiver relating to Lofts at Creekview, a proposed 4% Housing Tax Credit application that has not yet been submitted to the Department;

**WHEREAS**, the unit mix for Lofts at Creekview includes more than 35% one-bedroom units, which exceeds the threshold allowed in 10 TAC §11.101(b)(1)(A)(vii) of the 2025 QAP, thus rendering the development ineligible; and

**WHEREAS**, staff recommends that a waiver be granted pursuant to 10 TAC §11.207 based on specific factors related to the proposed development and its associated timeline as further detailed herein;

**NOW, therefore, it is hereby**

**RESOLVED**, that a waiver of §11.101(b)(1)(A)(vii) of the 2025 QAP relating to the allowable percentage of efficiency and/or one-bedroom units for Lofts at Creekview is hereby approved.

#### **BACKGROUND**

*General Information:* Lofts at Creekview is to be located in San Antonio, Bexar County, and involves the new construction of 301 units that will serve the general population. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not require any specific restrictions on rent or income and expires on October 20, 2025. According to the applicant, the development will utilize the income averaging set-aside such that 100% of the units will be rent and income restricted at an average at or below 60% of Area Median Income (AMI).

*Waiver Request:* Pursuant to §11.101(b)(1)(A)(vii) of the QAP, “any New Construction, Reconstruction, or Adaptive Reuse Development proposing more than 35% efficiency and/or one-Bedroom Units will be considered ineligible. This requirement will not apply to Elderly or Supportive Housing Developments.”

The unit mix for Lofts at Creekview consists of 32 efficiency units, 150 one-bedroom units, 104 two-bedroom units, and 15 three-bedroom units. The number of one-bedroom units comprises 60.4% of the total unit count. The applicant has requested a waiver of the aforementioned rule,

so that the development may be eligible without necessitating a change to the currently proposed unit mix.

According to the waiver request submitted, construction of the development was originally financed with the proceeds of essential function bonds issued and sold by the San Antonio Housing Trust Public Facility Corporation in 2022. This financing structure enabled the development to be constructed without the use of Low-Income Housing Tax Credits (LIHTC). Because LIHTC were not utilized, the development did not have to adhere to the requirements of the QAP, and, therefore, was not designed with those requirements in mind. The developer moved forward with closing under this financing structure, and construction began. The development is currently 50% complete.

Due to a myriad of factors, including environmental issues and rising construction costs, the developer has represented that the current financing is not sufficient to continue and complete construction of the development. As a result, the developer has proposed that the development be refinanced using Tax-Exempt Bonds and 4% Housing Tax Credits. However, in order for the development to qualify for 4% HTC, it must adhere to the requirements of the 2025 QAP. The current unit configuration does not adhere to §11.101(b)(1)(A)(vii) of the 2025 QAP, and, therefore, a waiver is necessary. According to the applicant, the current unit mix was supported by a market study at the time the original financing closed and will be supported with another market study in conjunction with the forthcoming tax credit application.

Per §11.207 of the QAP, a waiver request must establish that:

- (1) “the need for the waiver is not within the control of the Applicant or is due to an overwhelming need.”
- (2) “granting the waiver . . . serves the policies and purposes articulated in Tex. Gov’t Code §§ 2306.001, 2306.002, 2306.359, and 2306.6701, . . . than not granting the waiver.”
- (3) The Board does not “waive any requirement contained in statute.”

Based on the aforementioned factors, staff believes that the need for a waiver was not within control of the applicant because the Development was designed without the intent to utilize Housing Tax Credits. The unit mix was supported by a market study that identified the needs of the submarket and was approved by the City of San Antonio. Of the 301 total units, under the original structure only 151 units would have been affordable serving households at a combination of 80% of AMI, 60% of AMI and 50% of AMI levels, while the remaining 150 units were at market rate. In converting the project to utilize Housing Tax Credits, the applicant has indicated that all of the units would be affordable.

Staff believes that granting the waiver better serves the purposes articulated in Tex. Gov’t Code §2306.001(2) by providing affordable housing to meet the needs of individuals and families and §2306.001(3) by contributing to the development of neighborhoods and communities.

Based on the aforementioned factors and timeline associated with the design of Lofts at Creekview, staff recommends that a waiver of §11.101(b)(1)(A)(vii) be approved and that such

waiver is specific to the unit mix only. The Development must meet all other Department rules.

April 25, 2025

**Via Email:**

Mr. Jon Galvan  
Texas Department of Housing and Community Affairs  
221 East 11<sup>th</sup> Street  
Suite 400  
Austin, Texas 78701

RE: Development: Lofts at Creekview Apartments in San Antonio  
Applicant: SAHT Lofts at Creekview Housing LP  
**Waiver Request Under Section 11.207 of the QAP**

Greetings:

We represent Cohen-Esrey, LLC (the “**Developer**”) with respect to a proposed financing of the Development using 4% Housing Tax Credits<sup>1</sup> and Tax-Exempt Bonds. The Applicant received a reservation of Tax-Exempt Bonds for the Development (Docket No. 5352). **In connection with its Application for 4% Housing Tax Credits, the Applicant requests a waiver of Section 11.101(b)(1)(A)(vii) of the QAP with regard to the number of Efficiency Units and one-Bedroom Units in the Development.**

**The Applicant**

The Applicant consists of a partnership between the San Antonio Housing Trust Public Facility Corporation, which is an instrumentality of the City of San Antonio (“**SAHTPFC**”) and the Developer.

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<sup>1</sup> Capitalized terms used but not defined in this letter have the meanings given them in the 2025 Qualified Allocation Plan.

### **The Development**

In 2022, the Developer presented SAHTPFC with an opportunity to participate in the construction and ownership of the Development. The Development is currently under construction, approximately 50% complete, and expected to commence occupancy in January 2026, with substantial completion in April 2026. The Development has the following Unit configuration:

Type	Unit Count	Sq Foot	% of Total
Studio	32	555	10.6%
1 BR	150	698	49.8%
2 BR	104	962	34.6%
3 BR	15	1237	5.0%
TOTAL	301		

Within this configuration, the current affordability requirements are as follows:

Affordability Level	Unit Count	% of Total
Market Rate	150	49.8%
80% of AMI	106	35%
60% of AMI	30	10%
50% of AMI	15	5%
TOTAL	301	



Additionally, the Development's amenities will include a swimming pool, business center, picnic and barbecue area, playground, dog park, theater/media room, and community center. An elevator will serve the Development. The Development's website can be found here:

<https://www.loftsatcreekviewapts.com>

### **The Current Financing**

The Developer recommended to SAHTPFC that construction of the Development be financed with the proceeds of essential function bonds issued and sold by SAHTPFC (the "**Current Financing**"). In selecting the financing plan, the Developer suggested that SAHTPFC establish a new model that would allow it to own and operate an affordable housing property outright, without a for-profit partner. The Developer would receive a fee but would not be part of the ownership structure. This plan responded to community input about the use of property tax exemptions available to SAHTPFC. See the news release issued by SAHTPFC in April 2022, linked below and attached as Exhibit A.

<https://sahousingtrust.org/san-antonio-housing-trust-begins-construction-on-the-first-affordable-housing-community-solely-owned-by-the-trust/>

See, also, a more comprehensive article from April 2022, linked below and attached as Exhibit B.

<https://saheon.com/new-affordable-housing-model-texas-san-antonio-east-side/>

### **Challenges to Development**

As the Development proceeded to closing of the Current Financing, economic conditions began to deteriorate rapidly. The market experienced significant volatility—construction costs surged, and interest rates climbed sharply. The company acquiring the bonds, Preston Hollow Community Capital (the "**Bond Purchaser**"), was offering a lower interest rate but could not hold the rate for an extended period. Recognizing the critical importance of locking in a low interest rate to preserve the Development's viability, the Developer recommended that the parties proceed quickly with closing.

At the time of closing, an environmental issue affecting the Development Site had been identified and was in the process of resolution by the Developer. Assessments conducted by two nationally recognized environmental engineering firms, Tetra Tech and Terracon, identified contamination that required remediation. A comprehensive remediation plan was developed and submitted to the Texas Commission on Environmental Quality ("**TCEQ**"). Feedback from TCEQ—including verbal confirmation that the plan was acceptable and formal approval would follow shortly—gave the Developer comfort prior to proceeding with the bond closing, knowing it was providing guarantees.

Despite the original assurances, formal TCEQ approval was not obtained until nearly three months post-closing, creating immediate pressure on the development timeline. Once remediation efforts began, the situation proved far more severe than initially anticipated. Additional contamination was discovered, and soil conditions were worse than previous studies had indicated. This required excavation and removal of significantly more contaminated soil than initially expected, followed by the importation of clean fill material to stabilize the site, and, subsequently, further removal of the imported clean fill.

These unforeseen conditions led to direct environmental remediation costs totaling several million dollars and a delay to the project timeline of nearly two years. During this period, construction costs continued to rise, and interest accrued. SAHTPFC and the Developer remained committed to the project, with the Developer contributing almost \$12 million in additional funds through various financial instruments, such as letters of credit, to keep construction moving forward.

### **Proposal for Financial Viability**

Given the challenges and cost escalations, the Current Financing is not sufficient to complete the Development and cover the cost overruns funded by the Developer. As an alternative, the Developer has proposed that the Development be refinanced with 4% Housing Tax Credits and Tax-Exempt Bonds. By changing the financing structure and sources, the affordability of the Development will increase dramatically, using the average income election under Section 42(g)(1)(C) of the Internal Revenue Code. With this election, 100% of the Units would be rented to residents at an average AMI of 60%. This would add more than 150 Units to the affordable housing inventory in San Antonio, starting in about nine months. SAHTPFC has acquiesced to the Developer's new financing proposal, as the additional affordable Units directly support the mission of SAHTPFC and the Strategic Housing Implementation Plan adopted by the City of San Antonio.

[https://www.sanantonio.gov/Portals/0/Files/NHSD/Coordinated%20Housing%20Web-page/CHS/SHIP Approved.pdf?ver=2021-12-20-104249-810](https://www.sanantonio.gov/Portals/0/Files/NHSD/Coordinated%20Housing%20Web-page/CHS/SHIP%20Approved.pdf?ver=2021-12-20-104249-810)

This Plan seeks to produce nearly 12,000 affordable rental units within a 10-year period.

### **Request for Waiver**

For the Development to receive Housing Tax Credits, the Applicant must obtain a waiver of Section 11.101(b)(1)(A)(vii) of the QAP, which deems a New Construction Development ineligible if the Unit configuration includes more than 35% Efficiency Units and/or one-Bedroom Units. As noted above, 60.4% of the Units in the Development are either Efficiency Units or one-Bedroom

Units. This Unit mix was supported by a market study at the time the original financing closed and will be supported with another market study in conjunction with this Application. Per Section 11.207 of the QAP, a waiver request must establish that:

- (1) “the need for the waiver is not within the control of the Applicant or is due to an overwhelming need.”
- (2) “granting the waiver . . . serves the policies and purposes articulated in Tex. Gov’t Code §§ 2306.001, 2306.002, 2306.359, and 2306.6701, . . . than not granting the waiver.”
- (3) The Board does not “waive any requirement contained in statute.”

