

# **EXHIBIT D**

## **BOND PURCHASE AND FUNDING AGREEMENT**

**Among**

**5900 PLEASANT VALLEY, LP**

**as Borrower,**

**ZIONS BANCORPORATION, N.A. dba Amegy Bank**

**as Bond Owner**

**and**

**AUSTIN HOUSING FINANCE CORPORATION**

**as Issuer**

**Dated as of September 1, 2025**

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## BOND PURCHASE AND FUNDING AGREEMENT

This Bond Purchase and Funding Agreement (this “**Agreement**”) is entered into as of September 1, 2025, by and among 5900 PLEASANT VALLEY, LP, a Texas limited partnership (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION, a Texas public nonprofit housing finance corporation (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank (in this capacity, “**Bond Owner**”).

### RECITALS

- A. Borrower owns a ground leasehold interest in a certain 2.495-acre (more or less) tract of real property located at 5901 South Pleasant Valley in Austin, Travis County, Texas 78744, and more particularly legally described in **Exhibit A** attached to the Bond Loan Mortgage (“**Real Property**”).
- B. Borrower will begin constructing a new seventy-five (75) unit multifamily rental housing project on the Real Property (together with all appurtenances, fixtures, and tenant improvements now or hereafter located on or with respect to the Property and which is described in more detail below as the “**Improvements**”).
- C. Borrower has requested Bond Owner purchase Issuer’s \$14,800,000 Multifamily Housing Revenue Bonds (Sycamores at Pleasant Valley), Series 2025 (collectively, the “**Bonds**”), which are being issued pursuant to the terms of the Trust Indenture dated September 1, 2025 (the “**Indenture**”), between Issuer and Zions Bancorporation, National Association, as trustee (in that capacity, “**Trustee**”).
- D. Bond Owner is willing to purchase the Bonds upon the terms and conditions hereinafter set forth.
- E. The proceeds of the Bonds will be loaned by Issuer to Borrower (the “**Bond Loan**”) as provided for in a Financing Agreement (the “**Financing Agreement**”) dated September 1, 2025, between Issuer and Borrower, and in this Agreement, for the purpose of the construction of the Improvements in accordance with plans and specifications which Borrower has heretofore, or will hereafter deliver to Bond Owner, as amended in order to comply with the terms and conditions of this Agreement (hereafter defined as the “**Plans**”).
- F. The Bond Loan consists of a Construction Bond Loan (the “**Construction Bond Loan**”) in the principal amount not to exceed \$14,800,000.00 and which, subject to the terms hereof, will convert on the Conversion Date to a Permanent Bond Loan in an amount not to exceed \$5,300,000.00 (the “**Permanent Bond Loan**”); and
- G. Under the terms of the Indenture, Issuer has assigned the Bond Loan to the Trustee, and the Bond Owner has been and is hereby authorized to service and administer the Bond Loan for and on behalf of the Trustee and the Issuer as provided for herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions herein contained, and for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below:"

**"Acceptable Counterparty"** means (a) Bond Owner or (b) any other counterparty to a Hedging Transaction reasonably acceptable to Bond Owner and otherwise regularly provides Hedging Transactions in the ordinary course of its business and maintains a long-term unsecured debt rating or counterparty rating which is equal to or greater than that of Bond Owner.

**"Accounts"** has the meaning given to such term in **Section 7.6.4.**

**"Act"** means the Texas Housing Finance Corporation Act, Chapter 494, Texas Local Government Code, as amended from time to time, and any successor legislation.

**"Adjusted Daily Simple SOFR Rate"** means the following: the rate per annum equal to (1) Daily Simple SOFR plus (2) the SOFR Adjustment, plus (3) the Spread, provided, that if the Adjusted Daily Simple SOFR Rate as so determined shall ever be less than the Floor Rate, then the Adjusted Daily Simple SOFR Rate shall be deemed to be the Floor Rate. At all times the rate per annum will be equal to the product of (1) 0.87 (or, in the alternative after the occurrence of an Event of Taxability, 1.00) multiplied by (2) the Daily Simple SOFR plus (3) the Spread.

**"Affiliate"** means, as to any Person, any other Person which directly or indirectly Controls, is Controlled by, or is under common Control with such Person.

**"Agreement"** has the meaning given such term in the Preamble of this Agreement.

**"Agreement Effective Date"** means September 1, 2025.

**"AHFC"** means the Austin Housing Finance Corporation, a housing finance corporation, organized and operated under Chapter 394 of the Texas Local Government Code.

**"AHFC Loans"** means, collectively, the (a) \$8,950,000.00 loan (the "**AHFC RHDA Loan**") funded with proceeds of 20\_\_ general obligation bonds, accruing interest at the rate of [5.00%] per annum for the period commencing after a [24] month construction period (no interest shall accrue during the such [24] month construction term), and a 42-year maturity (2 years of construction followed by a 40 year permanent period), and payable from cash flow pursuant to a Rental Housing Development Assistance (RHDA)

Program Loan Agreement (the “**RHDA Loan Agreement**”), and which will be funded in connection with and after closing of the Bond Loan in draws based on the Approved Flow of Funds, and (b) \$750,000.00 loan (the “**AHFC St. David’s Grant Loan**”) funded with the proceeds made available to the AHFC under the terms of the Grant Agreement dated February 24, 2025, between the St. David’s Foundation and AHFC (the “**St. David’s Grant Agreement**”), accruing interest at the rate of 0.00% per annum, and maturing upon the expiration of the tax credit compliance period, at which time the obligation to pay the AHFC St. David’s Grant Loan will be forgiven as provided for in the Collateral Loan Agreement dated as of April 15, 2025 (the “**St. David’s Grant Loan Agreement**”), and which AHFC St. David’s Loan was in part funded prior to the the closing of the Bond Loan for predevelopment costs and with the remaining to be funded after the Bond Closing Date in accordance with the Approved Flow of Funds.

“**AHFC Loan Documents**” means collectively with respect to each AHFC Loan, the loan agreement, the promissory note, the deed of trust, and all other documents, agreements, and instruments evidencing, governing, and securing that AHFC Loan.

“**AHFC Restrictions**” means, collectively, (a) the Restrictive Covenant Running With The Land, executed by the Borrower to AHFC with respect to the restrictions required in connection with the AHFC RHDA Loan as provided for in the RHDA Loan Agreement and the Amended and Restated Affordability Unlocked Land Use and Restrictions Agreement by and between the City, acting by and through the Housing and Planning Department, AHFC, and the Borrower, and (b) the occupancy restrictions provided for in the promssory note issued as evidence of the AHFC St. David’s Grant Loan, in the St. David’s Grant Loan Agreement, and in the other AHFC Loan Documents relating to the AHFC St. David’s Grant Loan.

“**Amortization Period Commencement Date**” means [September] 1, 2028.

“**Applicable Laws**” means any and all applicable (a) federal, state and local laws, ordinances, rules, regulations, codes, ordinances, requirements, orders, judgments, awards, writs, decrees and similar governing provisions of all Governmental Authorities having jurisdiction over the Collateral, Borrower, Guarantor, Bond Owner, or otherwise relate to or affect any of the foregoing, including all Environmental Regulations (as defined in the Environmental Indemnity Agreement), Governmental Regulations, the Americans with Disability Act, ERISA, the Act, and the Housing Act, (b) requirements of Section 42 of the Internal Revenue Code, (c) requirements and terms of the QAP, (d) requirements of the Act, (e) requirements of the Housing Act, (f) requirements of TAC, (g) requirements of each Regulatory Agreement, (h) any and all other building, zoning and use laws, ordinances, permits, licenses, requirements, rules and regulations, together with any amendments, restatements, revisions or modifications thereof and any successor statutes thereto, and (i) determination or award of any arbitrator or other private adjudicator to which Borrower, Guarantors or the Project is subject.

“**Appraisal**” means a written statement setting forth an opinion of the market value of the Project that (a) has been independently and impartially prepared by a qualified appraiser directly engaged by Bond Owner, (b) complies with all Applicable Laws dealing

with appraisals or valuations of real property, including the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended or revised and any successor law thereto and (c) has been reviewed and approved by Bond Owner.

**“Appraised Value”** means the value of the Project, as determined by Bond Owner based upon its review of the Appraisal most recently obtained and accepted by Bond Owner; provided that such value may be an “as-is” value, an “as-completed” value, an “as-stabilized” value or such other appraised value for the Project depending on the purpose for which such value is used by Bond Owner in accordance with this Agreement.

**“Approved Flow of Funds”** means a flow of funds approved by the Bond Owner prior to the Bond Closing Date, outlining the timing of funding of each Funding Source in a manner satisfactory to the Bond Owner.

**“Approved Fund”** means any Fund that is administered or managed by (a) Bond Owner, (b) an Affiliate of Bond Owner or (c) an entity or an Affiliate of an entity that administers or manages Bond Owner.

**“Approved Lease”** means any Lease that is (a) substantially in the form of the Form Lease and (b) qualifies as an Approved Lease pursuant to **Section 7.2.7**. A Lease shall be deemed to be substantially in the form of the Form Lease if the variations from the Form Lease (taken as a whole) do not materially detract from the rights and protections of the lessor or the mortgagee set forth in the Form Lease.

**“Architect”** means \_\_\_\_\_.

**“Architect’s Agreement”** means that certain Architectural Design Fee Proposal dated on \_\_\_\_\_, 2025, between Architect and Borrower, together with any and all extensions, renewals, modifications, amendments, supplements or replacements thereto or thereof to the extent permitted or approved of in accordance with this Agreement.

**“Assignment of Management Agreement”** means the Assignment of Management Agreement and Consent and Subordination of Manager dated as of the Agreement Effective Date from Borrower to Issuer and joined in by the Qualified Property Manager.

**“Assignment of Permits and Contracts”** means the Assignment of Permits and Contracts dated as of the Agreement Effective Date from Borrower to Issuer.

**“Authorized Representative”** means, for any Person, the natural person or natural persons designated in the Signature Authorization Form (or otherwise in writing by that Person in a manner acceptable to the Bond Owner) to take any and all actions on the part of that Person under any of the Bond Loan Documents or in connection with the Bond Loan; provided that, with respect to the execution of any Compliance Certificates required pursuant to **Section 7.3**, such natural person shall be the designated financial officer or representative of the reporting party, who is responsible for or otherwise oversees the books and records of such reporting party, including such reporting party’s

operating reports and Financial Statements, as applicable. The individuals who have signed on behalf of Borrower below, together with any individual identified in the incumbency certificate of Borrower delivered to Bond Owner on or in connection with the Bond Closing, constitute, individually and collectively, Authorized Representatives for Borrower for all purposes, and Bond Owner shall be entitled to rely on such authorization without inquiry unless and until notified in writing by Borrower that such individual is no longer an Authorized Representative. Notwithstanding any provision contained in any certificate or other document executed by an Authorized Representative, no Authorized Representative shall be deemed to be a party to the Bond Loan Documents or have any contractual liability under or in connection with any of the Bond Loan Documents.

**“Bad Costs”** means the Project Costs that are not Good Costs.

**“Bail-In Action”** means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

**“Bail-In Legislation”** means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

**“Balancing Deposit”** has the meaning given such term in **Section 5.2.3(ii)**.

**“Bankruptcy Event”** means, with respect to any Person, any event whereby such person or entity becomes the subject of a bankruptcy proceeding or insolvency proceeding (a **“Bankruptcy Proceeding”**), whether under the Bankruptcy Code of the United States or any other Applicable Law, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its assets or business, appointed for it, or, in the good faith determination of Bond Owner, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that, with respect to Bond Owner only, a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in Bond Owner by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides Bond Owner with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

**“Beneficial Ownership Certification”** means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in the form of **Exhibit “S”** thereof.

**“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230, and any successor statutes and regulations thereof, all as may be revised, renewed or otherwise modified from time to time.

“**Bonded**” or “**bonded**” means a Lien bonded by a surety acceptable to Bond Owner in a manner which precludes the holder of that lien from having any recourse against the Project or Borrower for payment of any debt or other obligation.

“**Bond Closing**” means the closing of the Bond Owner’s purchase of the Bonds upon satisfaction of the closing conditions set forth in **Article 3**.

“**Bond Closing Date**” means the date of issuance and delivery of the Bonds.

“**Bond Counsel**” has the meaning assigned to that term in the Indenture.

“**Bond Documents**” means the Indenture, the Bonds, the Financing Agreement, the Bond Loan Note, the Bond Regulatory Agreement, the Bond Resolution, and the Tax Exemption Agreement.

“**Bond Loan**” has the meaning provided in **Recital E** of this Agreement.

“**Bond Loan Documents**” means this Agreement, the Bond Documents, the Bond Loan Note, the Bond Loan Mortgage, the Guaranty, the Non-Recourse Carve-Out Guaranty, the Assignment of Management Agreement, the Collateral Assignment of Developer Fee, the Collateral Assignment and Pledge of General Partnership Interest, the Assignment of Permits and Contracts, the Governing Agreement, the Environmental Indemnity Agreement, the Signature Authorization Form (once executed by Borrower on or after the date hereof), the Intercreditor Agreements, the Hedging Transaction Documents, the Hedging Transaction Guaranty, and all other agreements, assignments, documents or instruments now or hereafter evidencing, guarantying, securing, perfecting, supporting or otherwise related to the Bond Loan and, in each case, which is either (a) executed and delivered by Borrower or a Guarantor or (b) is executed by any third party in favor of Bond Owner in connection with the Bond Loan, including the Intercreditor Agreement, and any Estoppel Certificate, SNDA or third party consent executed in connection with any assignment of the General Contractor Agreement, the Architect Agreement, any Management Agreement or any other Material Project Related Document with respect to which Bond Owner has required an assignment thereof to it as additional collateral for the Obligations, in each case, as any of them may be amended, modified, extended, renewed or supplemented from time to time pursuant to this Agreement.

“**Bond Loan Note**” means the Promissory Note dated as of the Bond Closing Date, executed by Borrower in favor of Issuer, substantially in the form attached hereto as **Exhibit A**, as amended from time to time.

“**Bond Loan Mortgage**” means that certain Multifamily Construction and Permanent Leasehold Deed of Trust, Assignment of Rents, Security Agreement, and Fixture Filing executed by Borrower, as trustor, to Jennah Peoples, as trustee, for the benefit of Issuer, as beneficiary, creating a first lien on the Borrower’s leasehold interest the Project and all other buildings, fixtures and improvements now or hereafter owned or acquired by Borrower and situated thereon, including the Improvements, and all rights, interests, privileges and easements appurtenant thereto. Under the terms of the

Indenture, the Issuer will assign the Bond Loan Mortgage to the Trustee and the Bond Owner shall administer and service the Bond Loan including directing and instructing the Trustee in writing as to how to act as the beneficiary under the Bond Loan Mortgage.

**“Bond Owner”** has the meaning assigned to that term in the introductory paragraph of this Agreement.

**“Bond Owner’s Consultants”** means any attorneys, third party consultants, inspectors, advisors and experts retained by Bond Owner to assist it in connection with the Bond Loan, including in connection with the Bond Closing, approvals of Requisitions and requests made in a Draw Request Package, inspection and assessment of the Project or any other Collateral, administration of the Bond Loan or the protection, defense, enforcement of Bond Owner’s rights and remedies with respect to the Bond Loan.

**“Bond Owner Fee Letter”** means any separate fee letter agreement which has been executed by or on behalf of Borrower for the benefit of Bond Owner with respect to, among other things, any fees which are required to be paid by Borrower to Bond Owner in connection with the Bond Loan, any syndication with respect thereto and the administration thereof.

**“Bond Proceeds Disbursement”** means each disbursement of Bond proceeds from the Project Fund made by Trustee at the written direction of the Bond Owner in accordance with the terms and conditions of the Bond Loan Documents, including in accordance with **Article 5** hereof.

**“Bond Regulatory Agreement”** has the meaning assigned to that term in the Indenture.

**“Bond Resolution”** means the resolution adopted by the Bond Issuer duly authorizing and directing the issuance, sale and delivery of the Bond.

**“Borrower”** has the meaning given such term in the Preamble of this Agreement.

**“Borrower’s Funds”** has the meaning given such term in **Section 5.2.3(iii)**.

**“Borrower’s Funds Account”** has the meaning given such term in **Section 7.6.2**.

**“Borrower Records”** has the meaning given such term in **Section 7.12.2**.

**“Borrower Related Person”** means Borrower, Guarantor or any Affiliate of Borrower or a Guarantor, their respective officers, directors or other authorized representatives, and any Person acting, or refusing to act, in concert with or at the direction of any the foregoing.

**“Budget”** means Borrower’s construction budget setting forth the estimated Project Costs for completing construction of the Improvements, broken down between Hard Costs and Soft Costs, with separate line items for each category of cost thereunder, together with the sources for funding such Project Costs identified on a corresponding

line item basis, all in substance and detail as reasonably required by Bond Owner and as revised from time to time in accordance with **Sections 5.2.3**, and **7.1.2(iv)**. The initial Budget which has been approved by the Bond Owner as of the Bond Closing Date is attached hereto as **Exhibit C** (and shall in any event provide for an interest reserve of \$\_\_\_\_\_.00, a hard cost contingency of [10.0%] and a soft cost contingency of [5.0%]).

**“Business Day”** means any day on which Bond Owner and other financial institutions located in Texas are open and conducting business but expressly excluding Saturday, Sunday and any holiday officially recognized by the State of Texas or the United States of America; provided that, (a) with respect to any determination of the SOFR Index Rate, the term **“Business Day”** shall also exclude any day on which the SOFR Index Rate is not published by the applicable administrator of such index rate (as such index rate and administrator is identified and described in clause (a) of the definition of SOFR Index Rate) and (b) with respect to any determination of any Substitute Index Rate, the term **“Business Day”** shall also exclude any day on which such Substitute Index Rate is not published by the administrator of such benchmark.

**“Capital Contribution Account”** means the interest-bearing deposit account (ending with the last four digits XXXXXX\_\_\_\_\_) owned and maintained by Borrower and located at the Bond Owner to be used for deposit of the proceeds of certain Capital Contributions which will in turn be disbursed by the Bond Owner for deposit into the Construction Operating Account to pay for budgeted items.

**“Capital Contributions”** means each equity payment to be made to Borrower by the Investor Limited Partner to Borrower described in **Exhibit “L”**, and as more particularly provided in the Partnership Agreement (subject to the terms and conditions contained therein), as may be adjusted for “tax credit adjusters”. References to specific Capital Contributions shall be to the associated installment of the Capital Contributions listed in **Exhibit “L”**.

**“Certificate of Occupancy”** means a final certificate of occupancy or similar certificate (including a temporary certificate of occupancy to the extent available and commonly used) which is issued by the Governmental Authority in the jurisdiction where the Project is located evidencing that the Project is completed such that it is certified by such Governmental Authority for occupancy and use by the intended occupants thereof.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, both (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bond Owner for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in

each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**City**” means City of Austin, Texas, a Texas municipal corporation.

“**Claim Proceeding**” has the meaning given such term in **Section 7.11.2**.

“**Claim Proceeds**” has the meaning given such term in **Section 7.11.2**.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Collateral**” means, with respect to the Bond Loan, the Project, the FF&E and all other real and personal property, rights, title and interests of Borrower which, from time to time, secure the Obligations, all as more particularly described in the Bond Loan Mortgage and any other Bond Loan Documents.