***The need for the waiver was not within the control of the Applicant.*** The Developer designed the Development without the intent to utilize Housing Tax Credits. The Unit mix was supported by a market study that identified the needs of the submarket and was approved by the City of San Antonio. Further, the environmental and economic conditions that led to the cost overruns and construction delays were not within the control of the Developer.

***Granting the waiver supports the policies and purposes of TDHCA.*** Granting this waiver serves TDHCA’s public purposes in a variety of ways:

- **Maximizing Affordable Housing Supply.** Section 2306.6701 of the Texas Local Government Code states that TDHCA should administer the Housing Tax Credit program to maximize the number of affordable housing units in the state’s supply.

As noted above, utilizing Housing Tax Credits and Tax-Exempt Bonds to finance the completion of the Development will increase the overall number of affordable Units at the Development. Further, with a completion date in early 2026, this proposal will have residential Units available sooner than any other New Construction project that would be closing within the same timeframe using 4% Housing Tax Credits and Tax-Exempt Bonds.

- **Providing Preventive Financial Support.** Section 2306.6701 further encourages TDHCA to provide “preventive financial support.” The request for Housing Tax Credits is exactly that—a means to restructure the Development financing to improve long-term viability.
- **Assisting Local Governments.** Section 2306.001 notes that TDHCA should assist local governments in “overcoming financial, social, and environmental problems.” SAHTPFC undertook this Development, as the sole owner, to serve its community, upon the recommendations of the Developer. The financial and environmental

problems that arose were not within SAHTPFC's control; the waiver will help SAHTPFC to continue pursuit of its mission and fulfillment of the City's Strategic Housing Implementation Plan by adding affordable Units to the City's inventory.

- **Quality Affordable Housing.** While a majority of the Units in the Development are Efficiency or one-Bedroom Units, it should be noted that these Units are significantly larger than required by the QAP. Section 11.101(b)(6)(A) establishes minimum square footage for each Unit type. All Units in the Development will substantially exceed TDHCA's threshold, as noted:

Type	Unit Count	Actual Sq Foot	TDHCA Threshold Sq Foot	% Excess
Studio	32	555	450	23.3%
1 BR	150	698	550	26.9%
2 BR	104	962	800	20.3%
3 BR	15	1237	1000	23.7%
TOTAL	301			

With the planned amenities and services provided for residents, the Development will exceed statutory mandates to provide a "decent, safe, and affordable living environment."


***There are no Statutory Requirements Implicated.*** The Unit mix criteria in the QAP are a matter of policy and not statute. This allows the Board to consider the overall implications of the request. In doing so, it should note that the waiver request also does not affect any competitive process.

Mr. Jon Galvan  
Texas Department of Housing and Community Affairs  
April 25, 2025  
Page 7

**Conclusion**

For all the reasons cited in this letter, we believe the Board should approve the waiver request to allow the Lofts at Creekview to proceed with 4% Housing Tax Credit and Tax-Exempt Bond financing. If there are any questions about this request, we are happy to address them. Given that the Tax-Exempt Bond reservation has been received, please submit this request to the May Board meeting, if at all possible. Thank you very much.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Cynthia L. Bast". The script is cursive and fluid.

Cynthia L. Bast

cc: Pete Alanis  
San Antonio Housing Trust Public Facility Corporation

Stan Waterhouse  
Cohen-Esrey, LLC

## **EXHIBIT A**

**News Release Issued by San Antonio Housing Trust PFC  
April 13, 2022**

### **San Antonio Housing Trust Begins Construction On The First Affordable Housing Community Solely Owned By The Trust**

**📅 April 13, 2022**

San Antonio, Texas (April 11, 2022) – The San Antonio Housing Trust (SAHT) closed financing on the construction of Lofts at Creekview, a 301-unit, \$60-million affordable workforce apartment community located on 12 acres of vacant land at 3623 E. Commerce Street (East Commerce & IH 10, North of Houston St.) in Council District 2.

This is the first housing project that will be 100% solely owned by the San Antonio Housing Trust Public Facility Corporation, thanks to \$60 million in Tax-Exempt Bonds purchased by Preston Hollow Community Capital (<http://phcllc.com/>). The four-story Lofts at Creekview will be developed by Cohen-Esrey (<http://cohenesrey.com/>), out of Kansas City and constructed by San Antonio construction firm, Galaxy Builders (<https://www.galaxybuilders.com/>).

“The Lofts at Creekview is an important public private partnership, not only because it will provide affordable, high-quality affordable workforce housing to a range of income levels, but because it fundamentally changes how we work with private capital ensuring a strong sustainable project and by keeping the financial upside within our community. Additionally, no other source of public capital was needed other than the sale of bonds,” said Pete Alanis, Executive Director of the San Antonio Housing Trust. “As our equity

increases over time, we can increase affordable units, replenish our tenant assistance fund, and create proceeds for other charitable housing needs. It's truly remarkable what we were able to structure with this new form of public private partnership."

The apartment community will offer market level amenities while providing an affordable mix of 50%, 60%, 80% AMI units, as well as market-rate units. SAHT is also funding a \$450,000 *Tenant Assistance Fund* dedicated to the Loft at Creekview residents for emergency rental assistance and other tenant programmatic needs.

"Cohen-Esrey is excited to reach this landmark, in our second development with the San Antonio Housing Trust," said Jay Johnson, Texas Development Director for Cohen-Esrey. "With so much fluctuation and uncertainty in the housing market, revolving primarily around supply chain issues; this development is a positive reinforcement that in spite of the market, we can still get these public private partnerships across the finish line, and continue to provide affordable housing here in San Antonio. We could not be prouder to be a part of this investment on the Eastside of San Antonio."

"The unique structure of this transaction allows the Housing Trust to retain the project's long-term economic upside, which will provide more resources to further the Trust's mission," said Jim Thompson, CEO & Chairman of Preston Hollow Community Capital. "Our firm specializes in financing impactful outcomes like this, which benefit both the community's future residents and the Housing Trust's long-term community development goals."

Since 1991, the SAHT has provided financial assistance for projects designed to support the City of San Antonio's efforts to creating and preserving housing that is primarily affordable, accessible, attainable, and/or sustainable to residents within the City of San Antonio; and to support community development efforts that build and sustain neighborhoods, empower residents, and provide for positive equitable outcomes.

#### ***About the San Antonio Housing Trust and Foundation***

*The San Antonio Housing Trust provides opportunities to support affordable housing projects, programs, and initiatives in the form of loans, grants, and partnerships. Its goal is to align strategic housing investments with equitable values of economic inclusion, racial ' ethnic diversity, and focus on underserved and vulnerable populations. The Trust is a .d established with a \$10 million corpus by the City of San Antonio governed by a Board*

*of Trustees appointed by the San Antonio City Council. The day-to-day administration of the Housing Trust Fund and its affiliated entities is performed by the San Antonio Housing Trust Foundation, Inc. initially formed in 1991, as a Section 501(c)(3) non-profit organization, under contract with the City of San Antonio.*

***About Cohen-Esrey***

*Headquartered in the Kansas City suburb of Overland Park, Kansas, Cohen-Esrey's roots in Real Estate go back to 1969. The company is dedicated to enhancing the communities where they work by acquiring, developing and managing multi-family properties and providing rewarding investment opportunities for communities, organizations, and individuals. Cohen-Esrey's cumulative multi-family portfolio over the past four+ decades totals more than 65,000 units in more than 525 properties. The company strives to create communities that not only enhance the lives of the residents but also have a positive impact on the greater community to which the property belongs. For more information, visit [cohenesrey.com](https://www.cohenesrey.com) (<https://www.cohenesrey.com/>) or contact Jay Johnson at [jjohnson@cohenesrey.com](mailto:jjohnson@cohenesrey.com) (<mailto:jjohnson@cohenesrey.com>).*

***About Preston Hollow Community Capital***

*Preston Hollow Community Capital provides specialized impact financing solutions for projects of significant social and economic importance to local communities in the United States. As a team, we bring a decades-long track record of helping communities achieve their financial, sustainability and community impact goals. We do so through a unique partnership model, rigorous and disciplined credit underwriting and creative investment structuring built around delivering certainty and flexibility to our borrowers. For more information visit [phcllc.com](https://phcllc.com) (<https://phcllc.com/>) or contact Max Pickle at 214.389.0813 or [mpickle@phccap.com](mailto:mpickle@phccap.com) (<mailto:mpickle@phccap.com>).*



**EXHIBIT B**

**News Article in *San Antonio Heron*  
April 20, 2022**

## **New affordable housing model in Texas takes shape on San Antonio's East Side**

APRIL 20, 2022 BY BEN OLIVO

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The Lofts at Creekview is a \$60 million mixed-income development on the East Side planned by the San Antonio Housing Trust Public Facility Corp. **Courtesy San Antonio Housing Trust PFC**

**By Ben Olivo** | @rbolivo | Heron editor

In recent years, the San Antonio Housing Trust Public Facility Corp. (PFC), a city-created nonprofit whose mission is to build and preserve affordable housing, has been accused by housing advocates and some observers of helping for-profit developers line their pockets in exchange for producing apartments that weren't meeting San Antonio's housing needs.

Developers, they say, took advantage of the San Antonio Housing Trust PFC's powers under state law to provide full property tax exemptions—a lucrative subsidy worth millions of dollars over what are often 75-year lease terms—to development partnerships of which they were members.

Now, the San Antonio Housing Trust PFC says it has introduced a new housing model that helps right the ship.

The Lofts at Creekview is a \$60 million, 301-unit mixed-income apartment complex in the works at 3623 E. Commerce St., about a mile east of the AT&T Center, on the East Side.

The difference between the Lofts at Creekview and the 39 other developments either completed or under construction with the help of the San Antonio Housing Trust is that this one will be solely owned by the trust.

One hundred percent ownership allows the Housing Trust PFC to someday refinance and cash out on equity the project has earned over, say, 12-15 years. It would then use that equity to permanently lower rents at the lofts, or what is known as "buying down rents," said Pete Alanis, executive director of the San Antonio Housing Trust.

"One of the biggest complaints in our community was: 'You know, you're providing this property tax exemption, yet, the developer and the investors are seeing all the upside.' Right? We solved for that here," Alanis said. "We are getting all the upside out of the deal."

[ **Archive:** "NRP Group expects \$10M profit from sale of tax-exempt Baldwin apartments" | Aug. 28, 2019 ]

Some PFC deals have the ability to eventually "buy down" rents, but the Lofts at Creekview model allows for greater affordability down the road because the PFC collects 100 percent of the profit, which "is not shared with a (private equity) firm nor developer," Alanis said.

The new model comes as San Antonio works to find innovative ways to fill this city's affordable housing gap.

In December, the City Council approved the Strategic Housing Implementation Plan with the goal of aiding an estimated 95,000 cost-burdened households in San Antonio by building new housing, preserving existing housing and increasing wages. Another metric paints an even starker picture: Late last year, the San Antonio Housing Authority said there were 51,000 people on its public housing waiting list, and another 5,000 who were waiting for a Section 8 housing voucher.

However, the rent levels at the Lofts at Creekview are identical to previous models that were heavily criticized by some for not being affordable enough.

[ **Related:** "Tax breaks for developers under scrutiny in San Antonio, Texas capitol" | April 1, 2021 ]

During the process that lead to the adoption of the Strategic Housing Implementation Plan, the city also adopted a new definition for affordable housing: for renters, it's housing reserved for households making up to 60 percent of the area median income (AMI), or what is \$44,460 for a family of four in the San Antonio-New Braunfels region.

[ *Scroll down for a chart showing AMI levels.* ]

Under this definition, only 15 percent of the units, or 45, at the Lofts at Creekview would be considered affordable.

Here's how it breaks down for the 301 units at the Lofts at Creekview:

- » **half the units** will be market-rate priced
- » **35 percent** priced for households making up to 80 percent AMI
- » **10 percent** up to 60 percent AMI
- » **5 percent** up to 50 percent AMI

Alanis said it's the aforementioned ability to permanently lower this rent structure in future years that makes this development different.

For example, perhaps a percentage of the 80 percent AMI units were reduced to 60 percent AMI, or perhaps rents for all of the 50 percent AMI units were lowered down to 30 percent AMI, therefore reaching lower-income households.

"This really is the first model like this in Texas," Alanis said.

Such a move would require the approval of the San Antonio Housing Trust's board, which is composed of five City Council members, six community members, and a city executive.

Alanis said the Lofts at Creekview also puts into practice a slew of support services not found in previous PFC developments, such as a \$450,000 tenant assistance fund available to tenants who may have trouble paying rent because of an emergency.

"If somebody gets into some financial trouble and they're not able to make that rent, we have a fund that can assist them," Alanis said. "That's very valuable when we're talking about making sure people have stability, and we don't have that looming threat of eviction."

On-site support services and rent restrictions as defined by the federal government (which PFCs, as a state housing model, are not obligated to adhere to) are among other benefits found at this Housing Trust PFC development, and not others.

[ *Scroll down for a chart showing previous U.S. Department of Housing and Urban Development (HUD) rent limits.* ]

In short, because the Housing Trust PFC owns the development outright, it's able to call the shots.

Juxtapose this concept with the Friedrich Lofts, another East Side PFC deal, for example, where Atlanta-based investor American South Real Estate Fund demanded an abnormally large ownership stake—67 percent—and rent levels most observers would not consider "affordable" in exchange for the equity, or cash, to finally jump-start the decades-stalled redevelopment.

[ **Archive:** "Why some subsidized housing is beyond reach for many San Antonians" | Aug. 25, 2020 ]

To pay for the Lofts at Creekview, the Housing Trust PFC is issuing \$60 million in tax-exempt bonds, which it has the ability to do on its own under state law. Preston Hollow Community Capital, an investment group from Dallas, is purchasing the bonds. The Housing Trust PFC must repay Preston Hollow the \$60 million at 5.75 percent interest over 40 years.

[ *Read the Texas law allowing for the creation of public facility corporations, or PFCs.* ]

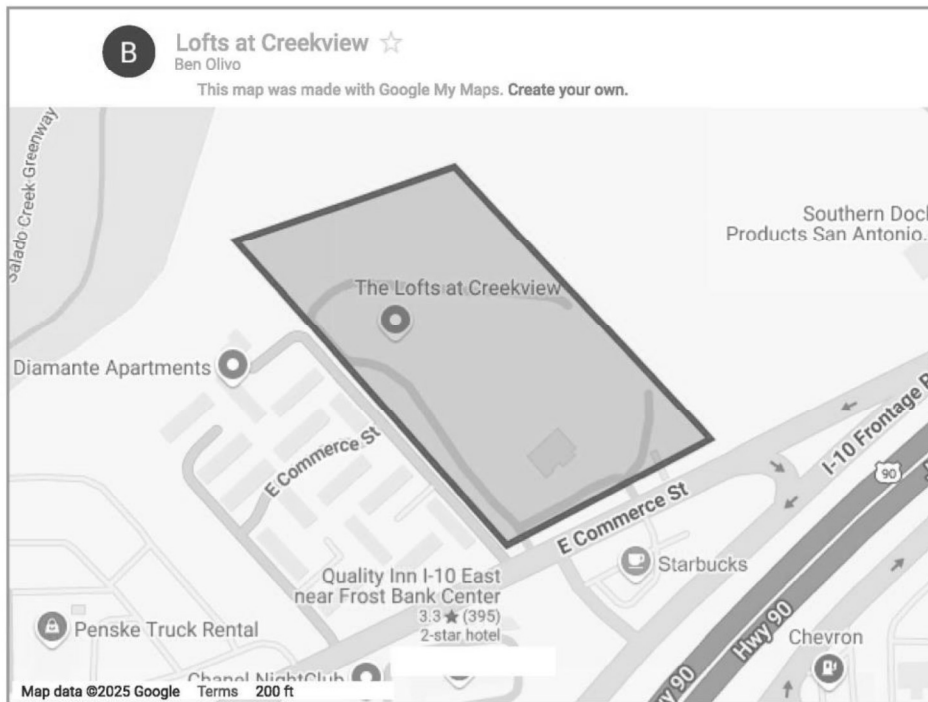
"It's a higher interest rate, because, obviously, they're funding 100 percent of a project, right? Whereas HUD may only fund 80 percent of a project or a bank would only fund about 60 to 65 percent of a project," Alanis said. "So it's a little bit higher rate, but we're getting 100 percent of the project financed."

The San Antonio Housing Trust PFC has hired Cohen-Esrey of Kansas City to act as the developer and Galaxy Builders of San Antonio as the construction firm. They were expected to break ground this week, and take 22 months to complete the four-story apartment complex.

This project is the 40th for the San Antonio Housing Trust. It also puts the nonprofit over 10,000 units that are either built or under construction.

[ Download a database of all San Antonio Housing Trust projects. ]

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## Origins of a deal

PFCs in Texas are powerful governmental entities with the ability to purchase land, offer full property tax exemptions, and issue tax-exempt bonds.

Deals take on different structures. Often, a lender—whether it be a conventional loan or one that is insured by HUD—finances the bulk of the development cost, and private equity from an investor fills the gap.

The San Antonio Housing Trust PFC isn't the only PFC in the area. There are others. Alamo Colleges District has one. Hemisfair has one. The San Antonio Housing Authority has two. Bexar County just started using theirs.

But the City of San Antonio's Housing Trust PFC is by far the most productive.

Here's how they work:

In short, the PFC owns the land. Therefore, whatever is built on the land gains the property tax exemption granted to PFCs under Texas law. It ends up being a huge savings that for-profit developers, as they are in most cases, reap.

In return, they must reserve half the units to households making up to 80 percent AMI, which San Antonio no longer considers affordable; and the other half end up as market rate.

In July 2020, this was the kind of deal Cohen-Esrey offered the San Antonio Housing Trust. But the San Antonio Housing Trust said it wasn't interested, Alanis said.

"We didn't give them a choice," he said. "We're not doing those deals anymore. We're not going to accept a deal structure that has private equity, and they can only get a, you know, half market and (half) 80 percent (AMI) units, and then maybe a token amount of 60 percent (AMI) units. That's not going to fly anymore. So we told them, we're not doing that."

Cohen-Esrey had already partnered with the Housing Trust PFC on the Loma Vista Apartments, a 211-unit affordable housing community envisioned for North General McMullen Drive, next to the SA Hope Center, which provides a food pantry, workforce development and other support services on the West Side.

It was Cohen-Esrey's responsibility to find a new model for the East Side property. They found Preston Hollow Community Capital, which is involved in two developments at Brooks, which

was willing to purchase the full cost of the development—\$60 million—in tax-exempt bonds the trust was able to issue on its own.

“Our team saw an opportunity to work with the San Antonio Housing Trust (SAHT) to move away from the prior PFC model in a manner that both addressed the needs of the housing market and better aligned with SAHT’s revised policy goals,” Jay Johnson, Cohen-Esrey’s Texas Development Director, said in an email. “With fluctuating interest rates, rises in lumber cost, and other supply chain issues; we are proud to be a part of an innovative public-private partnership model along with Preston Hollow Community Capital and the S.A. Housing Trust to get this project across the finish line.”

What Cohen-Esrey gets out of the deal is a developer fee (2.97 percent of the total cost; which amounts to \$1.7 million).

The trust eventually purchased the 12 acres for roughly \$1.8 million.

“The developer’s going to do what they do best: They’re gonna develop and build it,” Alanis said. “They’re going to guarantee certain things. And then once they’re done, they’re done. We’ll probably just have them property manage it over the course of time.”

...



The Lofts at Creekview is slated for this property 3623 E. Commerce St. Photo by Ben Oliva | Heron

### **'Doesn't work for every project'**

If this development structure is so advantageous to the public, why didn't the Housing Trust pursue it earlier?

"I don't think it was really conceived before," Alanis said. "Similar work is being done out in California. They're structured in a very similar way. But it really hasn't come here to Texas. This is the first project that's being funded in this manner. And it doesn't work for every project."

To build affordable housing, layers of public subsidies are often needed to offset the development cost, which allows the developer the ability to drive down market-rate rents—the rent level needed to pay for the cost of building the housing—to below-market rents, toward prices lower-income households can afford.

During the interview for this piece, we asked Alanis why such subsidies weren't pursued for the Lofts at Creekview, which could have, in theory, made the rents more affordable.

"What's important about this project is we didn't have to spend a single dollar of public funds," he said. "It didn't require CDBG (Community Development Block Grant) funds. It didn't



require HOME (Investment Partnerships Grants) funds to fill a gap. It didn't require TIRZ (tax increment financing) funds. Obviously, the project could have used it. And we could have gotten maybe some greater affordability if we did. But to be able to prove this model ... You know, we had to find someone that could take some risks. And that's where Preston Hollow Community Capital came in."

Alanis said this housing model could be reproduced closer to downtown, closer to the nexus of hospitality jobs in San Antonio, but it would be tough. The cost of downtown-area land is much more expensive, he said. "That makes a really big difference on what we're able to do," he said. "Not only that, but also rising interest rates. The rising costs of construction."