“**Collateral Assignment and Pledge of General Partnership Interest**” means the Collateral Assignment and Pledge of General Partnership Interest dated as of the Agreement Effective Date executed by the General Partner and acknowledged and agreed to by the Borrower in favor of the Issuer.

“**Collateral Assignment of Developer Fee**” means the Collateral Assignment of Developer Fee dated as of the Agreement Effective Date executed by Developer in favor of the Issuer.

“**Communications**” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Bond Loan Document or the transactions contemplated therein which is distributed by Bond Owner by means of electronic communications pursuant to this Section, including through an Electronic System.

“**Complete**”, “**Completed**” or “**Completion**” means completion of the construction of the Improvements (including installation of all FF&E required to be installed in order to obtain a Certificate of Occupancy), with such completion and installation being (a) except for Permitted Liens (including Contested Claims which are being contested in accordance with **Section 7.7.6(ii)**), free and clear of all Liens, including any stop payment notices and any other possible claims therefor, with such lien free completion evidenced by (i) mechanics lien waivers, conditional only upon final payment, from General Contractor and all subcontractors that are to receive payment from any remaining Loan proceeds, on the then current form required by Applicable Law and (ii) to the extent reasonably required by Bond Owner, the issuance of a CLTA 122 endorsement (or its equivalent) to the Title Insurance Policy and/or recordation of a notice of completion in the official records of the county in which the Project is located and the expiration of all time periods for filing stop payment notices and mechanics or materialman liens; (b) in accordance with the Plans, all Material Project Related Documents (as applicable), in all material respects, all Applicable Laws and this Agreement, (c) subject only to Punch List Items and (d) otherwise evidenced and confirmed by (i) receipt of a Certificate of Occupancy and (ii) to the extent required by Bond Owner, the following executed certificates of

completion (A) AIA Form G704 (Certificate of Substantial Completion in accordance with the Plans), (B) AIA Form G706 (Contractor's Affidavit of Payments of Debts and Claims) and AIA Form G706A (Contractor's Affidavit of Release of Liens), in each case subject only to receipt of final payment (the amount of which to be designated in the certificate), or a reasonable equivalent thereof acceptable to Bond Owner, and (C) Borrower's certification that, to its knowledge, such lien free Completion has occurred; provided that, all such certificates and sworn statements shall be in form and content reasonably acceptable to Bond Owner.

**"Completion Date"** means the earlier to occur of twenty-four (24) calendar months from the date hereof, subject to Force Majeure not to exceed sixty (60) days; provided, however, such date shall never exceed (a) the "placed in service" date as required pursuant to Section 42 of the Code, (b) the date AHFC shall require the Improvements be completed in the AHFC Loan Documents (c) the date required in the Partnership Agreement for completing the Improvements, or (d) the date required in the Ground Lease for completing the Improvements, if any.

**"Compliance Certificate"** means the form of compliance certificate attached hereto as **Exhibits G-1** and **G-2** respectively for Borrower and Guarantor, as each such form may be modified or replaced with the prior consent of Bond Owner.

**"Conditions to Conversion"** means the conditions listed in **Section 4.3**.

**"Construction Approvals"** has the meaning given such term in **Section 2.6.8**.

**"Construction Commencement Deadline"** means thirty (30) days after the Bond Closing Date (or such earlier date as may be provided for in the Partnership Agreement).

**"Construction Contracts"** means collectively, whether presently or hereinafter existing, any and all contracts entered into by or on behalf of Borrower and/or General Contractor relating to the construction of the Project, including the Architect's Agreement, the General Contractor Agreement, and any other subcontracts or supply agreements, whether for (a) work to be performed, (b) services to be provided or (c) FF&E, materials and supplies to be delivered, each in connection with construction of the Improvements and Completion thereof.

**"Construction Operating Account"** means the account of Borrower (ending with the last four digits XXXXXX\_\_\_\_) located at Bond Owner to be used for the deposit by Bond Owner in accordance with the terms of this Agreement, disbursements by Trustee of the proceeds of the Bonds from the Project Fund (or any other Fund set forth in the Indenture) and disbursements from the Capital Contribution Account.

**"Construction Schedule"** means Borrower's schedule for completing construction of the Improvements attached to the General Contractor Agreement, a copy of which is on file with the Bond Owner, as it may be amended by Borrower, subject to **Section 7.1.2(iv)** hereof.

“**Construction Term**” means the period commencing on the Bond Closing Date until the Conversion Date.

“**Contested Claim**” has the meaning given such term in **Section 7.7.6(ii)**.

“**Contingent Obligation**” means any agreement, undertaking, arrangement or obligation by which any Person: (a) assumes, guarantees, endorses, effectively guarantees, contingently agrees to purchase or provide funds for the payment of or otherwise becomes or is contingently liable upon, any obligation or liability of any other Person, in any manner, whether directly or indirectly; or (b) agrees to maintain the net worth, working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss; including, in either case (a) or case (b) above, (i) any comfort letter, operating agreement, take-or-pay contract, agreement to indemnify or hold harmless, performance bond, other suretyship arrangement or any other form of assurance against loss (except for the endorsement of negotiable or other instruments for deposit or collection in the ordinary course of business) or (ii) the obligations of any such Person as the general partner of a partnership with respect to the liabilities of the partnership.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the decisions, management or policies of a Person, whether pursuant to the Organizational Documents of such Person or otherwise through the ownership of voting securities, the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Conversion Certificate**” means a certificate in the form of **Exhibit “P”**, which will be issued by the Bond Owner if the Conditions to Conversion are satisfied by the Permanent Term Commencement Deadline.

“**Conversion Date**” means the date of the Conversion Certificate, which date shall be date of the commencement of the Permanent Term

“**Costs of Issuance**” shall have the meaning assigned to that term in the Indenture.

“**Daily Simple SOFR**” means for any day (a “**Daily Simple SOFR Rate Day**”), a rate per annum equal to SOFR for the day (such day, a “**Daily Simple SOFR Determination Day**”) that is five (5) Business Days prior to (A) if such Daily Simple SOFR Rate Day is a Business Day, such Daily Simple SOFR Rate Day or (B) if such Daily Simple SOFR Rate Day is not a Business Day, the Business Day immediately preceding such Daily Simple SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website; provided, that if by 5:00 p.m. (New York City time) on the second (2nd) Business Day immediately following any Daily Simple SOFR Determination Day, SOFR in respect of such Daily Simple SOFR Determination Day has not been published on the SOFR Administrator’s Website and a SOFR Unavailability Event with respect to Adjusted Daily Simple SOFR has not occurred, then SOFR for such Daily Simple SOFR Determination Day will be SOFR as published in

respect of the first preceding Business Day for which such SOFR was published on the SOFR Administrator's Website.

**"Debtor Relief Laws"** means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**"Default Rate"** or **"Default Interest Rate"** means the lesser of (i) (a) the then applicable rate of interest per annum which is equal to the then applicable rate, (b) the Default Rate Spread, or (ii) the Maximum Rate.

**"Default Rate Spread"** means that rate which is equal to five percent (5.00%).

**"Delaware LLC Division"** means, with respect to any Person that is a limited liability company organized or formed under the laws of the State of Delaware, the statutory division of such Person into two or more Persons pursuant to Section 18-217 of the Delaware Limited Liability Company Act, as amended from time to time.

**"Developer"** means, collectively, JCM Ventures, LLC, a Kansas limited liability company, and East 43<sup>rd</sup> St., LLC, a Texas limited liability company (d/b/a Structure Development).

**"Developer Fee"** means the fee payable by to Developer by Borrower in the amount of [\$2,940,000.00], as set forth in the Budget, which fee will be split 25% to the General Partner and 75% to the Developer as set forth in a Sub-Development Agreement and is paid subject to **Section 5.2.2(v)**.

**"Development Agreement"** means that certain Development Agreement dated on or about September 1, 2025, by and between Borrower and Developer, and any and all extensions, renewals, modifications, amendments, supplements and replacements thereto and therefor to the extent permitted or approved of in accordance with this Agreement.

**"Dissolution"** means, with respect to any Person, the termination, liquidation, dissolution of such Person, the merger or consolidation of such Person with another Person, the division of such Person into multiple Persons or any Delaware LLC Division with respect to such Person.

**"Distribution"** has the meaning given such term in **Section 7.7.8**.

**"Dollar," "U.S. Dollar"** and the symbol **"\$"** means lawful money of the United States of America.

**"Draw Request Package"** means a request for (a) disbursement of deposits in the Capital Contribution Account, (b) a disbursement of any of the AHFC Loans on deposit with Bond Owner for later disbursement, and/or (c) a Bond Proceeds Disbursement, in

each case related to construction of the Improvements, including Hard Costs and any Soft Costs, using the Request for Disbursement form attached hereto as **Exhibit E** or such other form as may be acceptable to Bond Owner, together with a payee vendor list setting forth the payee, amount to be paid and purpose of payment, supporting invoices, billing statements, the associated Requisition (if relating to a request for a disbursement from the Project Fund), applicable lien waivers, certificates and such other documents and information and that Borrower believes constitutes evidence that (i) requested disbursement is consistent with the Approved Flow of Funds, and (ii) the conditions precedent set forth in **Article 4** applicable to such disbursement from the Capital Contributions Account, deposits of an AHFC Loan, and/or Bond Proceeds Disbursement have been satisfied; provided that no invoices will be required with respect to work that has been completed and the total cost of which is less than \$25,000.00 unless any such invoice is specifically requested by Bond Owner.

**“DSCR”** means the ratio of (i) the Project Net Operating Income to (ii) the annualized debt service amount resulting from fully amortizing the then outstanding principal balances of the Bond Loan plus any remaining unfunded commitment over 480 months using the DSCR Assumed Rate. In calculating Project Net Operating Income for purposes of calculating DSCR, expenses deemed by the Bond Owner to not be normal and customary shall not be an operating expense for purposes thereof (such as costs of extra leasing agents during lease-up and extraordinary rental concessions in a particular month).

**“DSCR Assumed Rate”** means that rate of interest per annum which is equal to [5.90%] per annum for the Bond Loan.

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Electronic System”** means any electronic system, including e-mail, e-fax, Intralinks, ClearPar®, Debt Domain, SyndTrak, DebtX and any other internet or extranet-based site (whether such electronic system is owned, operated or hosted by Bond Owner or any other Person) providing for access to data on a protected basis.

**“Eligible Institution”** means any commercial bank, financial institution, institutional Bond Owner, “accredited investor” (as defined in Regulation D of the Securities Act of 1933, as amended) or any other Person (other than a natural Person, a Prohibited Person or a Borrower Related Person) which (a) has total assets of at least \$10,000,000,000.00, (b) has a long-term unsecured debt rating of BBB+ or higher from Standard & Poor’s or its equivalent, (c) has a lending office in the United States, (d) is regularly engaged in the business of making or owning (or, in the case of a pension advisory firm or similar fiduciary, regularly engaged in managing investments in) commercial real estate loans, and (e) is not a natural Person, a Prohibited Person, a Defaulting Bond Owner or a Borrower Related Person.

**“Eligible Participant”** means any Person other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), a Prohibited Person, Borrower, Guarantor or any Affiliate thereof.

**“Entity Guarantor”** means JCM Ventures, LLC.

**“Environmental Indemnity Agreement”** means the Unsecured Environmental Indemnity of even date herewith from Borrower and each Guarantor to Bond Owner, as it may be amended, restated or otherwise modified from time to time as set forth herein.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and any regulations issued pursuant thereto, as now or from time to time hereafter in effect.

**“Estoppel Certificate”** has the meaning given such term in **Section 7.2.7(iv)**.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Bond Loan Market Association (or any successor person), as in effect from time to time.

**“Event of Default”** means the occurrence of any of the events listed in **Section 8.1** and the expiration of any applicable notice and cure period provided in said section.

**“Event of Taxability”** has the meaning given to that term in the Indenture.

**“Exceptions to Non-Recourse Guaranty”** means the Exceptions to Non-Recourse Guaranty of Payment and Completion, of even date herewith, executed by each Guarantor, as may be restated, supplemented, affirmed, and ratified from time to time.

**“Excluded Taxes”** means with respect to Bond Owner, any of the following Taxes imposed on or with respect to such Person or required to be withheld or deducted from a payment to such Person, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits imposed as a result of such Person being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), (b) Other Connection Taxes, (c) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Bond Owner with respect to an applicable interest in a

Loan pursuant to a law in effect on the date on which (i) Bond Owner acquires such interest in the Bond Loan or (ii) Bond Owner changes its lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to Bond Owner's assignor immediately before Bond Owner became a party hereto or to Bond Owner immediately before it changed its lending office, (d) Taxes attributable to such Recipient's failure to comply with **Section 6.4.2**, and (e) any U.S. federal withholding Taxes imposed under FATCA.

**"FATCA"** means the Foreign Account Tax Compliance Act as set forth in Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

**"FCPA"** means the Foreign Corrupt Practices Act and related anti-corruption laws and regulations and any successor statutes and regulations thereof, all as may be revised, renewed or otherwise modified from time to time.

**"Federal Reserve Board"** means the Board of Governors of the Federal Reserve System of the United States.

**"FF&E"** means all furniture, fixtures and equipment (including machinery, tools, supplies and inventory) owned by Borrower and used, or intended to be used, in connection with the Project.

**"FHLB"** means the Federal Home Loan Bank of Dallas.

**"Fifty Percent Test"** means the 50% aggregate basis test under Section 42(h)(4)(B) of the Code.

**"Financial Institution"** means any national bank, banking corporation, national banking association or other banking institution, whether acting in its individual or fiduciary capacity, organized under the laws of the United States, any state, any territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the Comptroller of the Currency or a comparable state or territorial official or agency such as the Federal Deposit Insurance Corporation, Federal Reserve System or the Office of Thrift Supervision.

**"Financial Statements"** means the financial statements and reports of the applicable reporting party for the applicable reporting period, including without limitation balance sheets, statements of income and expenses and statements of cash flow, each of which shall be (a) prepared in accordance with GAAP consistently applied, (b) in form and detail consistent with any previous financial statements delivered to and accepted by Bond Owner, (c) accompanied by such footnotes, schedules and addenda as historically

and customarily included in such financial statements and reports, and (d) otherwise in form, detail and content reasonably acceptable to Bond Owner.

**“Floor Rate”** means 0.25% per annum.

**“Force Majeure Event”** means any delays which are beyond the reasonable control of Borrower and are caused by (a) any “acts of God”, including fire, earthquake, flood or any other extreme weather conditions or natural disaster, (b) the existence of any pandemic or other widespread health crisis, (c) terrorism, public enemies, riot or acts of insurrection, (d) strikes directly affecting the work of construction, (e) shortages of material or labor resulting directly from general market shortages or (f) any governmental regulations, orders or other acts imposed by any Governmental Authority in connection with and in an effort to address any of the foregoing. For avoidance of doubt, no Force Majeure Event shall be caused by the shortage of any funds available to Borrower whatsoever the reason therefor. Borrower shall notify the Bond Owner in writing within five (5) days after the occurrence of a Force majeure Event, but no Force Majeure Event shall suspend or abate any obligation of the Borrower or any other Person to pay any money under this Agreement and the other Bond Loan Documents.

**“Foreign Bond Owner”** means (a) if the Borrower is a U.S. Person, Bond Owner that is not a U.S. Person and (b) if the Borrower is not a U.S. Person, Bond Owner that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**“Form Lease”** means that form of lease to be used by Borrower with respect to leasing of any multifamily residential unit or any non-residential unit, which form shall be approved in form and content by Bond Owner in its reasonable discretion prior to any lease being entered into at the Project. For avoidance of doubt, the Form Lease for any non-residential unit must include the mortgagee protection provisions as described in **Section 7.2.7(iv)**.

**“Fund”** means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

**“Funding Sources”** has the meaning given such term in **Section 5.2.3**.

**“Future Lien”** has the meaning given such term in **Section 7.2.6(ii)**.

**“GAAP”** means generally accepted accounting principles and practices, consistently applied.

**“General Contractor”** means the General Partner (in that capacity), and each other general contractor, whether one or more, engaged by Borrower, and approved in writing by Bond Owner, to renovate the Improvements. Streamline Construction, LLC, a Kansas limited liability company (the **“Primary Subcontractor”**) will be the primary subcontractor for the construction of the Improvements and in such role, will be treated as Contractor for purposes of this Agreement except where the context as determined by

Bond Owner indicates otherwise such as where the use of “**General Contractor**” and “**Primary Subcontractor**” herein are intended to be different entities. If Streamline Construction, LLC is not the primary subcontractor, the Bond Owner must approve in Bond Owner’s sole and reasonable discretion any other primary subcontractor.

“**General Contractor Agreement**” means that certain Standard Form of Agreement Between Owner and Contractor dated on or about the date hereof between General Contractor, together with (a) any amendments or modifications thereto which have been delivered to and approved by Bond Owner prior to Closing and (b) thereafter, any and all extensions, renewals, modifications, amendments, supplements and replacements thereto and therefor to the extent permitted or approved of in accordance with this Agreement.

“**Good Costs**” means the Project Costs that are Qualified Development Costs.

“**Governing Agreement**” means the Governing Law and General Terms Agreement (with Jury Waiver and Dispute Resolution Agreement) of even date herewith among Borrower, Bond Owner, and Guarantor.

“**Governmental Authority**” means (a) the government of the United States of America or any other nation, any political subdivisions thereof, whether federal, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (and shall include without limitation the TDHCA, AHFC, the City, Travis County, and the Issuer), including, without limitation, any state agencies and Persons responsible in whole or in part for monitoring compliance with the Act and all land use restriction agreements and for environmental matters in the states in which Borrower is located or otherwise conducting its business activities and the United States Environmental Protection Agency, and (b) any arbitrator or other private adjudicator to the extent applicable pursuant to contract, agreement or otherwise.

“**Governmental Regulations**” means OFAC, FCPA, the QAP, TAC, the Beneficial Ownership Regulation, the Act, the Housing Act, and any other related Applicable Laws to which Bond Owner may be subject that limits, restricts prohibits or conditions the making of any advance or extension of credit to Borrower or from otherwise conducting business with Borrower or Guarantor.

“**Ground Lease**” means the Ground Lease dated as of \_\_\_\_\_, 2025, between Ground Lessor and the Borrower, covering the Real Property.

“**Ground Lessor**” means AHFC, in that capacity.

“**Guarantor**” means, collectively, the Entity Guarantor and the Individual Guarantors.

“**Guaranty**” or “**Guaranties**” means individually and collectively, (a) that certain Guaranty of Payment executed by each Guarantor in favor of Bond Owner as of even date herewith and any and all extensions, renewals, modifications, amendments,

supplements and replacements thereto, and (b) that certain Exceptions to Non-Recourse Guaranty executed by each Guarantor in favor of Bond Owner as of even date herewith and any and all extensions, renewals, modifications, amendments, supplements and replacements thereto.

**“Hard Costs”** means costs for work, labor and materials required to (a) demolish and remove any pre-existing structures, (b) perform any required excavation work and (c) complete construction of the Improvements, including those items identified as “Hard Costs” on the Budget.

**“Hedging Transaction”** means any transaction now existing or hereafter entered into between Borrower and Bond Owner or another Acceptable Counterparty which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, including without limitation the interest rate hedging transactions entered into pursuant to the Hedging Transaction Documents.

**“Hedging Transaction Documents”** means an ISDA Master Agreement and Schedule thereto between Borrower and Bond Owner or another Acceptable Counterparty, and all Confirmations (as such term is defined in such ISDA Master Agreement) executed in connection with any Hedging Transactions entered into now or in the future, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for any of the foregoing.