Alanis said this model will be applied on a case-by-case basis.

"The whole point of the model is to be able to 100 percent finance (a development) and get a project down without the ability to have to rely on public sources of funding," Alanis said, "and still create the affordability long-term that we need."

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*Setting It Straight: An earlier version of this article stated Cohen-Esrey benefitted from the Housing Trust's purchase of the land for this project. The trust purchased the land (two parcels) at its original cost.*

*Heron Editor Ben Olivo has been writing about downtown San Antonio since 2008, first for mySA.com, then for the San Antonio Express-News. He co-founded the Heron in 2018, and can be reached at 210-421-3932 | [ben@saheron.com](mailto:ben@saheron.com) | [@rbolivo](https://twitter.com/rbolivo) on Twitter*



## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

File #: 1031

Agenda Date: 6/12/2025

Agenda #: 17.

Presentation, discussion, and possible action regarding a Material Amendment to the Land Use Restriction Agreements for Villa Elaina (HTF #853338) and The Cornerstone (HTF #1000358)

#### **RECOMMENDED ACTION**

**WHEREAS**, Villa Elaina received a Housing Trust Fund (HTF) award in 2003 for the rehabilitation of 22 multifamily units, all of which are designated as low-income units, and The Cornerstone received a Housing Trust Fund award in 2004 for the construction of 30 multifamily units, of which eight units are designated as low-income units, in Austin, Travis County;

**WHEREAS**, Mary Lee Foundation, the prior owner for Villa Elaina and The Cornerstone (the Developments), executed a Land Use Restriction Agreement (LURA) for Villa Elaina on February 26, 2004, which was amended in 2012 to restrict 11 units for individuals and families earning no more than 30% of Area Median Income (AMI) and 11 units at no more than 60% of AMI for a term of 55 years;

**WHEREAS**, Mary Lee Foundation executed a LURA for The Cornerstone on February 24, 2005, to restrict four units for individuals and families earning no more than 30% AMI and four units at no more than 60% AMI for a term of 30 years;

**WHEREAS**, CVE Housing Corporation (Development Owner), an affiliate of Foundation Communities, Inc., acquired the Developments in 2024 for the purpose of redeveloping and reconstructing both properties on an adjacent site that was acquired by another affiliate of Foundation Communities, Inc. in 2023;

**WHEREAS**, Foundation Communities, Inc. has submitted a 4% Housing Tax Credit (HTC) application for the construction of The Bloom at Lamar Square (HTC #25420), which will include 58 new HTC units of which 52 units will mirror the unit mix and income restrictions at Villa Elaina and The Cornerstone;

**WHEREAS**, the Development Owner requests approval to amend and transfer the LURAs for Villa Elaina and The Cornerstone to The Bloom at Lamar Square (the New Development);

**WHEREAS**, the tenants at the restricted units at Villa Elaina and The Cornerstone will relocate to the New Development after its construction, and all other tenants will have an option to relocate to the New Development if their incomes qualify or will receive relocation assistance; and

**WHEREAS**, the Development Owner has complied with the amendment requirements in 10 TAC

§10.405(b), including holding a public hearing;

**NOW, therefore, it is hereby.**

**RESOLVED**, that the requested material LURA amendments for Villa Elaina and The Cornerstone is approved as presented at this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing; and

**FURTHER RESOLVED**, the amendments to the LURAs will be done once construction of the New Development has been completed.

### **BACKGROUND**

Villa Elaina received a Housing Trust Fund (HTF) award in 2003 to assist with the construction of 22 multifamily units, and The Cornerstone received a Housing Trust Fund award in 2004 to assist with the construction of 30 multifamily units in Austin, Travis County. Villa Elaina has 11 units restricted for individuals and families earning no more than 30% of Area Median Income (AMI) and 11 units at no more than 60% of AMI for a term of 55 years. The Cornerstone has four units restricted for individuals and families earning no more than 30% AMI and four units at no more than 60% AMI for a term of 30 years.

The current Development Owner, CVE Housing Corporation, which is a subsidiary of Foundation Communities, Inc., purchased the Developments from the Mary Lee Foundation in 2024. Foundation Communities, Inc. is working alongside fellow nonprofit, Mary Lee Foundation, to redevelop an eight-acre campus on South Lamar in South Austin. Foundation Communities, Inc. has submitted a 4% Housing Tax Credit (HTC) application for the construction of The Bloom at Lamar Square (HTC #25420). In a letter dated April 1, 2025, Walter Moreau, representative for the Development Owner, requested approval to transfer the LURAs for Villa Elaina and The Cornerstone from their current locations at 1322 and 1318 Lamar Square to the adjacent location of 1326 and 1328 Lamar Square, which is where the proposed New Development, The Bloom at Lamar Square, will be located. Because the existing Developments are in poor condition and past their useful life, Foundation Communities, Inc. is proposing to construct 58 units at the New Development, which is on the adjacent 0.58-acre site. Fifty two of the 58 units at the New Development will mirror the unit mix and income restrictions at Villa Elaina and The Cornerstone. The tenants at the restricted units at The Cornerstone and Villa Elaina are anticipated to be relocated to the New Development after its construction. All other tenants will have an option to relocate to the New Development if their incomes qualify or will receive relocation assistance. The demolition and reconstruction of The Cornerstone and Villa Elaina at the current development sites is not part of the proposed work for the New Development, and this will take place as part of a separate, future phase of redevelopment.

The Development Owner held a public hearing on May 13, 2025, to discuss the changes being made to the HTF LURAs to facilitate the development of the New Development. Ten residents

attended the hearing, and representative of the Development Owner received feedback and answered questions regarding the moving process, income certification at the new development, and features of the new development.

Staff recommends approval of the requested material amendments to the LURAs for the Developments. The amendments to the LURAs will be done once construction of the New Development has been completed.



3000 S IH 35, Ste 300  
Austin, TX 78704

tel: 512-447-2026  
fax: 512-447-0288

[foundcom.org](http://foundcom.org)



April 1, 2025

**RE: LURA transfer request**

To whom it may concern,

Please accept this letter as a request to transfer the LURA requirements for TDHCA funded Cornerstone Apartments and Villa Elaina Apartments from their current locations at 1322 and 1318 Lamar Square to the adjacent location of 1326 and 1328 Lamar Square, Austin TX 78704. Cornerstone includes 30 units, 8 of which are restricted by a TDHCA LURA. Villa Elaina includes 22 units, all of which are restricted by a TDHCA LURA. Because these 2 communities are in poor condition and past their useful life, Foundation Communities is working to reconstruct these units at the adjacent site and relocate current tenants.

Foundation Communities has submitted a 2025 4% tax credit application (#25420) to TDHCA to develop 'The Bloom at Lamar Square', which will include 58 new HTC units at 1326 and 1328 Lamar Square. 52 of these 58 units will mirror 52 unit mix at Cornerstone and Villa Elaina. The tenants at Cornerstone and Villa Elaina within the TDHCA restricted units will relocate to The Bloom after its construction. All other tenants will have an option to relocate to The Bloom if income qualified or receive relocation assistance. The demolition and reconstruction of Cornerstone and Villa Elaina are NOT part of the proposed Project for The Bloom; this will take place as part of a separate, future phase of redevelopment.

We respectfully request that TDHCA transfer the LURA to the location of the new development, The Bloom, so that we can provide better quality housing for current tenants.

Sincerely,

Walter Moreau  
Executive Director  
Foundation Communities



a Partner Agency of





## Texas Department of Housing and Community Affairs

### Governing Board

### Board Action Request

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**File #: 1032**

**Agenda Date: 6/12/2025**

**Agenda #: 18.**

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Presentation, discussion, and possible action regarding a Material Amendment for Sunset Ridge formerly Green Manor Apartments (HTC #24261)

#### **RECOMMENDED ACTION**

**WHEREAS**, Sunset Ridge (Development) received an award of 9% Housing Tax Credits (HTCs) in 2024 for the new construction of 36 multifamily units for the general population in Burnet, Burnet County;

**WHEREAS**, the HTC Application received two points for agreeing to include a certified Historically Underutilized Business (HUB) in the ownership structure of the General Partner and materially participating in the development and operation of the Development throughout the Compliance Period;

**WHEREAS**, due to challenges encountered in renewing the HUB certification with the Texas Comptroller, HVM 2024 PT Burnet, LLC (the Applicant) is requesting the removal of the two points previously awarded for the participation of HVM Housing LLC, the proposed HUB, in the Application;

**WHEREAS**, the ownership structure or involvement of HVM Housing LLC is not changing, and HVM Housing LLC will continue to serve as the Managing Member but not as a HUB; and

**WHEREAS**, the requested change does not negatively affect the Development, impact the viability of the transaction, or affect the amount of the tax credits awarded;

**NOW, therefore, it is hereby**

**RESOLVED**, that the requested material amendment for Sunset Ridge is approved as presented to this meeting, and the Executive Director and his designees are each authorized, directed, and empowered to take all necessary action to effectuate the foregoing.

#### **BACKGROUND**

Sunset Ridge originally Green Manor Apartments was approved for a 9% HTC award in 2024 for the construction of 36 units, all of which are designated as low-income units, of multifamily housing for the general population in Burnet, Burnet County. The HTC Application for the Development received two points because the Development was structured to include a Historically Underutilized Business (HUB) in the ownership structure that would have some

combination of ownership interest in the General Partner of the Owner, cash flow from operations, and Developer Fee. The HUB is also required to materially participate in the development and operation of the Development throughout the Compliance Period.

In a letter dated April 25, 2025, Carol Hoover, Managing Member of HVM Housing LLC, the originally proposed HUB, and representative for the Development Owner, requested approval for the removal of the two points previously awarded for the participation of a HUB in their application.

The Owner indicated that they encountered challenges in renewing their HUB certification with the Texas Comptroller. Because all but one of the women members of the HUB are also employed by the related party management company, the Comptroller has raised a potential conflict of interest. The Applicant is currently addressing this concern and actively reapplying for certification.

There is no change in the ownership structure or involvement of HVM Housing LLC as it will still serve as the Managing Member but not as a HUB. There are no new members being added. The Applicant indicated that the syndicator has advised them that they cannot proceed with closing until this matter is resolved.

Staff confirmed that the loss of the Sponsor Characteristics points would not have affected the award because there was no other Application that would have scored higher in Rural Region 7. The requested change does not materially alter the Development in a negative manner or impact the viability of the transaction.

Staff recommends approval of the material amendment as presented herein.

**HVM 2024 BURNET, LLC  
PO BOX 190  
BURNET, TX.78611**

**April 25, 2025**

**To:** Texas Department of Housing and Community Affairs

**RE:** Sunset Ridge (formerly Green Manor)  
**TDHCA #24261**

**Amendment Request – HUB Points**

We respectfully request the removal of the two points previously awarded for the participation of a Historically Underutilized Business (HUB) in our application.

Sunset Ridge was awarded 9% housing tax credits in 2024 and received two points based on the inclusion of HVM Housing LLC, a certified HUB, as the Managing Member. However, we have encountered challenges in renewing our HUB certification with the Texas Comptroller. Because all but one of the women members of the HUB are also employed by our management company, the Comptroller has raised a potential conflict of interest. We are currently addressing this concern and actively reapplying for certification. We fully expect to be recertified in the near future.

Since two other applicants in Rural Region 7 have withdrawn, Sunset Ridge remains the only application in the region. Therefore, the removal of these two points will not impact our award status.

Importantly, we are not changing the structure or involvement of our HUB. HVM Housing LLC will continue to serve as the Managing Member, and no new members are being added. Our organizational chart remains unchanged.

Our syndicator has advised that we cannot proceed with closing until this matter is resolved.

We respectfully request your approval of this amendment.

Sincerely,  
**Carol Hoover**  
Managing Member  
HVM Housing LLC



# 24221 Dashwood Trails - Application Summary

REAL ESTATE ANALYSIS DIVISION

June 11, 2024

PROPERTY IDENTIFICATION		RECOMMENDATION					KEY PRINCIPALS / SPONSOR		
Application #	24221	TDHCA Program	Request	Recommended			J.Ryan Hamilton / J. Douglas Hamilton / Michael K. Hamra - Trinity Housing Development Texas, LLC  Alice Woods - Broadleaf Development, LLC dba Broadleaf Community Consulting		
Development	Dashwood Trails	LIHTC (9% Credit)	\$2,000,000	\$2,000,000	\$20,408/Unit	\$0.87			
City / County	Houston / Harris								
Region/Area	6 / Urban								
Population	General								
Set-Aside	General								
Activity	New Construction								
TYPICAL BUILDING ELEVATION/PHOTO									
UNIT DISTRIBUTION			INCOME DISTRIBUTION						
# Beds	# Units	% Total	Income	# Units	% Total				
Eff	-	0%	20%	-	0%				
1	28	29%	30%	10	10%				
2	68	69%	40%	-	0%				
3	2	2%	50%	40	41%				
4	-	0%	60%	48	49%				
			70%	-	0%				
			80%	-	0%				
			MR	-	0%				
			TOTAL	98	100%	TOTAL	98	100%	
PRO FORMA FEASIBILITY INDICATORS									
Pro Forma Underwritten			Applicant's Pro Forma						
Debt Coverage	1.15		Expense Ratio	50.9%					
Breakeven Occ.	86.6%		Breakeven Rent	\$913					
Average Rent	\$978		B/E Rent Margin	\$64					
Property Taxes	\$906/unit		Exemption/PILOT	0%					
Total Expense	\$5,698/unit		Controllable	\$3,206/unit					
MARKET FEASIBILITY INDICATORS									
Gross Capture Rate (10% Maximum)			2.8%						
Highest Unit Capture Rate	11%	1 BR/50%	11						
Dominant Unit Cap. Rate	6%	2 BR/60%	33						
Premiums (↑80% Rents)	N/A	N/A							
Rent Assisted Units	N/A								
DEVELOPMENT COST SUMMARY									
Costs Underwritten		Applicant's Costs							
Avg. Unit Size	801 SF	Density	33.3/acre						
Acquisition		\$20K/unit	\$2,000K						
Building Cost	\$159.22/SF	\$128K/unit	\$12,496K						
Hard Cost		\$156K/unit	\$15,311K						
Total Cost		\$257K/unit	\$25,199K						
Developer Fee	\$2,914K	(43% Deferred)	Paid Year: 13						
Contractor Fee	\$2,144K	30% Boost	Yes						

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
PNC Bank	15/40	6.75%	\$6,459,324	1.15	City of Houston	0/0	0.00%	\$500	1.15	PNC Bank	\$17,498,250	
											Trinity Housing Development Texas, LLC	\$1,241,154
											TOTAL EQUITY SOURCES	\$18,739,404
											TOTAL DEBT SOURCES	\$6,459,824
											TOTAL CAPITALIZATION	\$25,199,228
TOTAL DEBT (Must Pay)			\$6,459,324		CASH FLOW DEBT / GRANTS			\$500				

CONDITIONS

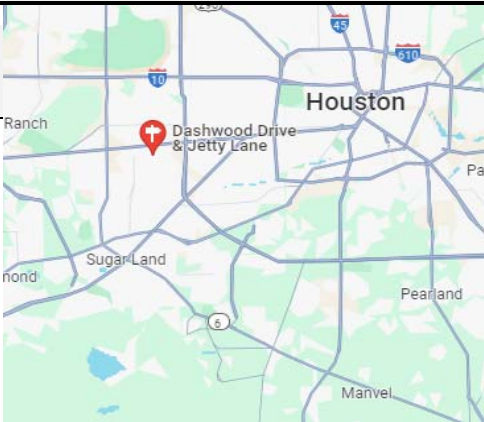
1 Receipt and acceptance by Commitment:

- Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that parking and drive areas will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance for the buildings as long as they remain in the floodplain.


2 Receipt and acceptance by Cost Certification:

- Architect or engineer certification that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives and parking areas are not more than 6 inches below the floodplain; or certification (including a Letter of Map Amendment or Revision ("LOMA / LOMR-F") if applicable, documenting that the development is not within the 100 year floodplain.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
<div><div>Developer experience</div><div>Low Capture Rate</div></div>	
WEAKNESSES/RISKS	
<div><div>DCR at 1.15</div><div>Northern edge of site in the 100-year plain</div></div>	
AREA MAP	
	

AERIAL PHOTOGRAPH(s)





### DEVELOPMENT IDENTIFICATION

TDHCA Application #: 24221 Program(s): 9% HTC

Dashwood Trails

Address/Location: NEC Dashwood Dr and Jetty Ln

City: Houston County: Harris Zip: 77072

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Elevator Served Region: 6

Analysis Purpose: New Application - Initial Underwriting

### ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION						
	Amount	Int. Rate	Amort	Term	Amount	Int. Rate	Amort	Perm. Term	Perm Lien	Const. Term	Const Lien
LIHTC (9% Credit)	\$2,000,000				\$2,000,000						

### CONDITIONS

- Receipt and acceptance by Commitment:
  - Certification that if the site is in the 100-year floodplain when it places in service, the finished ground floor elevation of the buildings will be at least one foot above the floodplain and that parking and drive areas will be no more than 6 inches below the floodplain; and that the Owner will provide flood insurance for the buildings as long as they remain in the floodplain.
- Receipt and acceptance by Cost Certification:
  - Architect or engineer certification that the finished ground floor elevation for each building is at least one foot above the floodplain and that all drives and parking areas are not more than 6 inches below the floodplain; or certification (including a Letter of Map Amendment or Revision ("LOMA / LOMR-F") if applicable, documenting that the development is not within the 100 year floodplain.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

## SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
30% of AMI	30% of AMI	10
50% of AMI	50% of AMI	40
60% of AMI	60% of AMI	48

## DEVELOPMENT SUMMARY

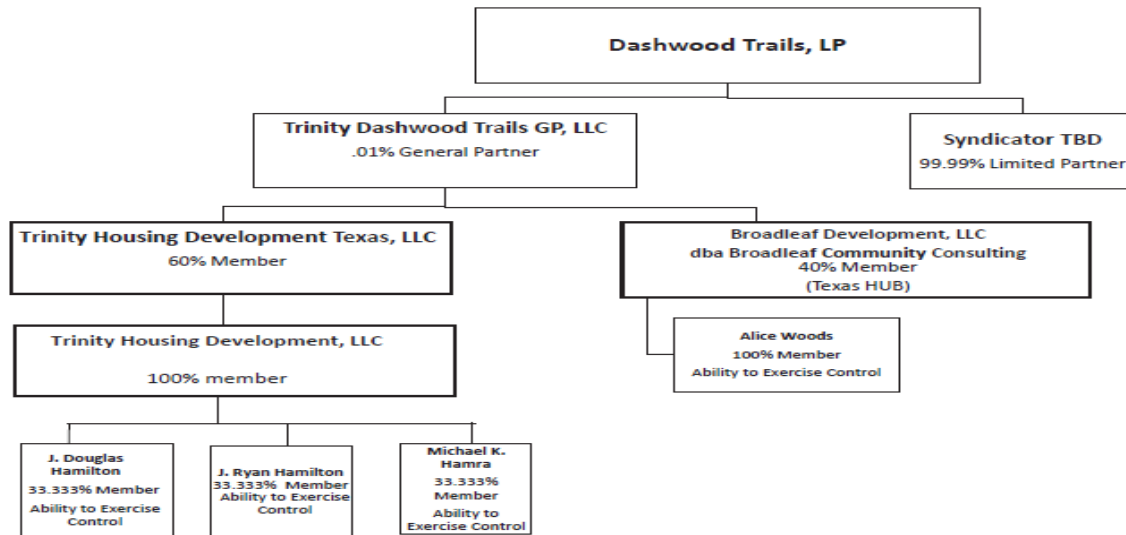
This application is for the new construction of 98 units serving the general population. The development will have one four-story elevator-served building that contains all units and indoor common amenities. The development will have an After School Learning Center.