**“Hedging Transaction Guaranty”** means the Guaranty of Hedging Obligations of even date herewith entered into by each Guarantor with respect to the Hedging Transactions entered into by Borrower with respect to the Bond Loan.

**“Hedging Transaction Obligations”** means any obligations of Borrower, whether absolute or contingent, and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Hedging Transaction Documents entered into in connection with the Bond Loan and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedging Transaction Documents entered into in connection with the Bond Loan.

**“Housing Act”** the United States Housing Act of 1937, as amended from time to time, and any successor legislation.

**“Impositions”** means any and all (a) real estate and personal property taxes and other taxes and assessments with respect to the Project, (b) water and sewer rates and charges and all other governmental charges and any interest or costs or penalties with

respect thereto and (c) other assessments or charges by any community facilities district, any associations, any master declarants or any other Persons pursuant to any Project Related Document maintained for the benefit of the Project or to which the Project is subject, in each case, of any kind and nature whatsoever (whether any of the foregoing are general or special, ordinary or extraordinary, foreseen or unforeseen) and which at any time may be assessed, levied or imposed upon the Project, the rent, revenues or income generated thereby or any use or occupancy thereof.

**“Improvements”** has the meaning as set forth in **Recital B**, and in any event, shall mean the 75-unit multifamily affordable residential rental project, consisting of \_\_\_\_\_ (\_\_\_) residential buildings, to be constructed on the Real Property, known as Sycamores at Pleasant Valley, to be constructed with the proceeds of the Bond Loan Note, the AHFC Loans, and the Capital Contributions, and substantially in accordance with the Plans. 19 of the units will be set aside for households with incomes of 40% or less of area median income, and 55 of the units will be set aside for households with incomes of 50% or less of area median income. [One unit will be a manager’s unit.]

**“In Balance”** has the meaning given such term in **Section 5.2.3**.

**“Indebtedness”** means, as to any Person at any time, the aggregate amount of all indebtedness, obligations or liabilities of such Person as determined in accordance with GAAP on a consolidated basis, including (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all obligations of such Person to pay the deferred purchase price of property or services; (d) all capitalized lease obligations of such Person; (e) all obligations or liabilities of others secured by a lien on any asset of such Person thereof, whether or not such obligation or liability is assumed; (f) all obligations guaranteed by such Person; (g) all obligations of such Person for letters of credit; (h) any Contingent Obligations and (i) any other obligations or liabilities which are required by GAAP to be shown as debt on the balance sheet of such Person; in each case, regardless of whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent or joint or several.

**“Indemnified Taxes”** means any and all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower or Guarantor under any Bond Loan Document.

**“Indemnitee”** has the meaning given such term in **Section 10.4.2**.

**“Individual Guarantors”** means, collectively, Jacob Mooney and Sarah Andre.

**“Information”** has the meaning given such term in **Section 10.11.1**.

**“Initial Capital Contribution”** means the first installment of the Capital Contribution payable under the Partnership Agreement as set forth in **Exhibit “L”**.

**“Insurance Requirements”** means all of the requirements for insurance set forth in **Exhibit F**.

**“Intercreditor Agreements”**: Collectively, for each AHFC Loan, the Intercreditor Agreement among Bank, Borrower, and AHFC, outlining the relative priorities of the Bond Loan and that AHFC Loan.

**“Interest Rate”** means the Adjusted Daily Simple SOFR Rate at all times subject only to the application of the Substitute Index Rate in accordance with **Section 6.1.1(ii)**; provided that if an Event of Taxability occurs, such Interest Rate will be increased by one percent (1%) per annum from the then applicable Interest Rate, and the Borrower shall pay to the Trustee (or the Bond Owner on its behalf as the case may be) promptly upon demand any interest due retroactively; provided further that, at any time the Interest Rate as calculated above would be less than 2.425% (2.175% margin + .25% Floor), then the Interest Rate shall be deemed to be 2.425% (2.175% margin + .25% Floor).

**“Interest Rate Adjustment Date”** shall mean, when the Interest Rate is the Adjusted Daily Simple SOFR Rate, the Daily Simple SOFR Rate Day, and, if the Interest Rate is not the Adjusted Daily Simple SOFR Rate, the first day of each calendar month.

**“Interest Rate Determination Date”** means, when the Interest Rate is the Adjusted Daily Simple SOFR Rate, the Daily Simple SOFR Determination Date, and, if the Interest Rate is not the Adjusted Daily Simple SOFR Rate, that date upon which the Bond Owner determines the Substitute Index Rate, which date shall be on up to two days prior to the Interest Rate Adjustment Date.

**“Interest Reserve”** means that amount of the unfunded portion of the Bond Loan which has been reserved for the payment of interest as and when due pursuant to this Agreement and subject to the terms and conditions hereof. The amount of such Interest Reserve is set forth in the Budget under the line item **“Interest Reserve”**.

**“Investment Grade”** means either a federally insured institution or a company (a) which has a senior unsecured debt rating of BBB - or higher by Standard & Poor’s or the equivalent or higher of such rating by another rating agency, (b) is an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, or (c) which has been approved by Bond Owner in writing in accordance with customary banking practices and reasonable underwriting standards.

**“Investor Limited Partner”** means RSEP Holdings, LLC, a Delaware limited liability company, and its successors and assigns (to the extent permitted by this Agreement).

**“IRS”** means the United States Internal Revenue Service.

**“Known Unmatured Event of Default”** means any Unmatured Event of Default for which notice and demand to cure has been given to Borrower by Bond Owner or with respect to which Borrower has actual knowledge thereof.

**“KYC Information”** means such documentation and information as may be deemed necessary by Bond Owner with respect to verification of compliance with the Government Regulations, including the identity of and information relating anyone

holding, whether directly or indirectly, an ownership interest in Borrower of twenty percent (20%) or more.

**“Lease”** or **“Leases”** means all leases, subleases, licenses and other agreements for the leasing, use or occupancy of any portion of the Project.

**“Lease Stabilization”** means such time when (i) the Project shall, for each of three consecutive calendar months, have at least ninety percent (90%) economic and physical occupancy levels (on the basis of the completion of all planned units) pursuant to Approved Leases at pro forma rents (on an average basis), (ii) the Loan-to-Value Ratio shall not be more than eighty percent (80%); provided that the Loan-to-Value Ratio shall be calculated based on the maximum Permanent Loan Amount (calculated based upon restricted rents and a forty (40) year amortization period), and (iii) a DSCR for each of the three calendar months referred to in clause (i) of at least 1.15 to 1.0.

**“Lien”** means, individually and collectively, with respect to the Collateral, any leases, other rights to occupy or use, mortgages, deeds of trust, pledges, security agreements, assignments, assignments as security, conditional sales, title retention arrangements or agreements, conditions, covenants, and restrictions and other charges, liens, encumbrances, or adverse interests, whether voluntarily or involuntarily created, regardless of whether prior or subordinate to any estate, right, title or interest of Borrower or of Bond Owner in such Collateral.

**“Line Item Cost Savings”** means (a) the portion of any Budget line item which remains after completion of the work applicable to such line item, (b) the portion of any Budget line item which is in excess of the actual cost for such work contracted for based on the applicable Construction Contracts or other documentary evidence applicable to such line item and/or (c) any other line item cost savings, including with respect to any Soft Costs, all as reasonably determined by Bond Owner upon the request of Borrower.

**“Loan-to-Cost Ratio”** means, with respect to satisfaction of the applicable closing condition, the amount of the sum of the Bond Loan divided by the total Project Costs (including Property Acquisition Costs, Hard Costs and Soft Costs, but without duplication thereof), all as set forth in the Budget approved by Bond Owner as a condition of Closing.

**“Loan-to-Value Ratio”** means with respect to determining satisfaction of the Bond Loan sizing condition set forth in **Section 3.1.7(a)**, the ratio obtained by dividing the amount of the sum of the Bond Loan by the “as stabilized” Appraised Value of the Project using restricted rents. The Loan-To-Value Ratio, when calculated for purposes of the Bond Closing shall be based on the sum of the amount of the sum of the Bond Loan and the Appraisal Value shall include the value of the Low-Income Housing Tax Credit and the related Capital Contributions (when determining if Lease Stabilization has occurred, the foregoing shall not be included in determining the Loan-To-Value Ratio).

**“Losses”** has the meaning given such term in **Section 10.4.2**.

**“Low Income Housing Tax Credit”** means the 2025 allocation of a Low-Income Housing Tax Credit as that term is used in Section 42 of the Internal Revenue Code allocated to the Project in the anticipated, annual amount of \$\_\_\_\_\_ for 10 years.

**“Management Agreements”** means collectively, whether presently or hereinafter existing, any management agreements with respect to, affecting or relating to the management of the Project or Borrower, including the Amended and Restated Management Agreement, any other property management agreements, any asset management agreements, any leasing listing agreements and any other management agreements and contracts pursuant to which the development, construction, use, operation or business of the Project or Borrower is managed or controlled by a Person other than Borrower. For clarification purposes, neither the Construction Contracts nor Project Related Documents are included in this definition of Management Agreement.

**“Material Adverse Change”** means (a) with respect to Borrower or the Project, any set of circumstances or events which has a material adverse impact on (i) Borrower’s ability to duly and punctually pay or perform any of its obligations as and when required under the Bond Loan Documents, including to Complete the Project as and when required by this Agreement (ii) the business, properties, assets, financial condition or results of operations of Borrower, including the Completion of the Project by the Completion Date, as applicable; provided that, any reduction in the market value of the Project due to a general change in the market which is not unique to the Project shall not constitute a **“Material Adverse Change”** and (b) with respect to Guarantor, any set of circumstances or events which has an material adverse effect on the ability of Guarantor to duly and punctually pay or perform any of its obligations as and when required under any Bond Loan Document to which it is a party, including the Guaranty.

**“Material Change Order”** has the meaning given such term in **Section 7.1.2(iii)**.

**“Material Project Related Documents”** means any Project Related Document that is not a Construction Contract, Lease or Management Agreement and any material default thereunder or termination thereof other than in accordance with its terms would result in a Material Adverse Change.

**“Maturity Date”** means September 1, 2046, provided that if the Conditions to Conversion are not satisfied by the Permanent Term Commencement Deadline, the Maturity Date shall be the Permanent Term Commencement Deadline.

**“Maximum Rate”** means on any day, the lesser of 18% per annum or the maximum nonusurious legal rate of interest (if any) permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that the Texas Finance Code, as it may from time to time be amended establishes the Maximum Rate, the Maximum Rate shall be the “weekly rate ceiling”, as defined and referenced in Section 303.002 of the Texas Finance Code, after application of Section 303.009 of the Texas Finance Code, for that day. Provided, however, that to the extent permitted by applicable law, Bond Owner reserves the right to change, from time to time by further notice and disclosure to Borrower, the ceiling on which the

Maximum Rate is based under the Texas Finance Code; and, provided further, that the “highest non-usurious rate of interest permitted by applicable law” for purposes of this Agreement shall not be limited to the applicable rate ceiling under the Texas Finance Code if Federal Laws or other state laws now or hereafter in effect and applicable to this Agreement (and the interest contracted for, charged and collected thereunder) shall permit a higher rate of interest. Notwithstanding the foregoing, in no event shall the Maximum Rate exceed the maximum interest rate that may be paid on the Bonds pursuant to Chapter 1204 of the Texas Government Code.

“**Moody’s**” means Moody’s Ratings and its successors.

“**Non-Recourse Carve-Out Guaranty**” means the Exceptions to Non-Recourse Guaranty dated as of the Agreement Effective Date executed by Guarantor.

“**Obligations**” means all of the obligations of Borrower, whether now existing or hereafter arising, pursuant to this Agreement or the other Bond Loan Documents, whether joint, several, joint and several, due or to become due, absolute or contingent, including the outstanding principal balance of the Bond Loan, accrued but unpaid interest, any Protective Advances, any Hedging Transaction Obligations, any indemnification obligations and any incurred but unpaid fees, costs and charges of Trustee, Bond Owner, Bond Owner’s Consultants, but in each case only to the extent such fees, costs and charges are required to be paid by Borrower under the Bond Loan Documents.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury, including Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 and those otherwise issued or promulgated by OFAC, and related laws and regulations, and any successor statutes and regulations thereof, all as may be revised, renewed or otherwise modified from time to time.

“**Organizational Documents**” means, with respect to any Person: (a) if such Person is a limited liability company, such Person’s articles of organization, operating agreement, limited liability company agreement and any other documents governing the internal management and operation of such Person (including all amendments, restatements and other modifications thereto); (b) if such Person is a general or limited partnership, such Person’s certificate of limited partnership, partnership agreement and other documents governing the internal management and operation of such Person (including all amendments, restatements and other modifications thereto); (c) if such Person is a corporation, such Person’s articles of incorporation, bylaws and the other documents and instruments governing the internal management and operation of such Person (including all amendments, restatements and other modifications thereto); (d) if such Person is a trust, such Person’s certificate of trust, trust agreement and the other documents and instruments governing the internal management and operation of such Person (including all amendments, restatements and other modifications thereto); and (e) if such Person is another type of entity, the documents and instruments pursuant to which such Person is formed, managed and operated (including all amendments, restatements and other modifications thereto); in each case, certified by (i) the applicable Secretary of State (for any Organizational Documents that have been filed with any

Secretary of State) or (ii) an Authorized Representative of the Person (for any Organizational Documents that have not been filed with any Secretary of State).

**“Other Connection Taxes”** means, with respect to Bond Owner, Taxes imposed as a result of a present or former connection between such Person and the jurisdiction imposing such Tax (other than connections arising from such Person having (a) executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to or enforced by, any Bond Loan Document or (b) sold or assigned an interest in any Bond Loan Document).

**“Partnership Agreement”** means the Amended and Restated Agreement of Limited Partnership of Borrower entered into among AHFC Pleasant Valley Non-Profit Corporation, as general partner (the **“General Partner”**), 5900 SPV ALP, LLC, a Texas limited liability company (the **“Administrative Limited Partner”**), the Special Limited Partner, as the special limited partner, the Investor Limited Partner, as the investor limited partner, \_\_\_\_\_, as the withdrawing general partner, as the same may be amended from time to time subject to and in accordance with this Agreement.

**“Payment Date”** means, (a) with respect to the first payment date after the Bond Closing Date, October 1, 2025, and (b) for each month thereafter until the Maturity Date, the first (1st) day of each calendar month; provided that, if such day is not a Business Day, the Payment Date shall be the immediately following Business Day thereafter.

**“Payments”** has the meaning given such term in **Section 6.2.5(ii)**.

**“Permanent Loan Amount”** means the amount of the Permanent Bond Loan available during the Permanent Term, which in any event shall be an amount not to exceed \$5,300,000.00.

**“Permanent Term”** means the period beginning on the Conversion Date through the Maturity Date.

**“Permanent Term Commencement Deadline”** means September 1, 2028, as may be extended by **Section 5.5** (without extending the Maturity Date).

**“Permitted Indebtedness”** means the following Indebtedness of Borrower: (a) the Obligations; (b) the AHFC Loans, (c) non-delinquent debt incurred by Borrower with respect to any Permitted Lien under clauses (b) through (i) of the definition of Permitted Liens, to the extent made subordinate to the Bond Loan in a manner satisfactory to the Bond Owner, (d) unsecured trade debt incurred in the ordinary course of operation of the Project in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event that the outstanding principal balance of all such trade debt shall not exceed at any one time two percent (2%) of the combined amount of the Bond Loan, and (e) any non-delinquent equipment leasing or financing to the extent any security interest therein is limited to such equipment, such equipment is required for the

use and operation of the Project, and is incurred in the ordinary course of business by Borrower.

**“Permitted Liens”** means only the following: (a) the Liens created in favor of Bond Owner pursuant to the Bond Loan Mortgage and other Bond Loan Documents; (b) inchoate Liens for works of improvement performed in accordance with this Agreement, any Approved Lease and all Applicable Laws and for which payment is not yet delinquent; (c) Contested Claims which are being contested in accordance with **Section 7.7.6(ii)**; (d) Impositions not yet delinquent or otherwise being contested in accordance with **Section 7.7.6(ii)**; (e) Permitted Title Exceptions; (f) any Approved Leases; (g) any equipment liens or leases to the extent constituting Permitted Indebtedness and limited to the equipment itself, (h) to the extent constituting a Lien, any Project Related Documents entered into in accordance with this Agreement, including any Future Lien approved in accordance with **Section 7.2.6(ii)**, (i) the deed of trust liens securing payment of the AHFC Loans and the other Permitted Indebtedness (in each case, to the extent made subordinate to the Bond Loan Mortgage in a manner acceptable to Bond Owner), and (j) any other items which have been approved by Bond Owner.

**“Permitted Ownership Transfer”** means with respect to any Transfer of any direct or indirect ownership or management interest in Borrower, whether pursuant to a single transaction or a series of transactions, any Transfer where, after giving effect to such Transfer, (a) (i) Control of the Borrower remains as it did prior to such Transfer and (ii) the holders of more than fifty percent (50%) of the ownership interests in and to the General Partner and/or in the Administrative Limited Partner, as applicable, remains as it did prior to such Transfer and (b) if such Transfer would result in one or more Persons who did not then hold an existing direct or indirect ownership interest in Borrower owning, whether directly or indirectly, more than twenty percent (20%) of Borrower, then, as an express condition of such Transfer being a Permitted Transfer, (i) such Person or Persons shall not be a Prohibited Person, (ii) after giving effect to such Transfer, Borrower shall remain in compliance with **Section 7.13.1** and (iii) Borrower shall provide to Bond Owner fifteen (15) days prior written notice of such proposed Transfer, which notice shall include the identity of any Person who will be acquiring twenty percent (20%) or more of the ownership interests in Borrower, an updated organizational chart of Borrower, the material documents evidencing such Transfer and an officer’s certificate from an applicable officer of Borrower certifying to the truth and accuracy of the information provided and that all of the foregoing conditions to such Permitted Ownership Transfer have been satisfied.

**“Permitted Project Transfer”** means any Transfer of the Project or any portion thereof, whether pursuant to a single transaction or a series of transactions, which (i) constitutes a Permitted Lien, (ii) constitutes an involuntary taking or condemnation of the Project or any portion thereof by any Governmental Authority so long as Borrower complies with **Section 7.11** and (iii) as an express condition to such Transfer, Repayment in Full is required at the time of such Transfer.

**“Permitted Title Exceptions”** means (a) those exceptions of title which are set forth on Schedule B of the Title Insurance Policy and accepted by Bond Owner as of the

Closing, (b) Impositions not yet delinquent, (c) any Future Liens but only to the extent that in connection with Bond Owner's approval of any such Future Lien in accordance with **Section 7.2.6(ii)**, Bond Owner has agreed to subordinate its Liens to such Future Lien and (d) any other exception approved by Bond Owner in writing in its sole and absolute discretion.

**"Permitted Transfer"** means either a Permitted Project Transfer, Equity Permitted Transfer or a Permitted Ownership Transfer.

**"Person"** means any natural person, any unincorporated association, any corporation, any partnership, any joint venture, any limited liability company, any trust, any other legal entity or any Governmental Authority.

**"Placed in Service"** or **"placed in service"** shall have the meaning attributed by the TDHCA for purposes of the Low-Income Housing Tax Credit (and, in any event, shall occur no later than the date required in the Tax Credit Allocation).

**"Plans"** has the meaning assigned to that term in **Recital E** and in any event means the final plans and specifications and working drawings with respect to the Improvements accepted by Bond Owner, all applicable Governmental Authorities and any other Persons required to approve same, as such plans and specifications may be modified and supplemented from time to time in accordance with the terms and provisions of this Agreement.

**"Pre-Substitute Rate"** has the meaning set forth in **Section 6.1.1(ii)**.

**"Primary Subcontract"** means the first-tier subcontract entered into by General Contractor and the Primary Subcontractor with respect to the agreement of the Primary Subcontractor to perform the obligation of the General Contractor under the general contract between Borrower and General Contractor.

**"Prohibited Person"** shall mean any Person that is:

(a) (i) a Person designated as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website <http://www.treasury.gov/ofac/downloads/sdnlist.pdf> or at any replacement website or other replacement official publication of such list, or any person or entity owned or controlled by or acting for or on behalf of such a Person; (ii) an agency of the government of a country, or an organization controlled by a country, or a Person resident in a country that is subject to trade restrictions or a sanctions program under any of the economic sanctions of the United States administered by the United States Department of the Treasury's Office of Foreign Assets Control; or (iii) a Person (including a country or government) with Bond Owner is prohibited from dealing or otherwise engaging in any transaction by any applicable Governmental Regulations;

(b) (i) unless consented to by Bond Owner or Bond Owner as applicable, a Person who is, or within the past seven (7) years was, an adverse party to Bond Owner or any Affiliate thereof in any material litigation and such Person acted in bad faith or without a reasonable basis in fact or law in connection therewith or (ii) has been found guilty of any felony charges involving a crime of dishonesty or moral turpitude;

(c) a Person who is, or within the past seven (7) years, was, the subject of a Bankruptcy Event; or

(d) a Person who is a direct or indirect equity owner of said Person who is in Control of, or at the time of the triggering event was in Control of, any Person listed in clauses (a), (b) or (c) above.

**“Project”** means the Real Property, the Improvements and all other improvements on the Real Property, including all FF&E and personal property of Borrower used in the development, construction, use and operation of the Project, in each case, whether currently existing or hereinafter constructed thereon, installed therein or used in connection therewith.

**“Project Costs”** means all Hard Costs, Soft Costs and Property Acquisition Costs.

**“Project Fund”** shall have the meaning assigned to that term in the Indenture.

**“Project Gross Revenues”** means the sum of (a) all rents received for the Project from Tenants that are in occupancy, paying rent under all of the then existing Approved Leases with respect to which the Tenant thereunder is not, (i) as of the date of determination, in monetary default (after expiration of any applicable notice and cure periods) or any other default which gives rise to the right of termination thereof by landlord and landlord has commenced enforcement action with respect thereto or (ii) subject to a Bankruptcy Event, plus (b) any other gross revenues generated by the Project which do not constitute rents to the extent such revenues are generated on a regular, recurring basis in the ordinary course of operations, all as reported on Borrower’s operating statements delivered pursuant to **Section 7.3.1**, consistently applied; provided that (1) in no event shall the following revenue be included in the calculation of Project Gross Revenues: (A) security deposits, (B) rent from any month-to-month Leases or hold-over Tenants and (c) any rent that is paid more than one (1) month in advance (unless paid pursuant to the express terms of any Approved Lease, in which case such rent shall be paid spread evenly over those rental periods pre-paid) and (2) in calculating the gross revenue generated from rents under clause (a) above, a vacancy factor equal to the then existing actual vacancy rate shall be applied.

**“Project Net Operating Income”** means, as verified by Bond Owner on the applicable date, the annualized net operating income for the Project as determined by Bond Owner by subtracting the Project Operating Expenses from the Project Gross Revenues based on the immediately preceding three (3) month period. In determining the annualized Project Net Operating Income, except to the extent expressly provided in

the applicable definitions therefor, all Project Gross Revenue and Project Operating Expenses shall be computed on a cash basis and subject to adjustments for the normalization of expenses, reserves and expense reimbursements.

**“Project Operating Expenses”** means the actual operating expenses of Borrower with respect to the operation and management of the Project for the applicable period as determined in accordance with GAAP or as otherwise previously approved by Bond Owner, consistently applied, annualized and normalized for the annual amounts of actual taxes and assessments, insurance premiums for casualty insurance and liability insurance carried in connection with the Project and any other regular, recurring operating expenses that are incurred in the ordinary course of operations but may be paid less frequently than monthly. Any depreciation, non-cash expenses and all debt service payments with respect to the Bond Loan shall be excluded from the calculation of Project Operating Expenses.

**“Project Related Documents”** means collectively, whether presently or hereinafter existing, any and all covenants, conditions, restrictions, maintenance agreements, homeowner association bylaws or condominium declarations, easements, reciprocal easement agreements, restrictive covenants, franchise agreements, parking agreements, leasing agreements, license agreements, agreements regarding utilities and other agreements, licenses, entitlements or permits affecting or governing or related to the ownership or permitted development, construction, operation or use of the Project or any portion thereof, but expressly excluding any Leases.

**“Property Acquisition Costs”** means the purchase price and/or acquisition costs of the Property, all as set forth in the Budget.

**“Property Management Agreement”** has the meaning set forth in **Section 7.2.5**.

**“Protective Advances”** means all sums expended by Bond Owner as applicable: (a) to make payments which are required to be made by Borrower but for which Borrower has failed to make as and when required under the Bond Loan Documents, including payment of Impositions, Project Operating Expenses and insurance premiums; (b) to protect the priority, validity and enforceability of the lien of the Bond Loan Mortgage and any and all other Bond Loan Documents encumbering any of the Collateral; (c) to protect the value or the security of any of the Collateral, including any amounts expended in accordance with **Section 5.4** of this Agreement; and (d) to pay Bond Owner’s fees, costs and expenses to the extent entitled thereto under the Bond Loan Documents and Borrower has failed to pay same as and when required under the Bond Loan Documents, including any fees, costs and expenses incurred in connection with Bond Owner’s the exercise of any rights and remedies as a result of an Event of Default.

**“Punch List Items”** means items of work which remain to be completed after Completion, as disclosed and reasonably accepted by Bond Owner, (a) which are nonstructural, customary and typical for projects substantially similar to the subject Project and not required in order to receive a Certificate of Occupancy, and (b) for which

Borrower has adequate funds for the payment thereof as and when required (taking into account any available undisbursed Bond Loan proceeds with respect thereto).

“**QAP**” means Qualified Allocation Plan for the 2025 Housing Tax Credit Program adopted by the TDHCA (as may be amended, replaced, or superseded).

“**Qualified Development Costs**” has the meaning assigned to that term in the Indenture.

“**Qualified Property Manager**” means (a) Valhalla Mgmnt, LLC, a Missouri limited liability company, so long as, at the time it is to become the property manager for the Project, no fundamental adverse change in circumstance or condition has occurred with respect to it nor has it become a Prohibited Person and (b) any other property manager which (i) is a reputable management company having at least seven (7) years’ experience in the management of multi-family properties with similar uses as the Project and in the jurisdiction in which the Project are located, (ii) has, for at least seven (7) years prior to its engagement as property manager, managed at least eight (8) properties of the same or similar property type and size as the Project, (iii) is not the subject of a Bankruptcy Event, (iv) immediately upon its engagement as property manager of the Project, will hold and otherwise maintain all required licenses and permits for the current use, management, operation and leasing of the Project and (v) is not a Prohibited Person.

“**Real Property**” shall have the meaning as set forth in the Recitals.

“**Regulation D**” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“**Regulatory Agreements**” means, collectively: (i) the Bond Regulatory Agreement, (ii) the TDHCA Restriction, and (iii) the AHFC Restrictions.

“**Repair Funds**” has the meaning given such term in **Section 7.11.4(iii)**.

“**Repayment in Full**” means the indefeasible payment and performance in full of the Loans all of the other Obligations; excluding, however, only those Obligations which, by the express terms of this Agreement or any other Bond Loan Document, survive repayment of the Bond Loan.

“**Requisition**” means a request for the disbursement of funds in the Project Fund in accordance with Section 6.2(3) of the Indenture on the form attached as **Exhibit A** to the Indenture (and in any event shall be the same as the requisitions used in the Indenture).

“**Retainage**” means an amount (without duplication) equal to ten percent (10%) of all costs under the Construction Contract, the Primary Subcontract, and subcontracts for the Improvements and all other costs for labor, materials and construction of the Improvements as part of the construction of the Improvements, it being the intent that the total Retainage held by Bond Owner upon completion of construction of the Improvements in accordance with the Plans shall be equal to 10.0%. The Retainage shall

in no event be less than the amount actually held back by the Borrower from the Contractor, the Primary Subcontractor, and all subcontractors engaged in the construction of the Improvements.

**“Signature Authorization Form”** means the Signature Authorization and Disbursement Instructions, prepared and completed on the form attached hereto as **Exhibit “D”** in a manner satisfactory to Bond Owner, dated on or about the date hereof, and executed by Borrower.

**“SNDA”** has the meaning given such term in **Section 7.2.7(iv)**.

**“SOFR”** means a rate per annum equal to the secured overnight financing rate published by the Federal Reserve, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time); provided that for purposes of this Agreement, SOFR shall have a floor of .25% per annum (if SOFR is determined under this Agreement to be less than .25% on the day of determination, in that case for purposes of this Agreement, SOFR shall be .25%). SOFR is not necessarily the lowest rate charged by Bond Owner on their loans. Bond Owner’s SOFR rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the interest rate used herein. Bond Owner’s SOFR may not necessarily be the same as the quoted offer side in any time deposit market by any particular institution or service applicable to any interest period.

**“SOFR Adjustment”** means 0% per annum.

**“SOFR Administrator”** means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Daily Simple SOFR Rate selected by the Agent in its reasonable discretion).

**“SOFR Administrator’s Website”** means the website of the SOFR Administrator, currently at <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“SOFR Index Rate”** means SOFR plus the SOFR Adjustment. The SOFR Index Rate is to be strictly interpreted and is not intended to serve any purpose other than providing an index to determine the interest rate used herein. The SOFR Index Rate is not necessarily the lowest rate charged by Bond Owner on its loans.

**“Soft Costs”** means those costs associated with the development, construction, marketing, leasing, operation and maintenance of the Improvements which are not Hard Costs, including the Developer Fee, leasing commissions, architectural and engineering fees, consultant fees, professional fees, marketing fees and expenses, real estate taxes, insurance and bonding costs, interest and financing fees and any other items identified as **“Soft Costs”** on the Budget.

**“Solvent”** means, with respect to any Person on a particular date, that on such date (a) the fair value of the assets of such Person is greater than the total amount of Indebtedness and other liabilities of such Person (excluding Contingent Liabilities to the extent not required to be recorded in accordance with GAAP on the balance sheets, or otherwise reflected in the Financial Statements, of such Person), (b) the present fair market value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its Indebtedness and other liabilities as they become absolute and matured (excluding Contingent Liabilities to the extent not required to be recorded in accordance with GAAP on the balance sheets, or otherwise reflected in the Financial Statements, of such Person), (c) such Person is able to realize upon its assets and pay its Indebtedness and other liabilities (other than Contingent Liabilities to the extent not required to be recorded in accordance with GAAP on the balance sheets, or otherwise reflected in the Financial Statements, of such Person) as they mature in the normal course of business and (d) such Person does not intend to, and does not believe that it will, incur Indebtedness and other liabilities beyond such Person’s ability to pay such Indebtedness and other liabilities as they mature.

**“SPE Requirements”** has the meaning given such term in **Section 7.9**.

**“Spread”** means 2.175% per annum.

**“Special Limited Partner”** means Red Stone Equity Manager, LLC.

**“Statements”** has the meaning given such term in **Section 10.9**.

**“Stored Materials”** has the meaning given such term in **Section 4.2.6**.

**“Substantial Completion”** means the completion of the construction and equipping of the Improvements free and clear of all liens other than Permitted Title Exceptions in substantial accordance with the Plans in all material respects and otherwise to the reasonable satisfaction of Bond Owner and the Bond Owner’s construction consultant, except for such defects or departures which do not, in the opinion of Bond Owner, the Bond Owner’s construction consultant, materially and adversely affect either the value of the work in place or the full utilization of the applicable portion of the Improvements for which it is intended, and the issuance and delivery to Bond Owner of a Certificate of Substantial Completion by the Architect on a form reasonably acceptable to Bond Owner and copies of all permits and approvals of Governmental Authorities for the occupancy of all apartment units comprised of the Improvements including, and not by way of limitation, a conditional or permanent certificate of occupancy.

**“Substitute Index Rate”** has the meaning set forth in **Section 6.1.1(ii)**.

**“Survey”** means a current Texas ALTA survey of the Project prepared by a surveyor registered or licensed in the State of where the Project is located and certified to Bond Owner, which survey and certification shall be in form and substance reasonably acceptable to Bond Owner and satisfy the requirements set forth in **Exhibit “M”**.

“**TAC**” means the Texas Administrative Code, a compilation of all state agency rules in Texas (including rules of the TDHCA).

“**Taking**” has the meaning given to such term in **Section 7.11.2**

“**Tax Credit Allocation**” means the carryover allocation issued by the TDHCA awarding the allocation of a Low-Income Housing Tax Credit for the Project and any carry over agreement or housing tax credit program determination notice which has been issued which is attached as **Exhibit “N”**.

“**Tax Exemption Agreement**” has the meaning assigned to that term in the Indenture.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholdings), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**TDHCA**” means the Texas Department of Housing and Community Affairs.

“**TDHCA Restrictions**” means that certain Declaration of Land Use Restrictive Covenants for Low Income Housing Credits to be executed by Borrower and, if appropriate, the TDHCA, to be recorded in the Real Property Records of Travis County, Texas, which will impose certain occupancy and rent restrictions on the Property and Improvements in connection with the Low-Income Housing Tax Credit.

“**Tenant**” means any tenant or lessee under any Lease, including any Approved Lease.

“**Threshold Change Order Amounts**” means, with respect to the individual and aggregate threshold amounts for Material Change Orders, [\$50,000.00] and [\$250,000.00] respectively;

“**Title Company**” means Chicago Title Insurance Company, or such other title insurance company approved by Bond Owner.

“**Title Insurance Policy**” means, collectively, a title insurance policy insuring the lien granted in the Bond Loan Mortgage, which each shall satisfy the requirements of **Section 7.10** and **Exhibit “O”**.

“**Transfer**” means: (a) any sale, transfer, assignment, conveyance, hypothecation, encumbrance, lease, or vesting of the Project or any part thereof or any interest therein, to or in any Person other than Borrower, whether voluntary, involuntary, by operation of law, or otherwise; (b) any sale, transfer, assignment, conveyance, hypothecation, encumbrance or vesting of any ownership interest in Borrower or Guarantor (whether directly or indirectly to or in any Person; (c) any consolidation or merger of Borrower or a Guarantor (whether directly or indirectly) into or with any Person,

whether voluntary, involuntary, by operation of law, or otherwise; or (d) the execution of any agreements to do any of the foregoing.

“**UCC**” means the Uniform Commercial Code as in effect in the State in which the Project is located, as amended or modified from time to time.

“**UCC Financing Statements**” means such UCC-1 financing statements in favor of Bond Owner as secured party, perfecting their security interest in the personal property Collateral now owned or hereafter acquired by Borrower.

“**U.S. Person**” means a “**United States person**” within the meaning of Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in **Section 6.4.2(vii)(2)(c)**, the forms of which are collectively attached hereto as **Exhibit H-1** through **H-4** as such forms may be amended or otherwise replaced by Bond Owner.

“**Unmatured Event of Default**” means the occurrence or existence of any condition or event that, with notice or the passage of time, or both, would give rise to an Event of Default.

“**Write-Down and Conversion Powers**” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**1.2 Interpretation.** Unless the context of this Agreement expressly and specifically requires otherwise, the following rules of construction shall apply to this Agreement and each of the other Bond Loan Documents:

**1.2.1 Number; Inclusion.** References to the singular includes the plural; references to the plural includes the singular, the plural, the part and the whole; “or” has the inclusive meaning represented by the phrase “and/or”; and “including” has the meaning represented by the phrase “including without limitation”. In the case of any ambiguity, any references, terms, words or provisions are intended by the parties hereto to be, and shall be, interpreted so as to provide Bond Owner with the maximum benefit thereof, it being understood that Borrower has reviewed and negotiated the Bond Loan Documents and the parties hereto, and Guarantor by its execution of the Guaranty, irrevocably and unconditionally waive any right to claim that the Bond Loan Documents should be interpreted against any other party hereto (or against Guarantor) as the drafter thereof.

**1.2.2 Documents Taken as a Whole.** The words “hereof,” “herein,” “hereunder,” “hereto” and similar terms in this Agreement or any other Bond Loan Document refer to this Agreement or such other Bond Loan Document as a whole

and not to any particular provision of this Agreement or such other Bond Loan Document.

1.2.3 **Headings.** The Section and other headings contained in this Agreement or the other Bond Loan Documents and the Table of Contents (if any) following this Agreement or the other Bond Loan Documents are for reference purposes only and shall not control or affect the construction of this Agreement or the other Bond Loan Documents or the interpretation thereof in any respect.

1.2.4 **Implied References to This Agreement.** Article, section, subsection, clause, schedule and Exhibit references are to this Agreement unless otherwise specified.

1.2.5 **Persons.** Reference to any Person includes such Person's successors and assigns but only if such successors and assigns are permitted by this Agreement or the other Bond Loan Documents, as the case may be.

1.2.6 **References to Loan Documents.** Reference to any agreement (including this Agreement and any other Bond Loan Document together with the schedules and exhibits hereto or thereto), document or instrument means such agreement, document or instrument as amended, modified, replaced, substituted for, superseded or restated.

1.2.7 **References to Agreement and Laws.** Unless otherwise expressly provided herein, (a) references to formation documents, governing documents, agreement and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Bond Loan Document; and (b) references to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

1.2.8 **Accounting Terms.** For purposes of this Agreement, all accounting terms not otherwise defined herein or in the Recitals shall have the meanings assigned to them in conformity with GAAP.

1.2.9 **UCC Terms.** Terms defined in the UCC in effect on the Bond Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions.

1.2.10 **Times of Day.** Unless otherwise specified, all references herein to times of day shall mean Pacific Standard Time or Pacific Daylight Time as applicable.

1.2.11 **Fees and Charges.** Any and all fees paid to Bond Owner pursuant to any Bond Loan Document, including the Bond Owner Fee Letter, shall

be deemed to be fully earned and nonrefundable upon receipt thereof regardless of whether the Bond Loan is fully funded or repaid prior to the Maturity Date.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

As an inducement to Bond Owner to execute this Agreement to purchase the Bonds, Borrower hereby makes to Bond Owner the representations and warranties set forth below.

### **2.1 Organization, Powers; Good Standing and Non-Foreign Affidavit.**

#### **2.1.1 Organization; Powers; Good Standing.**

(i) Borrower is a Texas limited partnership. Borrower has been duly formed, is validly existing and is in good standing under the laws of Texas which is the State of its organization, formation or incorporation as applicable, is otherwise properly registered, authorized to do business and in good standing in that State and, if different, that State within which the Project is located. Borrower has all requisite power, authority, rights and franchises to own, construct and operate the Project in accordance with the requirements set forth in this Agreement and the other Bond Loan Documents and to enter into, deliver and perform this Agreement and the other Bond Loan Documents to which it is a party.