## RISK PROFILE

STRENGTHS/MITIGATING FACTORS	WEAKNESSES/RISKS
<ul style="list-style-type: none"> <li>Developer experience</li> <li>Low Capture Rate</li> </ul>	<ul style="list-style-type: none"> <li>DCR at 1.15</li> <li>Northern edge of site in the 100-year plain</li> </ul>

## DEVELOPMENT TEAM

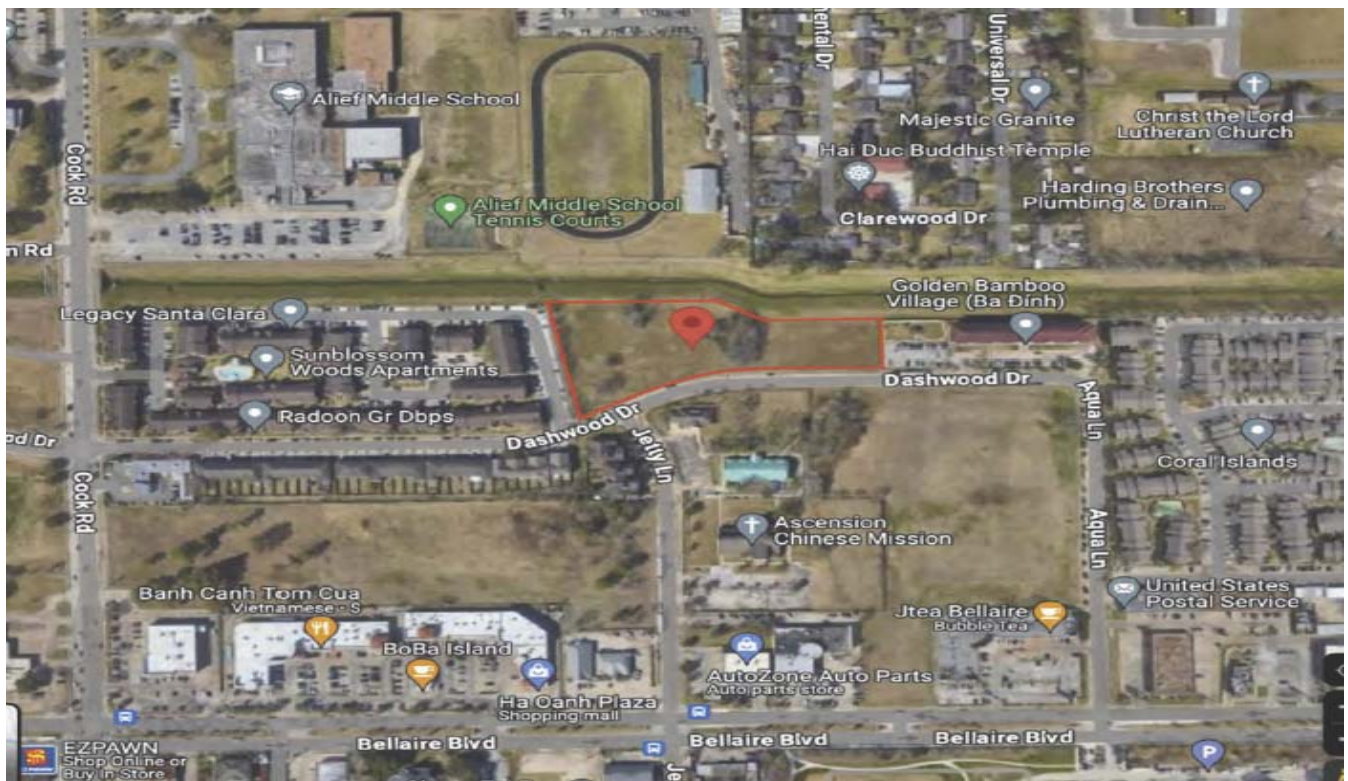
### OWNERSHIP STRUCTURE





# DEVELOPMENT SUMMARY

## SITE PLAN





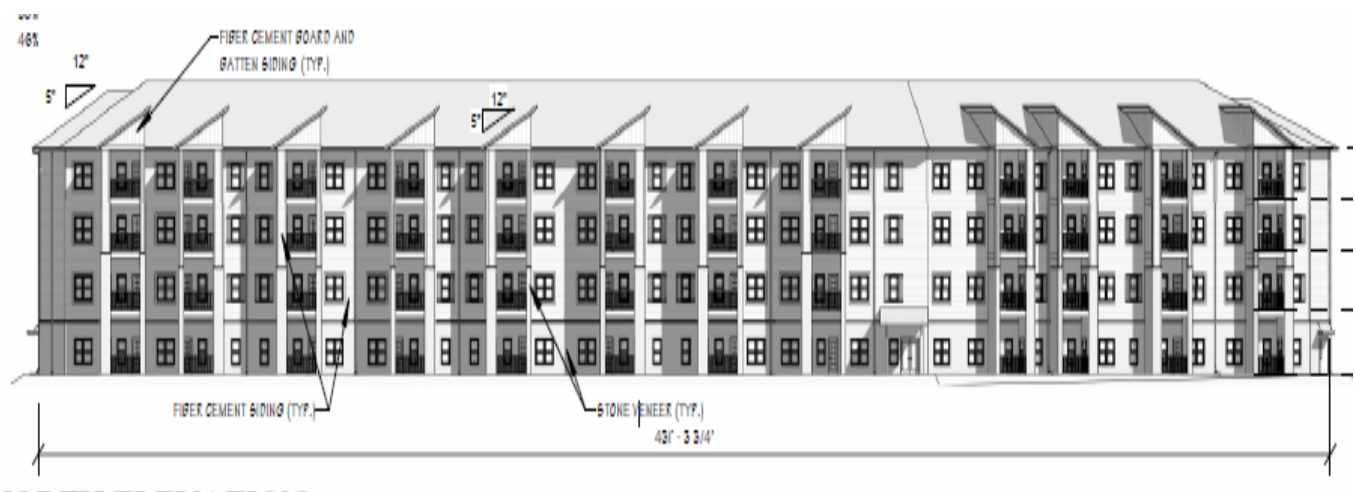
Comments:

The subject property is located within Zone X, an area of minimal flood hazard. Zone AE, a Floodway, appeared along the north property boundary. Zone AE is a Special Flood Hazard Area (SFHA) designated as a high-risk flood zone by FEMA. Zone AE has a 1% risk of flooding annually with a 26% risk of flooding over the course of a 30-year mortgage. FEMA assigns a base flood elevation (BFE) to Zone AE areas, which is the height floodwaters may reach during flood periods. The entirety of the development site is being built outside of the floodway.

Parking Comments:

Local parking requirements: 1.33 spaces per 1-BR unit, 1.66 spaces per 2-BR unit, 2 spaces per 3-BR unit.  
 Total required parking spaces: 154.12 (1.33 x 28 1-BR unit = 37.24; 1.66 x 68 2-BR unit = 112.88; 2 x 2 3-BR unit = 4)  
 Total parking spaces provided: 156  
 The project meets the local parking requirement.

BUILDING ELEVATION



## BUILDING CONFIGURATION

Building Type	1											Total Buildings	
Floors/Stories	4												
Number of Bldgs	1												1
Units per Bldg	98												
Total Units	98											98	
Avg. Unit Size (SF)	801 sf	Total NRA (SF)		78,480	Common Area (SF)*		16,894						

\*Common Area Square Footage as specified on Architect Certification

SITE CONTROL INFO	
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<b>Site Acreage:</b>	Development Site:	2.94	acres	Density:	33.3	units/acre
	<b>Site Control:</b>	2.94	<b>Site Plan:</b> 2.943	<b>Appraisal:</b>	NA	<b>ESA:</b> 2.943
	<b>Feasibility Report Survey:</b>	2.943	<b>Feasibility Report Engineer's Plan:</b>	2.94	<b>Existing LURA:</b>	NA

Control Type: UNIMPROVED PROPERTY CONTRACT

Development Site:	2.94	acres	Cost:	\$2,000,000	\$20,408	per unit
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Seller: Chau Venture, LLC

Buyer/  
Assignor: Trinity Housing Development - Texas LLC

Assignee: Dashwood Trails, LP

Related-Party Seller/Identity of Interest: No

SITE INFORMATION	
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Flood Zone: X and AE

Zoning: No Zoning in Houston

Scattered Site? No

Within 100-yr floodplain?	Yes
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Re-Zoning Required?	No
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Utilities at Site?	Yes
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Year Constructed: NA

Title Issues?	No
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Other Observations:

The northern edge of the site is in the 100-year floodplain.

## HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: ECS Southwest LLP

Date: 1/26/2024

Recognized Environmental Conditions (RECs) and Other Concerns:

▫ NONE

## MARKET ANALYSIS

Provider: Apartment Market Data, LLC

Date: 3/7/2024

Primary Market Area (PMA): 9.22 sq. miles 2 mile equivalent radius

## AFFORDABLE HOUSING INVENTORY

## Competitive Supply (Proposed, Under Construction, and Unstabilized)

File #	Development	In PMA?	Type	Target Population	Comp Units	Total Units
21264	Acadia Terrace	Yes	New Constructi	General	78	120

## Stabilized Affordable Developments in PMA

Total Units	586
Total Developments	3
Average Occupancy	97.4%

## OVERALL DEMAND ANALYSIS

		Market Analyst			
		HTC	Assisted		
Total Households in the Primary Market Area		20,900			
Potential Demand from the Primary Market Area		5,810			
10% External Demand		581			
Potential Demand from Other Sources		0			
GROSS DEMAND		6,391			
Subject Affordable Units		98			
Unstabilized Competitive Units		78			
RELEVANT SUPPLY		176			
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE		2.8%			

Population:	General	Market Area:	Urban	Maximum Gross Capture Rate:	10%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND											
		Market Analyst									
AMGI Band		Demand	10% Ext	Subject Units	Comp Units		AMGI Band Capture Rate				
30% AMGI		1,712	171	10	7		0.9%				
50% AMGI		1,476	148	40	32		4.4%				
60% AMGI		2,622	262	48	39		3.0%				

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE									
		Market Analyst							
Unit Type		Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate			
1 BR/30%		312	31	3	4	2%			
1 BR/50%		202	20	11	14	11%			
1 BR/60%		416	42	14	13	6%			
2 BR/30%		542	54	7	3	2%			
2 BR/50%		324	32	28	12	11%			
2 BR/60%		742	74	33	16	6%			
3 BR/50%		202	20	1	6	3%			
3 BR/60%		531	53	1	10	2%			

## OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$537,824	Avg. Rent:	\$978	Expense Ratio:	50.9%
Debt Service:	\$467,673	B/E Rent:	\$913	Controllable Expenses:	\$3,206
Net Cash Flow:	\$70,151	UW Occupancy:	92.5%	Property Taxes/Unit:	\$906
Aggregate DCR:	1.15	B/E Occupancy:	86.6%	Program Rent Year:	2023

## DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)					
Acquisition	\$680,272/ac	\$20,408/unit	\$2,000,000	Contractor Fee	\$2,143,563
Off-site + Site Work		\$21,288/unit	\$2,086,231	Soft Cost + Financing	\$2,317,128
Building Cost	\$159.22/sf	\$127,508/unit	\$12,495,827	Developer Fee	\$2,914,344
Contingency	5.00%	\$7,440/unit	\$729,103	Reserves	\$513,031
<b>Total Development Cost</b>	<b>\$257,135/unit</b>	<b>\$25,199,228</b>		<b>Rehabilitation Cost</b>	<b>N/A</b>
<b>Qualified for 30% Basis Boost?</b>		Non-Qualified Elderly not in QCT covered by Revitalization Plan [9% only]			

Off-site:

Application includes off-site work of street boring at a cost of \$26,000.

Building Cost:

Underwriter utilized Marshall & Swift's "Good" base cost adjusted.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$25,199,228	\$20,919,781	\$2,447,614

## UNDERWRITTEN CAPITALIZATION

### INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
PNC Bank	Construction to Permanent Loan	\$16,000,000	7.00%	68%
PNC Bank	HTC	\$6,124,388	\$0.88	26%
Trinity Housing Development Texas, LLC	Deferred Developer Fee	\$1,379,393	0.00%	6%
		<b>\$23,503,781</b>	<b>Total Sources</b>	

### PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
PNC Bank	\$6,459,324	6.75%	40	15.0	\$6,459,324	6.75%	40	15.0	26%
City of Houston	\$500	Grant			\$500	Grant			0%
<b>Total</b>	<b>\$6,459,824</b>				<b>\$6,459,824</b>				

	PROPOSED			UNDERWRITTEN			
Equity & Deferred Fees	Amount	Rate	% Def	Amount	Rate	% TC	% Def
PNC Bank	\$17,498,250	\$0.87		\$17,498,250	\$0.87	69%	
Trinity Housing Development Texas, LLC	\$1,241,154		43%	\$1,241,154		5%	43%
	Total	\$18,739,404		\$18,739,404			
				\$25,199,228	Total Sources		

#### Credit Price Sensitivity based on current capital structure

<b>\$0.937</b>	Maximum Credit Price before the Development is oversourced and allocation is limited
<b>\$0.856</b>	Minimum Credit Price below which the Development would be characterized as infeasible

## CONCLUSIONS

### Recommended Financing Structure:

Gap Analysis:	
Total Development Cost	\$25,199,228
Permanent Sources (debt + non-HTC equity)	\$6,459,824
<b>Gap in Permanent Financing</b>	<b>\$18,739,404</b>

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$21,414,484	\$2,447,614
Needed to Balance Sources & Uses	\$18,739,404	\$2,141,860
Requested by Applicant	\$17,498,250	\$2,000,000

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
<b>Tax Credit Allocation</b>	<b>\$17,498,250</b>	<b>\$2,000,000</b>

Deferred Developer Fee	\$1,241,154	( 43% deferred)
Repayable in	13 years	

### Recommendation:

Underwriter recommends annual 9% HTC tax credit of \$2,000,000 as requested by the applicant.

Underwriter:	<i>Bin Ni</i>
Manager of Real Estate Analysis:	<i>Robert Castillo</i>
Director of Real Estate Analysis:	<i>Jeanna Adams</i>

UNIT MIX/RENT SCHEDULE
<i>Dashwood Trails, Houston, 9% HTC #24221</i>

LOCATION DATA	
CITY:	Houston
COUNTY:	Harris
Area Median Income	\$93,200
PROGRAM REGION:	6
PROGRAM RENT YEAR:	2023

UNIT DISTRIBUTION						
# Beds	# Units	% Total	Assisted	MDL	ARP	Match
Eff	-	0.0%	0	0	0	0
1	28	28.6%	0	0	0	0
2	68	69.4%	0	0	0	0
3	2	2.0%	0	0	0	0
4	-	0.0%	0	0	0	0
5	-	0.0%	0	0	0	0
<b>TOTAL</b>	<b>98</b>	<b>100.0%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

PRO FORMA ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	130%
Applicable Fraction	100.00%
APP % Acquisition	4.00%
APP % Construction	9.00%
Average Unit Size	801 sf

<b>53%</b>	Income	20%	30%	40%	50%	60%	70%	80%	EO / MR	<b>TOTAL</b>
Average	# Units	-	10	-	40	48	-	-	-	<b>98</b>
Income	% Total	0.0%	10.2%	0.0%	40.8%	49.0%	0.0%	0.0%	0.0%	<b>100.0%</b>

UNIT MIX / MONTHLY RENT SCHEDULE																		
HTC		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS	
Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst
TC 30%	\$524	3	1	1	648	\$524	\$66	\$458	\$0	\$0.71	\$458	\$1,374	\$1,374	\$458	\$0.71	\$0	\$1,271	\$1,271
TC 50%	\$874	11	1	1	648	\$874	\$66	\$808	\$0	\$1.25	\$808	\$8,888	\$8,888	\$808	\$1.25	\$0	\$1,271	\$1,271
TC 60%	\$1,049	14	1	1	648	\$1,049	\$66	\$983	\$0	\$1.52	\$983	\$13,762	\$13,762	\$983	\$1.52	\$0	\$1,271	\$1,271
TC 30%	\$629	7	2	1	856	\$629	\$87	\$542	\$0	\$0.63	\$542	\$3,794	\$3,794	\$542	\$0.63	\$0	\$1,444	\$1,444
TC 50%	\$1,048	28	2	1	856	\$1,048	\$87	\$961	\$0	\$1.12	\$961	\$26,908	\$26,908	\$961	\$1.12	\$0	\$1,444	\$1,444
TC 60%	\$1,258	33	2	1	856	\$1,258	\$87	\$1,171	\$0	\$1.37	\$1,171	\$38,643	\$38,643	\$1,171	\$1.37	\$0	\$1,444	\$1,444
TC 50%	\$1,211	1	3	2	1,064	\$1,211	\$108	\$1,103	\$0	\$1.04	\$1,103	\$1,103	\$1,103	\$1,103	\$1.04	\$0	\$1,680	\$1,680
TC 60%	\$1,454	1	3	2	1,064	\$1,454	\$108	\$1,346	\$0	\$1.27	\$1,346	\$1,346	\$1,346	\$1,346	\$1.27	\$0	\$1,680	\$1,680
<b>TOTALS/AVERAGES:</b>		<b>98</b>			<b>78,480</b>				<b>\$0</b>	<b>\$1.22</b>	<b>\$978</b>	<b>\$95,818</b>	<b>\$95,818</b>	<b>\$978</b>	<b>\$1.22</b>	<b>\$0</b>	<b>\$1,399</b>	<b>\$1,399</b>

<b>ANNUAL POTENTIAL GROSS RENT:</b>	<b>\$1,149,816</b>	<b>\$1,149,816</b>	
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# STABILIZED PRO FORMA

*Dashwood Trails, Houston, 9% HTC #24221*

STABILIZED FIRST YEAR PRO FORMA													
COMPARABLES				APPLICANT				TDHCA				VARIANCE	
Database	Harris County Comps			% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT					\$1.22	\$978	\$1,149,816	\$1,149,816	\$978	\$1.22		0.0%	\$0
late fees, app fees and retained deposits						\$30.00	\$35,280						
Total Secondary Income						\$30.00		\$35,280	\$30.00			0.0%	\$0
POTENTIAL GROSS INCOME							\$1,185,096	\$1,185,096				0.0%	\$0
Vacancy & Collection Loss					7.5% PGI		(88,882)	(88,882)	7.5% PGI			0.0%	-
EFFECTIVE GROSS INCOME							\$1,096,214	\$1,096,214				0.0%	\$0

General & Administrative	\$49,993	\$510/Unit	\$47,255	\$482	3.47%	\$0.48	\$388	\$38,040	\$47,255	\$482	\$0.60	4.31%	-19.5%	(9,215)
Management	\$46,292	3.5% EGI	\$45,686	\$466	5.00%	\$0.70	\$559	\$54,811	\$54,811	\$559	\$0.70	5.00%	0.0%	-
Payroll & Payroll Tax	\$145,071	\$1,480/Unit	\$154,097	\$1,572	12.11%	\$1.69	\$1,355	\$132,784	\$132,784	\$1,355	\$1.69	12.11%	0.0%	-
Repairs & Maintenance	\$77,473	\$791/Unit	\$63,986	\$653	5.45%	\$0.76	\$609	\$59,705	\$63,700	\$650	\$0.81	5.81%	-6.3%	(3,995)
Electric/Gas	\$28,631	\$292/Unit	\$17,434	\$178	1.79%	\$0.25	\$200	\$19,600	\$17,434	\$178	\$0.22	1.59%	12.4%	2,166
Water, Sewer, & Trash	\$75,400	\$769/Unit	\$69,358	\$708	5.84%	\$0.82	\$653	\$64,040	\$69,358	\$708	\$0.88	6.33%	-7.7%	(5,318)
Property Insurance	\$79,947	\$1.02 /sf	\$84,702	\$864	6.59%	\$0.92	\$737	\$72,202	\$79,947	\$816	\$1.02	7.29%	-9.7%	(7,746)
Property Tax (@ 100%) 2.2332	\$89,213	\$910/Unit	\$99,473	\$1,015	8.10%	\$1.13	\$906	\$88,788	\$89,213	\$910	\$1.14	8.14%	-0.5%	(425)
Reserve for Replacements					2.23%	\$0.31	\$250	\$24,500	\$24,500	\$250	\$0.31	2.23%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)					0.36%	\$0.05	\$40	\$3,920	\$3,920	\$40	\$0.05	0.36%	0.0%	-
TOTAL EXPENSES					50.94%	\$7.12	\$5,698	\$558,389	\$582,922	\$5,948	\$7.43	53.18%	-4.2%	\$ (24,533)
NET OPERATING INCOME ("NOI")					49.06%	\$6.85	\$5,488	\$537,824	\$513,292	\$5,238	\$6.54	46.82%	4.8%	\$ 24,533

CONTROLLABLE EXPENSES							\$3,206/Unit			\$3,373/Unit				
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CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS
<i>Dashwood Trails, Houston, 9% HTC #24221</i>

		DEBT / GRANT SOURCES													
		APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE							AS UNDERWRITTEN DEBT/GRANT STRUCTURE						
		Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
DEBT (Must Pay)	Fee	UW	App											DCR	LTC
PNC Bank		1.10	1.15	467,673	6.75%	40	15.0	\$6,459,324	\$6,459,324	15.0	40.0	6.75%	\$467,673	1.15	25.6%
CASH FLOW DEBT / GRANTS															
City of Houston		1.10	1.15		0.00%	0	0.0	\$500	\$500	0.0	0.0	0.00%		1.15	0.0%
				\$467,673	TOTAL DEBT / GRANT SOURCES			\$6,459,824	\$6,459,824	TOTAL DEBT SERVICE			\$467,673	1.15	25.6%
NET CASH FLOW		\$45,618	\$70,151	APPLICANT NET OPERATING INCOME \$537,824 \$70,151 NET CASH FLOW											

EQUITY / DEFERRED FEES	EQUITY SOURCES										
	APPLICANT'S PROPOSED EQUITY STRUCTURE					AS UNDERWRITTEN EQUITY STRUCTURE					
	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method
PNC Bank	LIHTC Equity	69.4%	\$2,000,000	\$0.87	\$17,498,250	\$17,498,250	\$0.8749	\$2,000,000	69.4%	\$20,408	Applicant Request
Trinity Housing Development Texas, LLC	Deferred Developer Fees	4.9%	(43% Deferred)		\$1,241,154	\$1,241,154	(43% Deferred)		4.9%	Total Developer Fee: \$2,914,344	
Additional (Excess) Funds Req'd		0.0%			\$0	\$0			0.0%		
TOTAL EQUITY SOURCES		74.4%			\$18,739,404	\$18,739,404			74.4%		
TOTAL CAPITALIZATION					\$25,199,228	\$25,199,228	15-Yr Cash Flow after Deferred Fee:				\$387,146