(ii) The Entity Guarantor has been duly formed, is validly existing and in good standing under the laws of Texas, which is the State of its organization, formation or incorporation, as applicable, and is otherwise properly registered, authorized to do business and in good standing in each state so required in order to carry on its material businesses and operations. The Entity Guarantor has all requisite power, authority, rights and franchises to own and operate its assets and conduct its businesses and to enter into, deliver and perform the Guaranty, the Non-Recourse Guaranty, and the other Bond Loan Documents to which it is a party.

(iii) The address of Borrower's and the Entity Guarantor's respective registered office and principal place of business is as set forth on Schedule 1 attached hereto.

**2.1.2 IRS Code Section 1445 Certification.** Section 1445 of the Code, provides that a transferee of an U.S. real property interest must withhold tax if the transferor is a foreign person. Borrower hereby certifies to Bond Owner (together with the trustee under the Bond Loan Mortgage, as applicable) that it is not a foreign person within the meaning of Section 1445 of the Code. Borrower understands that this certification may be disclosed to IRS by Bond Owner and that any false statement contained herein could be punished by fine, imprisonment or both. Borrower has delivered to Bond Owner its true and correct U.S. employer

identification number, which is the only employer identification number for Borrower.

## **2.2 Purpose; Authorization, No Defaults, etc.**

**2.2.1 Loan Purpose.** The Bond Loan is solely for commercial and business purposes and is not intended for, and proceeds thereof will not be used for, any consumer related purpose, including personal, family or household, or for any agricultural purpose.

**2.2.2 Authorization.** The execution, delivery and performance of the Bond Loan Documents by Borrower and the Entity Guarantor as applicable are within Borrower's and the Entity Guarantor's respective powers and have been duly authorized by all necessary action of Borrower and the Entity Guarantor respectively. No approval, consent, exemption, authorization or other action, notice or filing with or to any Governmental Authority is necessary or required in connection the execution of the Bond Loan Documents unless otherwise approved by Bond Owner.

**2.2.3 No Conflict.** The execution, delivery and performance of the Bond Loan Documents by Borrower and each Guarantor as applicable will not: (a) violate (i) the Organizational Documents of Borrower or any Organizational Documents of the Entity Guarantor, respectively, (ii) to the best of Borrower's knowledge after due investigation and inquiry, any legal requirement affecting the Collateral, Borrower or a Guarantor or any of their respective properties or assets or (iii) any agreement to which Borrower or a Guarantor is bound or to which it is a party; or (b) result in or require the creation of any lien in favor of any third Person (other than Bond Owner as set forth in the Bond Loan Documents and Permitted Liens) upon the Collateral, upon any direct or indirect ownership interest in Borrower or upon each Guarantor's properties or assets in favor of any third Person (other than Bond Owner as set forth in the Bond Loan Documents).

**2.2.4 Binding Obligations.** This Agreement and the other Bond Loan Documents have been duly executed by Borrower and each Guarantor as applicable and are the legal, valid and binding obligations of Borrower and each Guarantor as applicable, enforceable against Borrower and each Guarantor as applicable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**2.2.5 No Defaults.** No Material Adverse Change, Known Unmatured Event of Default or Event of Default exists.

## **2.3 Financial Condition.**

**2.3.1 Solvency.** Borrower and each Guarantor are Solvent and will remain Solvent after giving effect to the transactions contemplated by the Bond Loan Documents, including each Bond Proceeds Disbursement, all Obligations

incurred thereby, the security interests granted therein and the payment of all fees and expenses related thereto.

**2.3.2 Financial Statements and Condition.** Each of the Financial Statements, reports and information delivered to Bond Owner by or on behalf of Borrower and each Guarantor prior to the Bond Closing Date and each of the Financial Statements, reports and information thereafter delivered to Bond Owner by or on behalf of Borrower and each Guarantor pursuant to the requirements set forth herein, are true, correct and complete in all material respects as of the stated date thereof. Each of the Financial Statements, reports and information delivered to Bond Owner by or on behalf of Borrower and each Guarantor prior to the Bond Closing Date completely disclosed Borrower's and each Guarantor's financial condition to the Bond Owner, that there has been no Material Adverse Change in the Borrower's or a Guarantor's financial condition, and there exists no material obligations of Borrower not disclosed in such Financial Statements.

## **2.4 No Adverse Facts or Circumstances.**

**2.4.1 Material Defaults.** Borrower is not aware of any default in any material respect with respect to (a) the terms and provisions of any instrument evidencing or securing any Permitted Indebtedness of Borrower, (b) any Permitted Lien or (c) any Construction Contract or any Material Project Related Document.

### **2.4.2 No Adverse Litigation.**

(i) **Borrower and Project.** Borrower is not aware of any action, suit, investigation, proceeding or arbitration at law or in equity or before or by any Governmental Authority, pending or threatened against or affecting Borrower or any assets of Borrower, Borrower's leasehold ownership in the Project, the ownership of Borrower or the validity, enforceability, perfection or priority of the Bond Loan Documents or the rights and interests of Bond Owner, including their security interests in and to the Collateral, which seeks to enjoin, prohibit or delay the development and Completion of the Project or the use and operation of the Project for its intended purpose or which if determined against Borrower or its interests would cause a Material Adverse Change.

(ii) **Guarantor.** No Guarantor is aware of any action, suit, investigation, proceeding or arbitration at law or in equity or before or by any Governmental Authority, pending or threatened against or affecting a Guarantor or any assets of a Guarantor, or the validity, enforceability, perfection or priority of the Bond Loan Documents to which a Guarantor is a party, or the rights and interests of Bond Owner with respect thereto, which is reasonably likely to result in a Material Adverse Change if determined adversely to a Guarantor.

2.4.3 **No Material Adverse Change.** Borrower is not aware of any existing Material Adverse Change.

## 2.5 Compliance with Applicable Laws.

2.5.1 **Payment of Taxes.** All tax returns and reports of Borrower and each Guarantor required to be filed by any of them have been timely filed (taking into account valid extensions of the due date for any such returns), and all taxes, assessments, fees and other governmental charges upon Borrower and Guarantor, and upon their respective properties, assets, income and franchises which are due and payable have been paid when due and payable or are being contested in good faith in accordance with Applicable Law and with appropriate reserves therefor. Borrower knows of no proposed tax assessment against it that would be material to the condition (financial or otherwise) of Borrower, and Borrower has not contracted with any Governmental Authority in connection with such taxes.

2.5.2 **No Prohibited Securities Activities.** Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock (as defined within Regulations G, T and U of the Board of Governors of the Federal Reserve System), and no more than twenty-five percent (25%) of the value of Borrower's assets consists of such margin stock. No part of the Bond Loan will be used to purchase or carry any margin stock or to extend credit to others for that purpose or for any other purpose that violates the provisions of Regulations U or X of said Board of Governors.

2.5.3 **ERISA.** To Borrower's knowledge, Borrower is in compliance with ERISA. No Reportable Event, Prohibited Transaction (both as defined in ERISA) or termination of any plan has occurred, and no notice of termination has been filed with respect to any plan established or maintained by Borrower and subject to ERISA. Borrower has not incurred any material funding deficiency within the meaning of ERISA or any material liability to the Pension Benefit Guarantee Corporation in conjunction with any plan established or maintained by Borrower. Borrower is not a party to any Multiemployer Plan (as defined in ERISA). Borrower is not and shall not become an entity deemed to hold "plan assets" within the meaning of 29 C.F.R. § 2510.3-101 of an employee benefit plan (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA or any plan (within the meaning of Section 4975 of the Code), and neither the execution of this Agreement nor the making of the Bond Loan gives rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code. Borrower is and will at all times be and remain an "operating company" as defined in 29 C.F.R. § 2510-101(c). **"Benefit plan investors"** (as defined in 29 C.F.R. § 2510.3-101(f)) do not and will not own twenty-five percent (25%) or more of the value of any class of equity interests in Borrower.

**2.5.4 Governmental Regulations.** Neither Borrower nor any Guarantor is the subject of any Governmental Regulations that prohibits or limits any financial institution, including Bond Owner, from approving a disbursements to, or making any advance or extension of credit, to Borrower or from otherwise conducting business with Borrower or each Guarantor. Borrower and each Guarantor have implemented and maintain policies and procedures designed to ensure compliance with Governmental Regulations and the transactions contemplated hereby will not result in any violation thereof. Neither Borrower nor any Guarantor has engaged, or intends to engage, in any activity that could be reasonably expected to result in a violation of any such policies and procedures or any Governmental Regulations.

**2.5.5 Investment Company.** Neither Borrower nor Guarantor is subject to regulation under the Investment Company Act of 1940, the Federal Power Act, the Public Utility Holding Company Act of 1935, the Interstate Commerce Act or any federal or state statute or regulation limiting its ability to incur the Obligations.

**2.5.6 Compliance with All Other Applicable Laws.** Borrower and each Guarantor are, in all material respects, in compliance with all other Applicable Laws.

**2.5.7 No Prohibited Persons.** Neither Borrower nor the Entity Guarantor are Controlled by a Prohibited Person and no Prohibited Person has an ownership in either Borrower or the Entity Guarantor, whether directly or indirectly, that is greater than twenty percent (20%).

## **2.6 Representations Regarding the Project.**

**2.6.1 Title to Project.** Borrower is or will be the sole owner of, and has good and indefeasible title to, the leasehold interest in the Project, free from any Lien of any kind whatsoever, excepting only the Permitted Liens and taxes not yet due and payable. Except for the Real Property which is ground leased to Borrower under the Ground Lease, all assets constituting collateral under the Bond Loan Documents are titled in Borrower's name, and except in favor of the Bond Owner, Borrower has not executed any security documents related to such assets, and Borrower has not used or filed a financing statement under any other name within the last five (5) years cover any such asset. Borrower has not used or filed a financing statement under any other name within the last five (5) years.

### **2.6.2 Project Related Documents; Construction Contracts, Plans and Management Agreements.**

(i) Borrower holds all of the rights, title and interests of the Project owner in and to any and all existing Project Related Documents, any Construction Contract to which it is a party, the Plans and any Management Agreements, Borrower is not aware of any existing default with respect thereto which is reasonably likely to constitute or result in a Material

Adverse Change and Borrower's interest therein is not subject to any Imposition, Lien or other claim (other than the Permitted Liens), set-off or deduction other than in the ordinary course of business; and

(ii) Except as may otherwise be permitted from and after the Bond Closing Date in accordance with the terms of this Agreement and as otherwise disclosed in writing to Bond Owner prior to Closing, there are no Management Agreements in existence and, to Borrower's knowledge, no Material Project Related Documents in existence.

**2.6.3 Utilities and Access; Parking.** The Project has adequate rights of access to public ways and is or upon Completion will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service the Project for full utilization of the Project for its intended uses. All public utilities necessary to the full use and enjoyment of the Project as currently used and enjoyed are or upon Completion, will be located either in the public right-of-way abutting the Project (which are connected so as to serve the Project without passing over other property) or in recorded easements serving the Project. All roads necessary for the use of the Project for its intended purpose have been or, upon Completion will be, completed and dedicated to public use and accepted by all Governmental Authorities. The Project has, or is served by, or upon Completion will have or be served by, adequate parking and access in accordance with all Applicable Laws.

**2.6.4 Insurance.** All insurance policies furnished to Bond Owner by Borrower are valid and in full force and effect. No notice has been given or claim made and, to the best of Borrower's knowledge, no grounds presently exist to cancel or void any of such policies or to reduce the coverage provided thereby and, in Borrower's reasonable judgment, such policies provide adequate coverage in amounts sufficient to insure the assets and risks of Borrower in accordance with prudent business practices.

**2.6.5 No Claims Proceeding.** Borrower is not aware of any existing or threatened (in writing) Claims Proceeding against Borrower and/or the Project (or any portion thereof).

**2.6.6 Leases.** As of the Bond Closing Date there are no existing Leases.

**2.6.7 Compliance with Laws to Which Project is Subject.** The Project, and the uses to which the Project are and will be put, comply fully with, and Borrower is not otherwise in default with respect to: (a) to the best of Borrower's knowledge after due investigation and inquiry, all Applicable Laws, including all building, zoning and use laws, ordinances, requirements, rules and regulations; and (b) all applicable Impositions, including any covenants, conditions and restrictions and any other restrictive covenants and obligations created by private contracts which affect the ownership, construction, equipping, fixturing, use or operation of the Project.

**2.6.8 Governmental and Private Approvals.** All material certifications, permits, licenses, entitlements and approvals, and any other requirements of Applicable Laws for the construction of the Improvements (collectively, the “**Construction Approvals**”) have been obtained, or to Borrower’s the best of knowledge, will be obtained as and when required, and are, or once obtained will be, valid and in full force and effect in all material respects. Borrower has not received nor is Borrower aware of (a) any notice of violation or noncompliance with respect to any Construction Approval, (b) any contemplated or pending proceeding or action to rescind, limit in any material respect or otherwise revoke any of the Construction Approvals or (c) any Construction Approval which has not yet been obtained and with respect to which there is a material risk of not being able to obtain as and when required in order to Complete the Improvements by the Completion Date in accordance herewith. From and after Completion, (x) all material certifications, permits, licenses and approvals, including certificates of completion or occupancy that are required for the legal use, occupancy and operation of the Project for the purpose intended herein have been obtained or will be obtained as and when required and are valid and in full force and effect, and Borrower has not received nor is Borrower aware of any notice of violation or noncompliance with respect thereto and (y) the use being made of the Project is in conformity with the Certificate of Occupancy and any and all approvals, permits or licenses issued for the Project. To Borrower’s knowledge after due investigation and inquiry, no additional governmental or regulatory actions, filings or registrations with respect to the Project, and no approvals, authorizations or consents of any trustee or holder of any Indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower of the Bond Loan Documents to be executed by Borrower, except for permits, inspections, sign offs and similar approvals and authorizations to be obtained as and when required in connection with the ordinary course of developing, constructing and operating the Project.

**2.6.9 Personal Property.** Borrower is now and shall continue to be the sole owner of the personal property Collateral free from any adverse lien, security interest or adverse claim of any kind whatsoever other than any applicable Permitted Liens.

**2.6.10 Separate Tax Parcels.** The Project is comprised of one or more tax parcels that are separately identified from and assessed separately from any other real property.

**2.6.11 Special Assessments.** Except for the Permitted Title Exceptions, Borrower knows of no special assessments that have been imposed upon or are outstanding against the Project, and Borrower has not received any notice that a special assessment is being contemplated by any Governmental Authority having jurisdiction over the Project.

**2.6.12 No Construction; Maintenance Expenses.** Except as disclosed in writing to, and accepted by, Bond Owner, (a) no demolition, site improvement

work (including rough grading, excavation and/or shoring) or any other work that would give rise to a mechanic's or materialman's Lien against the Project has been commenced or performed with respect to the Project prior to the recordation of the Bond Loan Mortgage; and (b) all costs and expenses of any and all labor, materials, supplies and equipment used in the maintenance or repair of the Project to date have been paid in accordance with the payment terms and conditions with respect thereto and there are no delinquent claims for payment for work, labor or materials affecting the Project which are or may become a Lien against the Project (other than Permitted Liens).

**2.6.13 Construction of the Project.** Borrower is not aware of any structural or other material defects or damages in the Project, whether as a result of a casualty or otherwise, and whether latent or otherwise, except to the extent the same will be (a) remedied in the ordinary course in connection with the Completion of the Project, including any demolition of any existing improvements in accordance with the Plans and Applicable Law, or (b) otherwise remedied in accordance with **Section 7.13**. Borrower has not received notice from any insurance company, bonding company, inspector or any other Person of any defects or inadequacies in the Project, the construction of the Project or any part thereof, which would materially and adversely affect Completion, occupancy, leasing, use, sale or insurability of the same, (y) cause the imposition of extraordinary premiums or charges thereon or (z) cause any termination or threatened termination of any policy of insurance or bond.

**2.6.14 Boundaries.** Except as disclosed on the Survey, (a) except for any offsite work required to be done in connection with the construction of the Improvements pursuant to Applicable Law, none of the Improvements, including any Improvements from and after Completion, which were included in determining the value of the Project lie or are contemplated to lie outside the boundaries and building restriction lines of the Project and (b) no improvements on adjoining properties encroach upon the Project and no easements or other encumbrances upon the Project encroach upon any of the vertical Improvements so as to materially affect the intended use of the Project or the value or marketability of the Project.

**2.6.15 Intellectual Property.** Any trademarks, trade names and service marks necessary to the business of Borrower and the Project as presently conducted or as Borrower contemplates conducting upon Completion of the Improvements are, to Borrower's knowledge, in good standing and, to Borrower's knowledge, uncontested. Borrower has not infringed, is not infringing, and has not received notice of infringement with respect to any asserted trademarks, trade names and service marks of others. To Borrower's knowledge, there is no infringement by others of trademarks, trade names and service marks of Borrower or the Project.

2.6.16 **Ground Lease.** The Ground Lease is unmodified and in full force and effect and no event has occurred which with notice or lapse or time would allow the Ground Lessor to terminate the Ground Lease.

2.6.17 **Low-Income Housing Tax Credit.** A Low-Income Housing Tax Credit has been allocated to the Project in the amount set forth in the Tax Credit Allocation and, to Borrower's knowledge, all requirements to Borrower's right to receive the tax credit allocation as of the date hereof have been met. In connection with the foregoing, the Tax Credit Allocation is in full force and effect and Borrower is in full compliance with the terms and provisions thereof.

2.6.18 **No Commencement.** Except as otherwise specifically disclosed to the Bond Owner in writing prior to the Bond Closing Date, there has been no commencement of work of any nature on, or delivery of materials to, the Project.

2.6.19 **Bond Documents.** All representations and warranties of Borrower in the Bond Documents are true and correct in all material respects.

**2.7 Nature of Representations.** The foregoing representations and warranties shall be deemed made to Bond Owner as of the Bond Closing Date and except for representations made as to a specific date shall be deemed re-made (a) as of the date of each Bond Proceeds Disbursement (except as may be disclosed by Borrower in the Draw Request Package for such Bond Proceeds Disbursement), (b) as of each date that Financial Statements are delivered to Bond Owner pursuant to **Section 7.3** (except as may be disclosed by Borrower or a Guarantor in the applicable required certificate pursuant to **Section 7.3**).

**2.8 Reliance.** Borrower acknowledges and agrees that (a) Bond Owner is relying that each of the foregoing representations and warranties are true and correct in all material respects as a condition of (i) entering into this Agreement, (ii) purchasing the Bonds and Bond Owner approving a Requisition for making any of the Bond Proceeds Disbursements hereunder (subject only to any disclosures as set forth in **Section 2.7**), (b) that such reliance is without any duty or obligation to investigate or conduct any due diligence into whether any of the foregoing representations and warranties are or otherwise continue to be true and correct and (c) that such reliance is justified and reasonable.

### **ARTICLE 3 CLOSING**

**3.1 Conditions Precedent to Closing.** The effectiveness of this Agreement, the commitment of the Bond Owner to purchase the Bonds, and any obligations of Bond Owner to otherwise perform any obligations which any of them may have under this Agreement or any other Bond Loan Document are subject to Bond Owner's determination that each of the conditions precedent set forth below have been satisfied or otherwise waived in writing by the Bond Owner (and each such item has been received and

approved by Bond Owner; provided documents required under this **Article 3** may be delivered electronically):

**3.1.1 Delivery of Bond Loan Documents.** (a) Borrower shall have delivered to Bond Owner (or Trustee, as the case may be, and in that case copies of such documents to the Bond Owner) (i) fully executed (and notarized as applicable) originals of the Bond Loan Documents (or, as to any Bond Loan Document for which Bond Owner is willing to accept, a fully executed copy of the same with the original to follow via overnight mail), (ii) properly executed closing instructions of Bond Owner and (iii) a final closing settlement statement acceptable to Bond Owner, (b) Bond Owner shall have received all required Bond Owner's signatures, (c) Bond Owner shall have executed the same to the extent requiring Bond Owner's signature and (d) escrow shall have accepted and approved the Bond Loan Mortgage and all other recordable Bond Loan Documents for recordation in the applicable county or counties.

**3.1.2 Recordation of Deed of Trust – UCC Financing Statements.** The Bond Loan Mortgage and all other recordable Bond Loan Documents required to be recorded at the Bond Closing shall have been recorded in the applicable county recorder's office and Bond Owner shall have received confirmation of same (unless Bond Closing is pursuant to a gap Title Insurance Policy endorsement as approved by Bond Owner, in which case such recordation shall be substantially concurrent with Bond Closing). In connection with the Bond Closing, Bond Owner is hereby authorized to file (or cause to be filed) the UCC Financing Statements and fixture filings with all recording or filing offices in such jurisdictions as Bond Owner determines appropriate in order to perfect, continue or confirm the security interests in and to the Collateral granted to Issuer, Bond Owner, under the Bond Loan Documents.

**3.1.3 Closing Fees, Costs and Charges.**

(i) **Fee Letter Fees.** Bond Owner shall have received payment of all of the fees required to be paid to Bond Owner pursuant to the Bond Owner Fee Letter as of the Bond Closing Date.

(ii) **Bond Owner Fees, Costs and Charges.** Bond Owner shall have received, or will receive at the time of Bond Closing, payment of all fees, costs, charges, expenses and other amounts of Bond Owner and Bond Owner's Consultants which have been incurred in preparation of and in connection with the Bond Closing.

(iii) **Title, Escrow and Third-Party Costs.** Borrower shall have paid, or will pay at the time of Bond Closing, all third-party fees, costs, charges, expenses and other amounts required to be paid in order to satisfy the conditions of Closing and to close the Bond Loan, including all title and escrow fees, costs and charges, the cost of each Title Insurance Policy (inclusive of all endorsements) and any and all recording and filing fees and

costs, and the Bond Closing shall otherwise have occurred pursuant to the escrow and other terms of **Exhibit “O”**.

(iv) **Application of Good Faith Deposit; Loan Proceeds.** The fees, costs and charges set forth above, shall have been be paid from (i) any remaining good faith deposit funds which were previously received by Bond Owner with respect to the Bond Loan from or on behalf of Borrower prior to the Bond Closing, (ii) from Borrower’s own funds; all in accordance with the settlement statement approved by Bond Owner as of the Bond Closing Date and with Bond Owner’s closing instructions, as applicable, and (iii) to the extent any Bond Loan proceeds are to be disbursed at Closing, from Bond Loan proceeds.

**3.1.4 Project Related Closing Conditions.** Borrower shall have delivered to Bond Owner, and Bond Owner shall have determined, approved or otherwise accepted, each of the following:

(i) **Appraisal.** An Appraisal.

(ii) **Reports.** To the extent required by Bond Owner, a property condition report, a plan and cost review, a soils report and engineering study covering the Project (both certified to Bond Owner) and all other inspection and test reports made by or for Borrower or otherwise prepared by Bond Owner’s Consultants (and all items noted in any such reports as needing remediation, repair, or correction shall have been made in a manner satisfactory to the Bond Owner).

(iii) **Environmental Compliance.** An environmental assessment phase I report and, if required by Bond Owner, an environmental assessment phase II report, and such other evidence that Borrower has (i) conducted and completed all environmental investigations and studies on or to the Project, including a comprehensive environmental assessment, as may be required by (A) Bond Owner, (B) any governmental agency or authority or (C) any statute, regulation, rule, policy, or ordinance, to determine whether the Project has been contaminated with or by Hazardous Substances and whether regulated wetlands are present on the Project and (ii) performed and completed all necessary remedial, removal, and other actions to the Project so that the Project conforms to all applicable federal, state, and local statutes, ordinances, rules, regulations, policies, orders, and directives which govern or protect the environment. There has been no use, storage or release of any hazardous substances on any of the Project, Borrower has no knowledge of any use, storage or release of hazardous substances on the Project or any litigation related to any such use or release, there will be no use, storage or release of hazardous substances on the Project unless previously disclosed to, and agreed to by, the Bond Owner, and Bond Owner may enter onto the collateral property to ensure compliance with all environmental laws.

(iv) **Governmental Authority Authorizations.** Bond Owner shall have received such evidence as Bond Owner may require to confirm that the Project is and upon Completion will be in compliance with all Applicable Laws, and that any and all licenses, permits, entitlements, approvals and authorizations required as of the Bond Closing Date (or applicable requested Bond Proceeds Disbursement) have been obtained with respect to the ownership, development, construction, occupancy, use and maintenance of the Project as contemplated by this Agreement.

(v) **Flood Zone.** In accordance with the provisions of the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 (all as amended from time to time), satisfactory evidence that the Project is not located in a special flood hazard area (as determined by the Federal Emergency Management Agency) where flood insurance would be available in accordance with the aforementioned Acts, or if the Improvements are located within a special flood hazard area, Borrower has obtained, and is maintaining in full force and effect, a policy or policies of flood insurance in accordance with the terms hereof.

(vi) **Special Studies Zone.** Such evidence as Bond Owner may require that the Property is not located within a “special studies zone” under the Alquist-Priolo Special Studies Zone Act or within any zone which is classified as a Major Damage Zone, Zones 3 and 4, by the International Conference of Building Officials or, if the Property is within any such a zone, upon request from Bond Owner, evidence that Borrower has obtained, and is maintaining in full force and effect, a policy or policies of earthquake insurance pursuant to the Insurance Requirements.

(vii) **Impositions; Separate Tax Parcels; Zoning.** Evidence that all Impositions have been paid prior to delinquency, that the Project is in compliance with all subdivision requirements and constitutes a separate tax parcel or parcels and is properly zoned for its intended use and the Improvements to be built on the Real Property.

(viii) **Survey.** A Survey.

(ix) **Maps and Site Plans.** Borrower shall have delivered to Bond Owner true, correct and complete copies of any final maps (or tentative maps to the extent accepted by Bond Owner) and all site plans; together with such evidence as Bond Owner may reasonably require that such maps have been approved by the appropriate Governmental Authority (and with respect to any tentative map, subject only to non-discretionary remaining approval).

(x) **Title Insurance Policy.** Each Title Insurance Policy or, if acceptable to Bond Owner, an unqualified and unconditional commitment

by the Title Company for the Title Insurance Policy and payment of premiums with respect thereto) and true, complete and legible copies of all Permitted Title Exceptions.

(xi) **Insurance.** The policies of insurance (or evidence thereof) as required by the Insurance Requirements.

(xii) **Bond Closing.** Evidence that Bond Closing has occurred and in connection therewith, Bond Owner shall have received and approved copies of the fully executed Bond Documents, and Bond Owner shall have received and approved its original Bond (unless it is agreed in writing by the Bond Owner the Trustee may receive the Bond and hold the original Bonds for and on behalf of the Bond Owner, in which case the Bond Owner shall have received and approved evidence that the original Bonds are being duly held by Trustee).

(xiii) **Management Agreements and Project Related Documents.** Any existing Management Agreements and Material Project Related Documents.

(xiv) **Utilities.** Such evidence that electric, gas, sewer, cable, water and telephone facilities either are, or upon Completion will be, available to the Project.

(xv) **Accounts.** Borrower shall cause to be opened the Capital Contribution Account, Borrower's Construction Operating Account and any other Accounts required to be opened as of the Bond Closing Date pursuant to the terms and conditions set forth herein or in any other Bond Loan Document.

(xvi) **Approved Flow of Funds.** The Approved Flow of Funds.

3.1.5 **Construction Related Documents.** Borrower shall have delivered to Bond Owner, and Bond Owner shall have determined, approved or otherwise accepted, each of the following:

(i) **Architect's and Engineer's Agreements.** The Architect's Agreement and the Engineer's Agreement, together with assignments thereof to Bond Owner and the counter-party's consent thereto.

(ii) **General Contractor Agreement.** The General Contractor Agreement, together with an assignment thereof to Bond Owner and the counter-party's consent thereto.

(iii) **Conveyance to Ground Lessor.** The Real Property shall have been conveyed to the Ground Lessor on terms acceptable to the Bond Owner.

(iv) **Ground Lease.** The Ground Lease, together with an estoppel from the ground lessor on a form satisfactory to the Bond Owner.

(v) **Subcontracts, Schedule of Values, etc.** Copies of all existing subcontracts and a schedule showing (i) to the extent required by Bond Owner, all other Construction Contracts (including any subcontracts) awarded as of the Bond Closing Date, including names, types of work, subcontract amounts and percentage Retainage provided in said subcontracts, (ii) the amount of general conditions and an estimate of value for each subcontract not awarded as of such date and (iii) a total overall schedule of values.

(vi) **Contractor Licenses and Financial Condition of Contractors.** If requested by Bond Owner, (i) the General Contractor, Primary Subcontractor, and each existing subcontractor's respective contractor's license numbers and (ii) evidence satisfactory to Bond Owner that the General Contractor, Primary Subcontract, and the subcontractors each have the requisite experience and financial strength to perform its obligations under their respective Construction Contracts, which evidence may require delivery of its financial statements, including balance sheets and profit and loss statements.

(vii) **Budget and Construction Schedule.** The Budget and Construction Schedule.

(viii) **Plans, Etc.** The Plans and any other specifications, maps, drawings and other materials as exist and are reasonably available with respect to the Project.

(ix) **Cost Review; Budget and Construction Schedule.** Bond Owner shall have approved a cost review of the Project and contemplated construction thereof prepared by Bond Owner's Consultants confirming the reasonableness and accuracy of the Budget, the Plans and the Construction Schedule.

(x) **Payment and Performance Bonds.** If Bond Owner requires a payment and performance bond, copies of a payment and performance bond in amounts, form and content acceptable to Bond Owner and issued by a bonding company acceptable to Bond Owner and have a dual obligee clause.

(xi) **Regulatory Agreements.** The Bond Regulatory Agreement and each AHFC Restriction will be in place at closing of the Bond Loan.

(xii) **Other.** All building and other permits necessary for commencement of development of the Project, together with all additional documents and information relating to the design and construction of the

Improvements as may be required by Bond Owner and which are customarily required by construction lenders for projects similar to the subject Project.

**3.1.6 Borrower and Guarantor Related Conditions.** Borrower shall have delivered to Bond Owner, and Bond Owner shall have determined, approved or otherwise accepted, each of the following:

(i) **Organizational Documents.** True, correct and complete copies of the Organizational Documents of Borrower and Guarantor, together with such other information as Bond Owner may reasonably require in order to verify full authorization to execute, deliver and perform the Bond Loan Documents, including the authority of each Authorized Representative signing on behalf of Borrower or a Guarantor, as applicable.

(ii) **Good Standing Certificates; Resolutions.** (i) Good standing certificates (or their equivalents) for Borrower and each Guarantor from the State(s) referenced in **Section 2.1.1**, (ii) to the extent requested by Bond Owner, good standing certificates (or their equivalent) from the direct and indirect interest holders of Borrower and the Entity Guarantor who are within the chain of authority and (iii) such certified corporate, limited liability company, partnership or other appropriate entity resolutions, consents and certificates from each of such entities, authorizing the transactions described herein.

(iii) **Incumbency Certificates.** Incumbency certificates from Borrower and the Entity Guarantor which shall identify by name and title, and bear the signatures of, the Authorized Representatives of each such entity.

(iv) **Financial Statements.** As to Borrower and each Guarantor, current Financial Statements and, to the extent required by Bond Owner, (i) up to the last three (3) years of historical Financial Statements and (ii) such other financial information as Bond Owner may reasonably request to verify the financial condition of Borrower and Guarantors.

(v) **IRS Forms.** A signed IRS Form W-8 or W-9, as applicable.

(vi) **Governmental Regulations.** Bond Owner shall have received all KYC Information (including a Beneficial Ownership Certification to the extent Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation), and Bond Owner shall have determined compliance with the Governmental Regulations.

(vii) **AHFC Loans.** Evidence that each AHFC Loan has closed on terms acceptable to the Bond Owner and in connection therewith, Bond Owner shall have received and approved copies of each of the AHFC Loan

Documents and an original fully executed counterpart of an Intercreditor Agreement for each AHFC Loan.

(viii) **Other Information.** Borrower shall have provided Bond Owner such other documentation and information as Bond Owner may reasonably request.

3.1.7 **Loan Sizing Conditions.** Borrower shall have delivered to Bond Owner such evidence as may be required by Bond Owner to confirm the following as of the Bond Closing Date:

(a) **Loan-to-Value Ratio.** The Bond Loan-to-Value Ratio does not exceed eighty percent (80%).

(b) **Loan-to-Cost Ratio.** The Loan-to-Cost Ratio does not exceed eighty percent (80%).

(c) **DSCR.** The pro forma DSCR for the Project is no less than 1.15:1.00.

3.1.8 **Contributed Equity.**

(i) **Borrower's Initial Capital Contribution.** The Initial Capital Contribution shall have been deposited into the Capital Contribution Account, except for amounts used to pay Costs of Issuance and deposited in the Cost of Issuance Fund and other budgeted closing costs paid through the title company or to pay fees and pre-closing advances owing to the Investor Limited Partner.

3.1.9 **General Closing Conditions.**

(i) **Representations and Warranties.** All of the representations and warranties of Borrower and Guarantors set forth in the Bond Loan Documents and in the Bond Documents, including in **Article 2** of this Agreement, are true, correct and complete in all material respects.

(ii) **Covenant Compliance.** Borrower and Guarantor are in compliance with all of their respective covenants set forth in the Bond Loan Documents applicable to each of them, including all of the covenants set forth in **Article 7** of this Agreement.

(iii) **No Defaults.** No Material Adverse Change, Known Unmatured Event of Default or Event of Default is presently existing as of the Bond Closing Date.

(iv) **Legal Opinions.** Borrower, at its expense, shall provide (or cause to be provided by Bond Counsel) to Bond Owner with one or more written opinions by counsel reasonably acceptable to Bond Owner, with

respect to (i) the due organization, good standing and authority of Borrower and each Guarantor to execute deliver and perform the Bond Loan Documents and to grant to Bond Owner the security interests in and to the Collateral as provided in the Bond Loan Documents, (ii) the validity and enforceability of the Bond Loan Documents, (iii) the attachment of the liens and perfection thereof with respect to the real property, fixtures and the personal property collateral (to the extent perfected by filing of a UCC Financing Statement), (iv) the fact that there are no documentary stamp tax or other taxes or payments with respect to the recordation of the recordable Bond Loan Documents (other than standard filing and recordation fees), (v) the fact that there are no legal or contractual prohibitions to the execution, delivery and performance of the Bond Loan Documents by Borrower and each Guarantor, (vi) that the Bonds have been duly issued and interest earned on the Bonds will be tax exempt, and (vi) such other matters as may be reasonably required by Bond Owner.

(v) **Other Items and Information.** Borrower shall have taken such other actions and shall have provided Bond Owner with such other information and documents that it may reasonably require, and Bond Owner shall have accepted or otherwise approved the same as applicable, including any conditions of Closing which may be set forth in any schedule, Exhibit or rider hereto or as otherwise set forth in any other Bond Loan Document.

#### **ARTICLE 4 CONDITIONS PRECEDENT TO DISBURSEMENTS**

**4.1 General Conditions Precedent to All Disbursements.** In addition to and without limitation of any other conditions precedent set forth elsewhere herein, as a condition precedent to any approval of a Requisition to disburse Bond proceeds from the Project Fund, or to disburse Capital Contributions then on deposit with the Bond Owner, or to disbursement any deposits of the AHFC Loans for later disbursement, whether the initial disbursement, periodic disbursements related to construction, Requisition from the Interest Reserve or otherwise, Bond Owner shall have reasonably determined that, as of the date of such disbursement (or approval of a Requisition), each of the following conditions has been satisfied:

**4.1.1 Contributed Equity.** To the extent not required as a condition of Bond Closing, as a condition precedent to the initial Bond Proceeds Disbursement, satisfaction of the equity requirements set forth in **Section 3.1.8**.

**4.1.2 Loan Balancing.** As of the date of the Draw Request Package request, the Bond Loan is In Balance.

**4.1.3 Representations and Warranties.** Each of the representations and warranties of Borrower and Guarantor set forth in the Bond Loan Documents, including in **Article 2** of this Agreement, are true and correct in all material respects

as of the date made (with each of the representations and warranties set forth in **Article 2** being deemed remade by Borrower as true and correct in all material respects as of the date of the Draw Request Package, except as disclosed by Borrower pursuant to **Section 2.7**; provided that such disclosure shall not constitute satisfaction of this condition precedent to the applicable requested Bond Proceeds Disbursement).

**4.1.4 Financial Covenant Compliance.** [Reserved]

**4.1.5 No Defaults.** No Event of Default then exists and, unless waived by Bond Owner, no Material Adverse Change or Known Unmatured Event of Default then exists.

**4.2 Construction Disbursement Conditions Precedent.** In addition to and without limiting any other conditions precedent set forth elsewhere herein to the disbursement of any amount on deposit in the Capital Contribution Account or any amount of an AHFC Loan deposited with Bond Owner for later disbursement, or to the approval of a Requisition, as a condition precedent to any such disbursement from the Capital Contribution Account, of deposits of proceeds of the AHFC Loans, or approval of a related Requisition, Bond Owner shall have determined that for that disbursement or approval, each of the following conditions has been satisfied:

**4.2.1 Draw Request Package.** At least ten (10) Business Days prior to the date of the requested disbursement of any amount on deposit in the Capital Contribution Account or the disbursement of Bond proceeds in the Project Fund, (a) Borrower shall have delivered to Bond Owner a complete and accurate Draw Request Package and (b) Bond Owner shall have verified that the Draw Request Package is complete and accurate and is consistent with the Approved Flow of Funds. Each Draw Request Package submitted by Borrower shall constitute a representation and warranty by Borrower that, except as otherwise specifically disclosed in such Draw Request Package and labeled as a **"Disclosure"**: (i) Borrower is in compliance with and has satisfied all of the conditions to the applicable disbursement of the requested Funding Sources set forth in this Agreement, (ii) all applicable representations and warranties made under **Article 2** hereof or elsewhere in any Bond Loan Document, or in any certificate or other document executed by Borrower or Guarantor and delivered to Bond Owner pursuant to or in connection with the Bond Loan, are true, correct and complete in all material respects as of the date of the Draw Request Package (except to the extent any representation and warranty is made as of a specified date, in which case, such representation and warranty shall have been true, correct and complete in all material respects as of such specified date as if made on such date) and (iii) no Known Unmatured Event of Default or Event of Default then exists and, to Borrower's knowledge, no Material Adverse Change then exists (other than as disclosed in the Draw Request Package). Borrower hereby authorizes the Person identified on the Signature Authorization Form to execute and deliver each Draw Request Package. Promptly upon receipt Bond Owner shall post the Draw Request Package (or such portion thereof that Bond Owner deems appropriate)

onto an Electronic System to which Bond Owner have access. Acceptance by Borrower of the requested Bond Proceeds Disbursement or disbursement of deposits of the Capital Contributions or AHFC Proceeds shall in each case constitute a representation and warranty by Borrower that the statements and information set forth in the Draw Request Package remain true, correct and complete in all material respects as of the date of such Draw Request Package. With respect to and approval of a disbursement for hard costs, as part of the related Draw Request Package, Bond Owner shall have received a Request for Disbursement on the form attached hereto as **Exhibit "E"**. Notwithstanding anything contained herein to the contrary, as a condition precedent to Bond Owner's approval of the first Requisition and Draw Request Package after the Bond Closing Date, Bond Owner shall have received the following items: (A) a predetermination letter from Travis County Appraisal District indicating the Real Property is exempt from ad valorem taxes, together with a legal opinion satisfactory to the Bond Owner supporting the availability of that tax exemption, and (B) all Construction Approvals. Further, in addition to the other terms and requirements herein, for any request for reimbursement of a particular soft cost in excess of \$10,000.00, Borrower shall provide Bond Owner with the Draw Request Package a copy of the invoice for that soft cost;

**4.2.2 Construction Approvals.** Borrower shall have delivered, whether as part of the Draw Request Package or otherwise previously delivered, all necessary Construction Approvals relating to any work that is the subject of the requested Bond Proceeds Disbursement.