		DEVELOPMENT COST / ITEMIZED BASIS											
		APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE	
		Eligible Basis		Total Costs			Total Costs			Eligible Basis			
		Acquisition	New Const. Rehab.							New Const. Rehab.	Acquisition		
Land Acquisition				\$20,408 / Unit	\$2,000,000	\$2,000,000	\$20,408 / Unit				0.0%	\$0	
Building Acquisition		\$0		\$ / Unit	\$0	\$0	\$ / Unit			\$0	0.0%	\$0	
Off-Sites			\$0	\$265 / Unit	\$26,000	\$26,000	\$265 / Unit		\$0		0.0%	\$0	
Site Work			\$1,831,931	\$18,843 / Unit	\$1,846,631	\$1,846,631	\$18,843 / Unit	\$1,831,931		0.0%	\$0		
Site Amenities			\$213,600	\$2,180 / Unit	\$213,600	\$213,600	\$2,180 / Unit	\$213,600		0.0%	\$0		
Building Cost			\$11,357,626	\$159.22 /sf	\$127,508/Unit	\$12,495,827	\$11,631,808	\$118,692/Unit	\$148.21 /sf	\$11,357,626	7.4%	\$864,019	
Contingency			\$670,158	5.00%	5.00%	\$729,103	\$729,103	5.31%	5.00%	\$670,158	0.0%	\$0	
Contractor Fees			\$1,970,264	14.00%	14.00%	\$2,143,563	\$2,022,600	14.00%	14.00%	\$1,970,264	6.0%	\$120,963	
Soft Costs		\$0	\$1,016,397	\$10,626 / Unit	\$1,041,397	\$1,041,397	\$10,626 / Unit		\$1,016,397	\$0	0.0%	\$0	
Financing		\$0	\$1,131,138	\$13,018 / Unit	\$1,275,732	\$1,275,732	\$13,018 / Unit		\$1,131,138	\$0	0.0%	\$0	
Developer Fee		\$0	\$2,728,667	15.00%	15.00%	\$2,914,344	\$2,784,741	15.00%	15.00%	\$2,728,667	\$0	4.7%	\$129,603
Reserves				6 Months	\$513,031	\$1,026,063	12 Months				-50.0%	(\$513,031)	
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$20,919,781		\$257,135 / Unit	\$25,199,228	\$24,597,674	\$250,997 / Unit	\$20,919,781	\$0	2.4%	\$601,553	
Acquisition Cost		\$0				\$0							
Contingency			\$0			\$0							
Contractor's Fee			(\$0)			\$0							
Financing Cost			\$0										
Developer Fee		\$0	(\$0)		15.00%	\$0							
Reserves						\$0							
ADJUSTED BASIS / COST		\$0	\$20,919,781		\$257,135/unit	\$25,199,228	\$24,597,674	\$250,997/unit	\$20,919,781	\$0	2.4%	\$601,553	
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):						\$25,199,228							

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS				
Dashwood Trails, Houston, 9% HTC #24221				

	CREDIT CALCULATION ON QUALIFIED BASIS			
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction
ADJUSTED BASIS	\$0	\$20,919,781	\$0	\$20,919,781
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$20,919,781	\$0	\$20,919,781
High Cost Area Adjustment		130%		130%
TOTAL ADJUSTED BASIS	\$0	\$27,195,715	\$0	\$27,195,715
Applicable Fraction	100.00%	100.00%	100%	100%
TOTAL QUALIFIED BASIS	\$0	\$27,195,715	\$0	\$27,195,715
Applicable Percentage	4.00%	9.00%	4.00%	9.00%
ANNUAL CREDIT ON BASIS	\$0	\$2,447,614	\$0	\$2,447,614
CREDITS ON QUALIFIED BASIS	\$2,447,614		\$2,447,614	

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8749	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$2,447,614	\$21,414,484	----	----	----
Needed to Fill Gap	\$2,141,860	\$18,739,404	----	----	----
Applicant Request	\$2,000,000	\$17,498,250	\$2,000,000	\$0	\$0

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Elevator Served	78,480 SF	\$119.01	9,339,968
Adjustments				
Exterior Wall Finish	2.80%		3.33	\$261,519
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.35%		3.99	312,889
Roof Adjustment(s)			0.00	0
Subfloor			0.30	23,152
Floor Cover			3.68	288,806
Enclosed Corridors	\$107.66	10,647	14.61	1,146,265
Balconies	\$40.31	6,068	3.12	244,619
Plumbing Fixtures	\$2,130	6	0.16	12,780
Rough-ins	\$790	196	1.97	154,840
Built-In Appliances	\$3,675	98	4.59	360,150
Exterior Stairs	\$3,550	6	0.27	21,300
Heating/Cooling			3.12	244,858
Storage Space	\$107.66	0	0.00	0
Carports	\$16.05	0	0.00	0
Garages	\$30.00	0	0.00	0
Common/Support Area	\$129.67	5,742	9.49	744,540
Elevators	\$150,400	1	1.92	150,400
Other:			0.00	0
Fire Sprinklers	\$3.65	94,869	4.41	346,272
SUBTOTAL			173.96	\$13,652,357
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	1.00		0.00	0
Reserved				0
TOTAL BUILDING COSTS			173.96	\$13,652,357
Plans, specs, survey, bldg permits	3.30%		(5.74)	(\$450,528)
Contractor's OH & Profit	11.50%		(20.01)	(\$1,570,021)
NET BUILDING COSTS		\$118,692/unit	\$148.21/sf	\$11,631,808

## Long-Term Pro Forma

*Dashwood Trails, Houston, 9% HTC #24221*

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35	Year 40
EFFECTIVE GROSS INCOME	2.00%	\$1,096,214	\$1,118,138	\$1,140,501	\$1,163,311	\$1,186,577	\$1,310,077	\$1,446,431	\$1,596,977	\$1,763,191	\$1,946,705	\$2,149,320	\$2,373,023
TOTAL EXPENSES	3.00%	\$558,389	\$574,593	\$591,272	\$608,440	\$626,111	\$722,560	\$834,030	\$962,877	\$1,111,832	\$1,284,052	\$1,483,196	\$1,713,499
<b>NET OPERATING INCOME ("NOI")</b>		<b>\$537,824</b>	<b>\$543,545</b>	<b>\$549,229</b>	<b>\$554,871</b>	<b>\$560,466</b>	<b>\$587,517</b>	<b>\$612,401</b>	<b>\$634,099</b>	<b>\$651,360</b>	<b>\$662,654</b>	<b>\$666,125</b>	<b>\$659,524</b>
EXPENSE/INCOME RATIO		50.9%	51.4%	51.8%	52.3%	52.8%	55.2%	57.7%	60.3%	63.1%	66.0%	69.0%	72.2%
<b>MUST -PAY DEBT SERVICE</b>													
PNC Bank		\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673
TOTAL DEBT SERVICE		\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673	\$467,673
DEBT COVERAGE RATIO		1.15	1.16	1.17	1.19	1.20	1.26	1.31	1.36	1.39	1.42	1.42	1.41
<b>ANNUAL CASH FLOW</b>		<b>\$70,151</b>	<b>\$75,872</b>	<b>\$81,556</b>	<b>\$87,198</b>	<b>\$92,793</b>	<b>\$119,844</b>	<b>\$144,728</b>	<b>\$166,426</b>	<b>\$183,686</b>	<b>\$194,980</b>	<b>\$198,451</b>	<b>\$191,851</b>
Deferred Developer Fee Balance		\$1,171,003	\$1,095,131	\$1,013,575	\$926,377	\$833,585	\$287,780	\$0	\$0	\$0	\$0	\$0	\$0
<b>CUMULATIVE NET CASH FLOW</b>		<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$387,146</b>	<b>\$1,177,386</b>	<b>\$2,063,355</b>	<b>\$3,018,401</b>	<b>\$4,007,263</b>	<b>\$4,984,252</b>





Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1951**

**Agenda Date: 6/12/2025**

**Agenda #: 19.**

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Presentation, discussion, and possible action on recommendation to debar Rise Residential Construction Riverside, LLC, Melissa Fisher, Sonoma Housing Advisors, LLC, and James R. (Bill) Fisher, relating to Riverside Heights Senior Living AKA Legacy Riverside Senior Living Community (HTC #20613 / Bond #20613B / CMTS 5659)

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MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1055**

**Agenda Date: 6/12/2025**

**Agenda #: 20.**

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Presentation, discussion, and possible action on point penalties for 2024 9% Housing Tax Credit Applications related to the Readiness to Proceed scoring item

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1054**

**Agenda Date: 6/12/2025**

**Agenda #: 21.**

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Presentation, discussion, and possible action on an appeal of the termination of Trinity East Senior (25090)

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1057**

**Agenda Date: 6/12/2025**

**Agenda #: 22.**

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Presentation, discussion, and possible action on a scoring appeal for Meadow Heights (25065)

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1060**

**Agenda Date: 6/12/2025**

**Agenda #: 23.**

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for three Buena Vida Developments

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1061**

**Agenda Date: 6/12/2025**

**Agenda #: 24.**

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for 2910 Motley Senior Living and 3606 S Cockrell Hill Road Senior

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1063**

**Agenda Date: 6/12/2025**

**Agenda #: 25.**

---

Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Bailey at Stassney

**TO BE POSTED  
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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1064**

**Agenda Date: 6/12/2025**

**Agenda #: 26.**

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Bailey at Berkman

**TO BE POSTED  
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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1065**

**Agenda Date: 6/12/2025**

**Agenda #: 27.**

---

Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Stella Haven

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1066**

**Agenda Date: 6/12/2025**

**Agenda #: 28.**

---

Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Ovetta Rosedale

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1067**

**Agenda Date: 6/12/2025**

**Agenda #: 29.**

---

Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Georgian Oaks

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Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1068**

**Agenda Date: 6/12/2025**

**Agenda #: 30.**

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Presentation, discussion, and possible action on a request for return and reallocation of tax credits under 10 TAC §11.6(5) related to Credit Returns Resulting from Force Majeure Events for Dashwood Trails

**TO BE POSTED  
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THE THIRD DAY  
BEFORE THE  
DATE OF THE  
MEETING**



Texas Department of Housing and Community Affairs

Governing Board

Board Action Request

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**File #: 1054**

**Agenda Date: 6/12/2025**

**Agenda #: 31.**

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Presentation, discussion, and possible action to issue a list of approved Applications for 2025 Housing Tax Credits (HTC) in accordance with Tex. Gov't Code §2306.6724(e)

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MEETING**