**4.2.3 Bond Owner's Consultant's Report.** To the extent required by Bond Owner, with respect to Bond Proceeds Disbursements and disbursement of deposits of Capital Contributions and proceeds of the AHFC Loans for Hard Costs, Bond Owner shall have received a report from Bond Owner Consultant designated by Bond Owner to review, analyze and conduct inspections pursuant to **Section 7.12** with respect to the subject Draw Request Package, with the cost and expense of such inspection and report paid by Borrower.

**4.2.4 Stop Notices; Lien Waivers and Related Endorsements.** No stop notices have been served on Borrower, General Contractor (and/or the Primary Subcontractor), Bond Owner which are not being contested by Borrower in accordance with **Section 7.7.6**. Other than Permitted Liens, no Liens (nor any claims which could give rise to Liens) exist. Bond Owner shall have received such conditional lien waivers as Bond Owner may require for works of improvement on the Project which is the subject of the requested Draw Request Package and, on a thirty (30) day trailing basis, Bond Owner shall have received such unconditional lien waivers as Bond Owner may require with respect to all prior works of improvement on the Project. All lien waivers shall be on forms in the form of **Exhibit "I"** attached hereto (using the applicable form), or such other form which substantially satisfies the requirements of HB 1456 as adopted by the Texas legislature and effective as January 1, 2012, or as otherwise required by Applicable Law and in form and content reasonably acceptable to Title Company and Bond

Owner. To the extent required by Bond Owner, Bond Owner shall have also received a commitment from the Title Company to issue an endorsement to each Title Insurance Policy extending the coverage to include the date and the amount of the requested Bond Proceeds Disbursement without exception for any matter not previously approved by Bond Owner in writing and insuring over all mechanics' and material suppliers' liens arising (or which may arise) from any works of improvement on the Project through the date of the applicable Bond Proceeds Disbursement.

**4.2.5 Additional Conditions for Vertical Construction.** With respect to either of the, (i) disbursement after the Bond Closing Date of deposits in the Capital Contribution Account or of deposits of the AHFC Loans with Bond Owner for later disbursement, or (ii) approval after the Bond Closing Date of a Requisition, (a) to the extent not previously delivered, Bond Owner shall have received, the policies of insurance (or evidence thereof) required during any period of renovation as set forth in the Insurance Requirements, and (b) to the extent required by Bond Owner, an updated Survey showing the location of such foundation and an endorsement to each Title Insurance Policy insuring that such foundation (i) is located within the boundaries of the Property and any set-back requirements and (ii) does not encroach on any other legal parcel or property or any easement or public or private right of way, and (c) a copy of a filed Affidavit of Commencement, in the form of **Exhibit "J"**, as filed with the County Clerk of Travis County, Texas, and otherwise satisfying the requirements of the Texas Property Code (which shall evidence that commencement of construction of the Improvements began after the date the Bond Loan Mortgage was recorded).

**4.2.6 Additional Conditions for Stored Materials.** With respect to any disbursement of deposits of the Capital Contributions, or approval of a Requisition for any materials, supplies or FF&E which are not yet physically incorporated into the Improvements ("**Stored Materials**"), except for deposits required to be made with respect to materials which have not yet been fabricated and/or delivered, to the extent required by Bond Owner, Bond Owner shall have determined that the following conditions have been satisfied: (a) Borrower has delivered an invoice and/or bill of lading describing the Stored Material, which shall include Borrower's name and the Project address; (b) the amount to be disbursed on account thereof does not include the cost of incorporating such Stored Materials into the Improvements; (c) the Stored Materials are, or upon delivery will be, safely and suitably stored on-site (or if off-site, as applicable) and insured for the full value thereof against theft, destruction or other casualty under insurance policies designating Bond Owner, as loss payee and additional insured as evidenced by insurance binders or endorsements satisfactory to Bond Owner; (d) immediately upon disbursement of the Bond Proceeds Disbursement thereof (or disbursement of deposits of the Capital Contributions and/or the proceeds of the AHFC Loans, Borrower will own such Stored Materials, as evidenced by appropriate bills of sale and payment receipts; (e) such Stored Materials are consistent with and will comply with the Plans, are free from defect and are of suitable quality for incorporation into the Improvements; (f) to the extent stored offsite and to the

extent required by Bond Owner, all such Stored Materials shall be physically segregated from all other assets of the vendor, placed in a bonded warehouse or similarly secured facility, with such vendor or other Person subordinating any rights thereto to the rights and Liens of Bond Owner; and (g) Bond Owner may file a financing statement or require Borrower to execute a security agreement relating to such Stored Materials. All Stored Materials must be installed in the Improvements within one hundred twenty (120) days of the delivery of such Stored Materials to the initial storage area, subject to reasonable extension thereof as may be approved by Bond Owner upon the prior request therefor by Borrower, but not to exceed one hundred eighty (180) days. The aggregate amount of Stored Material at one time in no event shall exceed \$\_\_\_\_\_.

**4.2.7 Additional Funding Conditions.** Except as may be required to satisfy the Fifty Percent Test, the Bond Owner shall have no obligation to approve any Requisition or disbursement of other funds unless and until it has received evidence of the payment for those line items set forth in the Budget and in accordance with the funding schedule agreed upon by Bond Owner to be funded by the portions of (a) the Capital Contributions then due pursuant to the Partnership Agreement and the Approved Flow of Funds, and/or (b) all of the funds from the AHFC Loans then payable under the Approved Flow of Funds.

**4.2.8 Slab Survey.** If and to the extent reasonably required by Bond Owner, after the pouring of a slab and upon completion of that slab, Borrower shall have delivered a current survey evidencing the actual location of the slab, showing no encroachment. If and to the extent required by the Bond Owner, Borrower shall have delivered a slab survey, if the proceeds of a particular Draw Request Package are for, among other things, costs associated with the slab to the Improvements, showing, among other things, no encroachments on or over any boundary line, easement, setback line, or other restricted area. The survey must be dated, signed, and stamped by a surveyor licensed by the State of Texas.

**4.2.9 Additional Conditions for Final Disbursement upon Completion.** With respect to approving a Requisition or any disbursement of other available Funding Sources for the final payment of the Hard Costs (but excluding any Punch List Items) and the payment of any Retainage (except as hereafter provided), Bond Owner has received evidence, and shall have reasonably determined, that each of the following conditions have been satisfied:

(i) **Completion.** Evidence of Completion, all as further described in the definition of "**Completion**" set forth above in **Section 1.1**, and without limiting the foregoing, Bond Owner shall have received and approved evidence that forty-one (41) days have elapsed after the later of (i) "completion" of the Improvements, as defined in and required by Section 53.106 of the Texas Property Code, or (ii) the date of completion as set forth in an Affidavit and Certificate of Completion (the "**Affidavit of Completion**"), filed with the county clerk of the county where the Real Property is located, executed by Borrower and the Contractor, and Architect

(provided the Architect shall be required to sign only if and to the extent required by the Bond Owner) in the form of **Exhibit "K"** (or a certificate or affidavit in such other form which complies with Section 53.106 of the Texas Property Code and is otherwise acceptable to the Bond Owner), or (iii) the date Borrower has otherwise fully and completely satisfied the requirements of Section 53.106 of the Texas Property Code, including, without limitation, providing a copy of any such affidavit to all parties, and within the time periods, required by such Section 53.106.

(ii) **Title Insurance Endorsements.** Such title insurance endorsements as Bond Owner may reasonably require which may include date down endorsements and other endorsements which insure over all mechanics' and material suppliers' liens arising (or which may arise) from the construction related to the Completion of the Improvements; and

(iii) **Permits.** Copies of all licenses, permits and agreements necessary for the use, operation and occupancy of the Project after Completion thereof to the extent not previously delivered to Bond Owner (which shall include in any event a final certificate of occupancy evidencing the Improvements can be legally occupied); and

(iv) **As-Built Survey.** If required by Bond Owner, an as-built survey, approved by Bond Owner and satisfying the requirements of **Exhibit "M"**, showing the location of the Improvements and showing no encroachment by any of the Improvements upon any boundary line, easement, building setback line, or other restricted area, and shall reflect there is public access and shall contain flood plain disclosures (Bond Owner in any event shall have received and approved a flood plain determination with respect to the Real Property). The survey must be dated, signed, and stamped by a surveyor certified in Texas; and

(v) **Affidavit of Bills Paid.** An affidavit of bills paid, in a form reasonably acceptable to Bond Owner, executed by Borrower (in the form of **Exhibit "R"**) and each Contractor (in the form of **Exhibit "Q"**), Architect, and such other Persons who have supplied materials or labor as Bond Owner may require to satisfy itself that the Improvements, on a form reasonably satisfactory to Bond Owner (and all other improvements to the Real Property completed through the date of any such affidavit) have been substantially completed lien-free and that the costs of all materials furnished and labor performed in connection with such construction have been paid in full subject to Retainage (or Bonded around by a Bond issued by a company satisfactory to Bond Owner and in an amount and on a form reasonably satisfactory to Bond Owner). Without limiting the foregoing, the Bond Owner shall have received and approved a fully executed (by Borrower, Architect, and Contractor) AIA Form G706 (Contractor's Affidavit of Payment of Debts) AIA Form G704, and concurrently with the payment

of Retainage, AIA Form G706a (Contractor's Affidavit of Release of Liens) and full; and

(vi) **Punch List.** A punch-list of any work to be completed and evidence there are sufficient sources of funds to pay such items;

(vii) **Lien Release.** Full and complete releases of lien from each subcontractor of and supplier to the Contractor with respect to work performed and/or materials supplied at the Project;

(viii) **Insurance.** Evidence of continuing insurance coverage in accordance with the Insurance Requirements; and

(ix) **As-Built Plans.** If required by the Bond Owner, a complete set of "as-built" plans and specifications, certified as accurate in all material respects by the Contractor; and

(x) **Escrows and Reserves.** All escrows and reserves required by this Agreement established in a manner satisfactory to the Bond Owner;

(xi) **No Breach or Default.** No Unmatured Event of Default or Event of Default shall have occurred and be then existing; and

(xii) **Other Items.** Such other evidence or information concerning completion as Bond Owner shall reasonably request (including funding of the installment of the Capital Contribution due in connection with construction completion as provided in **Exhibit "L"**).

**4.3 Conversion.** The Bond Owner shall have no obligation to deliver the Conversion Certificate and thereby convert the Construction Bond Loan to the non-advancing Permanent Bond Loan unless each of the following are fully and completely satisfied, in Bond Owner's sole and reasonable determination, or waived by the Bond Owner in writing on or before the Permanent Term Commencement Deadline (the below are collectively referred to as the "**Conditions to Conversion**"):

4.3.1 Lease Stabilization shall have occurred and in connection therewith, the outstanding principal balance of the Bond Loan shall have been reduced to at least the amount of \$5,300,000.00 (or such lesser amount required to achieve Lease Stabilization), and all unpaid and accrued interest on the Bond Loan shall have been paid;

4.3.2 Bond Owner shall have received and approved each of the following at least ten (10) days prior to the Conversion Date, but in any event by the Permanent Term Commencement Deadline (to the extent not theretofore provided to the Bond Owner);

- (a) a complete set of “as-built” Plans, consisting of the original Plans accepted pursuant to **Section 7.1.5**, modified with field notations and revisions to reflect the completed project, as constructed;
- (b) an updated ALTA/NSPS as-built survey of the Project;
- (c) an endorsement to the Title Insurance Policy, bringing the effective date of the policy to a date acceptable to Bond Owner, with no additional exceptions other than Permitted Title Exceptions and such other items as may be approved by Bond Owner in writing (or if such an endorsement is not available, for any reason, a new title policy on a form reasonably satisfactory to Bond Owner) and the escrow and other requirements of **Exhibit “O”** shall have been satisfied;
- (d) a final report from a review architect or Bond Owner’s construction consultant stating that the Improvements were satisfactorily completed in substantial accordance with the Plans;
- (e) current financial statements for Borrower, Guarantor, and the general partner of Borrower;
- (f) evidence of all insurance required at time of conversion, as set forth on in the Insurance Requirements;
- (g) current, within thirty (30) days of the date of the Conversion Date, Certificates of Fact, evidence from the Texas Comptroller of Public Accounts related to the payment of franchise taxes for Borrower, Guarantor other than individuals, if any, and the general partner of Borrower, as applicable;
- (h) a current certified project rent roll for the Project and most current balance sheet and income statement for the property.

4.3.3 No Unmatured Event of Default or Event of Default shall have occurred and be then existing.

4.3.4 Borrower shall have fully and timely satisfied (or Bond Owner has waived in writing) the requirements of **Section 4.2**, including, without limitation, providing Bond Owner with permanent certificates of occupancy, if available from the applicable Governmental Authority, for all units of the Project and the AIA Form G704;

4.3.5 Borrower shall be deemed to have reaffirmed all of the representations and covenants contained in the Bond Loan Documents are true and correct in all material respects (other than representations and warranties made as to a specific date);

4.3.6 All reserves and escrows then required by the Bond Loan Documents (or under the Partnership Agreement) shall be funded (proof of payment of insurance and taxes for the next twelve months may be provided in place of the required escrow); provided, however, that the Operating Reserve may be funded from the proceeds of the [third] Capital Contribution described in **Exhibit “L”** (as provided for in the Partnership Agreement);

4.3.7 The Investor Limited Partner shall have made (or, simultaneously with conversion, will make) all scheduled Capital Contributions required up to and including lease stabilization as provided in **Exhibit “L”** pursuant to the terms and conditions of the Partnership Agreement (except for adjustments made in accordance with the terms of the Partnership Agreement) and any other funding source for the development of the Project then scheduled to have been paid shall have then been paid;

4.3.8 Borrower shall have executed and delivered to Bond Owner such other information, documents, and certificates as Bond Owner may reasonably request in connection with the conversion of the Bond Loan and reimbursed Bond Owner for all of its reasonable costs and expenses incurred with respect thereto (including, without limitation, certificates of occupancy for all of the planned Improvements); and

4.3.9 Borrower shall have reimbursed Bond Owner for all of its reasonable costs and expenses related to the conversion of the Bond to the permanent phase.

## **ARTICLE 5 BOND PURCHASE AND BOND PROCEEDS DISBURSEMENTS**

### **5.1 Commitment to Purchase Bonds and to Disburse Bond Proceeds.**

5.1.1 In order to provide funds to make the Bond Loan subject to and as provided for in this Agreement, the Indenture and in the Financing Agreement, the Issuer will issue the Bonds and sell and deliver the Bonds to the Bond Owner, and the Bond Owner will purchase the Bonds for the combined face amount of the Bonds on the Bond Closing Date.

5.1.2 Simultaneously with the sale and delivery of the Bonds to the Bond Owner and subject to the provisions set forth below, the Issuer shall use the proceeds from the sale of the Bonds on the Bond Closing Date to simultaneously with such sale and receipt of the such proceeds make the Bond Loan to the Borrower subject to and as provided in the Financing Agreement and other Bond Documents and shall assign its rights with respect to the Bonds to the Trustee as provided in the Financing Agreement and the Indenture (Bond Owner is the party responsible for administering the Bond Loan as provided in this Agreement). As a result thereof, the Bond Loan shall be fully funded on or before the Bond Closing Date by deposit into the Project Fund (and certain other Funds under and as

provided for in the Indenture) and the deposits in the Project Fund not expended on or in connection with the Bond Closing Date for acquisition of the Real Property thereafter will, to the extent there are any amounts still on deposit in the Project Fund, be disbursed by the Trustee in periodic disbursements to Borrower by deposit into the Construction Operating Account subject to and as provided in this Agreement and the Financing Agreement.

5.1.3 In connection with the foregoing, Borrower promises and agrees to cause to be issued and delivered to Issuer the Bond Loan Note and Issuer agrees to issue the Bonds to the Bond Owner and Borrower agrees to repay the Bond Loan, plus interest, fees, and costs, in accordance with the terms of the Bond Loan Note, the Bonds, the Bond Documents, and the other Bond Loan Documents. Interest shall accrue on the Bond Loan and the Bonds in accordance with and in same manner interest accrues under the terms of the Bond Loan Note, as provided for in the Indenture, the Bonds, this Agreement, and the Financing Agreement.

5.1.4 Notwithstanding anything to the contrary set forth elsewhere in this Agreement or in any other Bond Loan Document, (a) the Bond Loan is not a revolving loan and no amounts which have been advanced and subsequently repaid may be re-borrowed, and (b) the commitment of Bond Owner to approve any further Requisitions (i) may be suspended pursuant to **Section 8.2.1** at any time during the existence of an Event of Default or Unmatured Event of Default, and (ii) shall automatically terminate, on the earlier of (A) the Maturity Date (as then applicable, or (B) the termination of such commitment as a result of the occurrence of an Event of Default under **Sections 8.1.9(i),(iv) or (vi)** as denoted in **Section 8.2.1**,.

5.1.5 Notwithstanding the foregoing, Borrower shall be entitled (subject to **Section 4.1** and **Section 4.2**) to request Bond Owner to make distributions of amounts in the Capital Contribution Account and of any deposits of the proceeds of the AHFC Loans made with Bond Owner for later disbursement, and to approve Requisitions made on the Bond Loan until, but not including the Completion Date, when (except as hereafter provided in the last sentence of this subsection), provided no Event of Default is then existing, the Bond Loan shall automatically convert to non-advancing term loans. On the Maturity Date, the outstanding balances and all unpaid and accrued interest of the Bond Loan shall be fully and finally due and payable in accordance with the terms and provisions of this Agreement and the Bond Loan Note. Notwithstanding the foregoing or anything to the contrary herein, disbursements of the Bond Loan for budgeted interest carry and for other hard and soft costs approved by Bond Owner as being provided for in the Budget and being payable from a Loan (and reflected in the Approved Flow of Funds as being payable after the Completion Date) and for Retainage may be made after the Completion Date (but in any event, in each case, prior to the Permanent Term Commencement Deadline); subject to compliance with **Section 4.2**, for hard and soft costs approved by the Bond Owner, interest carry, other items approved by the Bond Owner and only to the extent contained in the Budget, and for the final disbursement for Retainage (provided that with respect to

any such hard and soft costs payable after the Completion Date (and not fundings of interest carry), the conditions listed in **Section 4.2** are fully satisfied or waived by Bond Owner in writing, and with respect to Retainage, the final Bond Proceeds Disbursement or disbursement from the Capital Contribution Account of the Capital Contributions and/or of deposits with Bond Owner of the AHFC Loans, the conditions listed in **Section 4.2** are fully satisfied or waived by Bond Owner in writing.

5.1.6 Subject to the further terms of this Section and this Agreement, amounts approved to be paid pursuant to a particular Draw Request Package made after the Bond Closing Date to pay Good Costs shall be paid and/or disbursed in the following order: (A) first from deposits of the proceeds of the AHFC Loans made with Bond Owner for later disbursement, (B) second from proceeds of the Initial Capital Contribution deposited in the Capital Contribution Account maintained by the Bond Owner (to the extent deposited with the Bond Owner under the terms of the Partnership Agreement and to the extent available to pay Good Costs as provided in the most recently revised Budget and as set forth in subsection (6) below), and (C) third from the Requisitions made on the Project Fund until Bond proceeds have been fully disbursed therefrom (based on amounts as may be in the Project Fund after disbursement from the Project Fund on the Bond Closing Date for the acquisition of the Real Property). Without limiting the foregoing, except for a Requisition which may be made on the Bond Closing Date to use Bond proceeds to purchase the Real Property, no consent to a Requisition by the Bond Owner will be provided unless and until all of the Initial Capital Contribution and the AHFC Loans (to the extent to be funded under the Approved Flow Funds) have been fully funded in accordance with the terms of the Partnership Agreement and used first to pay Bad Costs and other Costs of Issuance (by payment to the Trustee in accordance with the terms of the Indenture) and then to pay Good Costs (by deposit in the Capital Contribution Account with respect to the Capital Contributions and in a designated account of Borrower at Bond Owner with respect to proceeds of the AHFC Loans deposited for disbursement therefrom in accordance with the terms of this Agreement). Without limiting the foregoing, it is agreed the proceeds of the Bonds shall only be used to pay Good Costs, and the proceeds of the Capital Contributions and the AHFC Loans shall be used first to pay Costs of Issuance and other Bad Costs (based on the Approved Flow of Funds) and then any remaining amounts shall be used to pay Good Costs in the order provided hereinabove. Notwithstanding the foregoing or anything else in this Agreement to the contrary, if the Bond Owner determines it is necessary that certain Draw Request Package be instead funded from the Project Fund to satisfy the Fifty Percent Test or if it is necessary to ensure that 95% of the proceeds of the Bonds are expended on Good Costs, those Draw Request Package will be first funded from the Project Fund (in any event, it is the intent of the parties that all proceeds of the Bond will be used for the development of the Project). Further, it is agreed and acknowledged that notwithstanding the foregoing or anything herein to the contrary, on or in connection with the Bond Closing Date, \$\_\_\_\_\_ of the proceeds of the Bonds will be used for the first rental payment due under the Ground Lease. Further, provided no default is then

existing under the Partnership Agreement, if after the Initial Capital Contribution is funded and the payment of the next installment described in **Exhibit "L"** is not yet then payable under the terms of the Partnership Agreement, and has not been actually deposited in the Capital Contribution Account subject to the terms of this Agreement, and if there are then no amounts from the AHFC Loans then deposited with Bond Owner subject to the terms of this Agreement, Bond Owner shall approve Requisitions of the Construction Bond Loan as provided for in this Section and in **Sections 4.1** and **4.2**, until the next funding of the Capital Contribution described in **Exhibit "L"** is payable under the terms of the Partnership Agreement. Amounts on deposit in the Capital Contribution Account and proceeds of the AHFC Loans deposited with Bond Owner for later disbursement, and other amounts deposited in an account of Borrower located at Bond Owner shall be each disbursed subject to and upon satisfaction of the same conditions as provided for in **Sections 4.1** and **4.2**.

5.1.7 Prior to and as a condition to the Bond Owner's agreement to buy the Bonds, the Borrower shall have caused the portion of the Initial Capital Contribution set forth in **Exhibit "L"** which will be used to pay Costs of Issuance to be deposited in the Cost of Issuance Fund in accordance with the terms of the Indenture, and then any remainder of the Initial Capital Contributions shall be deposited on a draw basis in the Capital Contribution Account for disbursement in accordance with the terms of this Agreement to first pay budgeted Bad Costs which are not Costs of Issuance in accordance with the Budget and then to pay budgeted Good Costs as provided in subsection (5) above.

5.1.8 Notwithstanding any of the foregoing or anything in this Agreement (or in the Partnership Agreement) to the contrary, (i) the second Capital Contribution described in **Exhibit "L"**, when funded subject to and in accordance with the terms and conditions of the Partnership Agreement, shall be first paid to Bond Owner for deposit in the Capital Contribution Account and then shall be applied first to pay any unpaid budgeted construction items which are the subject of a pending Draw Request Package, then at least [\$\_\_\_\_\_] shall be used to pay the outstanding principal balance of the Bond Loan Note, and the remaining portion shall be used as provided for in the Partnership Agreement, (ii) the third Capital Contribution described in **Exhibit "L"**, when funded subject to and in accordance with the terms and conditions of the Partnership Agreement, if and to the extent necessary, shall be first paid to Bond Owner and applied to pay the outstanding principal balance of the Bond Loan Note to a balance of not more than \$5,300,000.00 (and interest accrued thereon) (or such lesser amount required for Lease Stabilization and in any event to pay the Bond Loan to the amount Permanent Loan Amount) and then shall be applied to fund any required reserves and as otherwise provided for in the Partnership Agreement and (iii) the fourth Capital Contribution described in **Exhibit "L"**, when funded subject to and in accordance with the terms and conditions of the Partnership Agreement, shall be used to pay any Developer Fee to the extent then payable under the Partnership Agreement. The foregoing shall not change the treatment of the payment of such

Capital Contributions as Capital Contributions from the Investor Limited Partner for purposes of the Partnership Agreement.

## **5.2 Construction Related Disbursements.**

**5.2.1 Construction Related Bond Disbursements.** Subject to Bond Owner's determination that each of the applicable conditions, restrictions and limitations to a Bond Proceeds Disbursement related to construction have been satisfied (subject to any waiver or deferment thereof by Bond Owner in accordance with this Agreement), Bond Owner shall execute and consent to the associated Requisition whereby Trustee shall deposit such funds from the Project Fund into the Borrower's Construction Operating Account; provided that Bond Owner may, at any time an Event of Default, Known Unmatured Event of Default or a Material Adverse Change then exists, instruct the Trustee in writing to disburse the Bond proceeds or any portion thereof (a) directly to the General Contractor (or the Primary Subcontractor as the case may be), (b) jointly to Borrower and the General Contractor, (c) directly to contractor, subcontractor, supplier or materialman, (d) jointly to Borrower and any of said Persons or (e) to any combination of the foregoing.

**5.2.2 Construction Related Disbursement; Restrictions and Limitations.** In addition to and without limiting the other restrictions, limitations and conditions of Bond Owner's approval of a Requisition or of a request for disbursements of deposits of the Capital Contributions in the Capital Contribution Account and/or for a deposit of proceeds of the AHFC Loans made with Bond Owner for later disbursement, each as set forth elsewhere herein, all construction related Bond Proceeds Disbursements shall be subject to the following restrictions and limitations:

(i) **Disbursements Pursuant to Budget Only.** Construction related Requisitions on the Bonds and disbursements of deposits of the Capital Contributions in the Capital Contribution Account and of deposits of proceeds of the AHFC Loans made with Bond Owner for later disbursement, shall in case only be funded in accordance with the Budget, and Borrower shall only use such proceeds for the construction related Project Costs for which the Requisitions and disbursements were made. Except in a manner consistent with any changes thereto made in accordance with any changes in the Plans permitted under **Section 7.1.2** and clauses (b) and (c) below, Borrower will not revise, amend or otherwise modify the Budget without the prior written consent of Bond Owner, which consent shall not be unreasonably withheld, delayed or conditioned (except that it may be conditioned upon the satisfaction of any Disbursement condition with respect to such proposed change, including the balancing requirement set forth in **Section 5.2.3**). Borrower will submit any proposed revisions to the Budget requiring Bond Owner's review and approval at least ten (10) Business Days prior to the requested date of approval. Unless and until any proposed revised Budget has been approved, or otherwise

permitted under this **Section 5.2.2**, the then existing approved Budget shall control. Bond Owner shall not be required to approve any Requisition or to make any other disbursement under this **Section 5.2** with respect to (i) any work that is not a Project Cost set forth in the Budget, (ii) any requested payment or reimbursement that exceeds the actual cost of such work and (iii) any line item in the Budget, such requested payment or reimbursement when added to all prior payments and reimbursements as to such line item, would exceed the line item amount as set forth in the Budget (as such Budget may be updated from time to time pursuant hereto, including as a result of any previously permitted and/or approved change orders pursuant to **Section 7.1.2(iii)**); provided that, with respect to clauses (ii) and (iii) above, subject to taking into account any reallocation of any Line Item Cost Savings and any use of contingency pursuant to **Section 5.2.2(ii)** and/or **Section 5.2.2(iii)** respectively.

(ii) **Cost Savings; Reallocation.** In the event Borrower demonstrates to the reasonable satisfaction of Bond Owner that an actual cost savings has occurred with respect to any Budget line item, such that the full budgeted amount will not be necessary for the payment of the all of the costs and expense covered by that line item, the actual amount of such Line Item Cost Savings shall be reallocated to the contingency line item in the Budget or, subject to the reasonable approval of Bond Owner to another Budget line item or items to the extent determined appropriate by Bond Owner given any existing or increased costs with respect to such other line item or items. Notwithstanding anything to the contrary set forth elsewhere herein, no reallocation from the Interest Reserve shall be permitted.

(iii) **Contingency.** Subject to the satisfaction of the other conditions precedent to the approval of a Requisition or the making of a disbursement applicable thereto and the reasonable consent of Bond Owner, the Hard Cost contingency line item may be reallocated and used by Borrower for the payment of Hard Cost line items and the Soft Cost contingency line item may be reallocated and used by Borrower to pay for Soft Cost line items; provided that: (i) the applicable contingency line items in the Budget shall be reallocated and made available to Borrower only on a percentage of completion basis as reasonably determined by Bond Owner; (iii) without the prior consent of Bond Owner, the Hard Cost contingency shall not be reallocated to any Soft Cost line items and the Soft Cost contingency shall not be reallocated to any Hard Cost line items; and (iv) any request for reallocation and use of any contingency line item shall be set forth in the applicable Draw Request Package.

(iv) **Contractual Limitations.** Requisitions and other disbursements will be limited to amounts then due and payable (i) under the applicable Construction Contract, any Management Agreement, Project Related Document, taking into account any withholding or Retainage requirements or (ii) to the extent not the subject of a Construction Contract,

on the basis of invoices, statements or other evidence thereof reasonably acceptable to Bond Owner so long as consistent with the Budget.

(v) **Contractor Fees/Developer Fees.** Budgeted contractor fees and profit may be paid on a percentage of completion basis. Unless otherwise agreed to by Bond Owner upon request by Borrower and Borrower's showing of good cause therefor under the circumstances (which request shall be included in the Draw Request Package), no Developer Fee shall be paid prior to the issuance of the Conversion Certificate; except that so long as no Event of Default is then existing (or will result from the payment), (i) \$\_\_\_\_\_ of the Developer Fee may be paid from the Initial Capital Contribution, notwithstanding anything to the contrary provided for in the Partnership Agreement and the Development Agreement, and (ii) \$\_\_\_\_\_ may be paid upon Completion of the Improvements from the second installment of the Capital Contribution as set forth in **Exhibit "L"**, notwithstanding anything to the contrary provided for in the Partnership Agreement and the Development Agreement.

(vi) **Disbursements for Stored Materials.** In addition to the conditions set forth in **Section 4.2.6**, at no point in time, shall the aggregate amount of disbursements from the Project Fund and from deposits of the Capital Contributions for Stored Materials not yet incorporated into the Improvements exceed five percent (5%) of the total Hard Costs as set forth on the then applicable Budget.

(vii) **Frequency of Disbursements.** Borrower shall be entitled to submit no more than one (1) construction related Draw Request Package (with respect to a Requisition from the Project Fund or a disbursement of other Funding Sources on deposit with the Bond Owner) per calendar month.

(viii) **Minimum Disbursement Amount.** The minimum amount of any construction related Requisition or disbursement of any other source shall be One Hundred Thousand and No/100 Dollars (\$100,000.00) (except as to the final construction related Bond Proceeds Disbursement, which may be the lesser of One Hundred Thousand and No/100 Dollars (\$100,000.00) or the combined, remaining unfunded portion of the Bond Loan.

(ix) **Final Disbursement on Completion; General Contractor Retainage.** The final construction related Requisition and/or disbursement and payment of the Retainage to the General Contractor shall not be approved and made until Completion has occurred and the conditions to the final construction related Bond Proceeds Disbursement (and/or disbursement of the other Funding Sources) set forth in **Section 4.2.9** have been satisfied.

(x) **Punch List Items.** Bond Proceeds Disbursements for any Punch List Items remaining after Completion will be made upon completion of all such Punch List Items (and satisfaction of the other conditions to approval of the related request therefor by Borrower).

### 5.2.3 **Borrower's Funds.**

(i) **Loan In Balance Requirement.** An approval of a Requisition and/or a disbursement of deposits of the Capital Contributions and of deposits of proceeds of the AHFC Loans made with Bond Owner for later disbursement shall only be made at such times as the Bond Loan is In Balance. The Bond Loan will be considered "**In Balance**" only at such times as Bond Owner has determined that there are sufficient Funding Sources to pay Project Costs as and when required through Completion, pay any Punch List Items after Completion and pay interest on the Bond Loan through stabilization of the Project (to the extent provided for in the Budget). As used herein, "**Funding Sources**" means (i) the then available, remaining portion of the Bond Proceeds that has not yet been disbursed from the Project Fund for the payment of then remaining Project Costs, (ii) any undisbursed portion of the AHFC Loans, (iii) the sum of any of Borrower's Capital Contributions then on deposit in the Capital Contribution Account and any undisbursed Capital Contributions to be used for budgeted costs or to pay the Bond Loan which will be disbursed under the Partnership Agreement for budgeted items and/or the Borrower's Funds Account as applicable, (iv) any fees, credits, reimbursements or other amounts to which Borrower is entitled but has not yet received, but only to the extent included within the Budget or as otherwise reasonably accepted by Bond Owner, (v) any Balancing Deposit then held by the Bond Owner under this Section, and (vi) any Line Item Cost Savings approved by Bond Owner or which Borrower is entitled to reallocate pursuant to **Section 5.2.2(ii)**. In determining the then remaining amount of Project Costs, Bond Owner shall take into account any increases or decreases in Project Costs, operating expenses and extraordinary expenses, whether presently existing or reasonably likely to occur through Completion of the Project (and with respect to interest payments and reserves therefor, through stabilization), whether as a result of any changes in the Plans, the General Contractor's Agreement, any permitted change orders, delays or other matters which have come to the attention of Bond Owner and any changes to the Interest Rate.

(ii) **Balancing Deposits.** Within ten (10) Business Days after written notice from Bond Owner that the Bond Loan is not In Balance, which notice shall include the amount required to bring the Bond Loan back In Balance, Borrower shall deposit that amount required to bring the Bond Loan back In Balance into the Borrower's Funds Account (each, a "**Balancing Deposit**"). Any determination of Bond Owner with respect to whether the Bond Loan is In Balance shall be made in its reasonable discretion

and, so long as no Event of Default then exists, in consultation with Borrower; provided that, for avoidance of doubt, no consent or approval by Borrower shall be required with respect to Bond Owner's determination that the Bond Loan is not In Balance, with any determination by Bond Owner that the Bond Loan is not In Balance being conclusive absent manifest error.

(iii) **Funding from Borrower's Funds Account.** Except as otherwise permitted by Bond Owner or to satisfy the Fifty Percent Test or if it is necessary to ensure that 95% of the proceeds of the Bonds are expended on Good Costs, in each instance as determined by Bond Owner, all funds on deposit in the Borrower's Funds Account (collectively, the "**Borrower's Funds**") shall be disbursed prior to any subsequent Bond Proceeds Disbursement. Disbursements of Balancing Deposits shall be subject to the same conditions as would be applicable to a Bond Proceeds Disbursement hereunder. At any time an Event of Default then exists, Bond Owner (i) may apply all or any portion of the Borrower's Funds to the payment of the Obligations in accordance with **Section 6.2.5(ii)** (subject only to any right of each Guarantor to have applied to Project Costs pursuant to the Guaranty) or to the payment of any Project Costs, (ii) may use all or any portion of the Borrower's Funds to preserve, protect or otherwise secure its Collateral and its security interest therein or (iii) may hold all or any portion of the Borrower's Funds as additional Collateral for the Bond Loan. Any Balancing Deposit shall be returned by Bond Owner to Borrower upon either (x) Repayment in Full or (y) so long as no Event of Default then exists, the Bond Loan being back In Balance, without giving effect to any Balancing Deposit.

**5.3 Interest Reserve Disbursement; Disbursements for Bond Owner's Fees, Charges, Costs, Expenses or Other Amounts.** Borrower hereby authorizes Bond Owner, and the Bond Owner hereby agrees, to instruct Trustee in writing to make disbursements from the applicable Fund (or related account) pursuant to this Section (without the necessity of a Requisition therefor, to the extent not required by the Indenture) for (a) the payment of interest as and when due under this Agreement from the Interest Reserve and (b) any fees, charges, costs, expenses or other amounts of Bond Owner to be paid or reimbursed by Borrower pursuant to this Agreement or any other Bond Loan Document; provided, however, that all Bond proceeds shall be spent in accordance with the requirements of the Tax Exemption Agreement. Any disbursements for fees, charges, costs, expenses or other amounts of Bond Owner to be paid or reimbursed by Borrower pursuant to this Agreement or any other Bond Loan Document shall not be made to Borrower but shall be accounted for and otherwise paid or reimbursed to Bond Owner. Such authorization is irrevocable, and no further direction or authorization shall be required for the payment of interest, fees, charges, costs, expenses or other amounts as and when due in accordance with this Section. Upon Borrower's request, Bond Owner shall provide Borrower with a statement of, together with evidence of, any interest, fees, charges, costs, expenses or other amounts disbursed pursuant to this Section, but only to the extent Bond Owner maintains such statements or evidence in the ordinary course of administering the Bond Loan. If funds are not available from the

Interest Reserve or otherwise to pay such interest, fees, charges, costs, expenses or other amounts as and when due under this Agreement in accordance with this Section, Borrower shall timely pay such interest, fees, charges, costs, expenses or other amounts from its own funds. Nothing in this provision shall prevent Borrower from paying interest, fees, charges, costs, expenses or other amounts on the Bond Loan from its own funds prior to depletion of the Interest Reserve or any other applicable line item of the Budget. To the extent Borrower's Funds have been previously deposited with Bond Owner in accordance with **Section 5.2.3**, and such Borrower's Funds have been allocated for the payment of such interest, fees, charges, costs, expenses or other amounts, then such Borrower's Funds shall be disbursed prior to any disbursement of Loan proceeds pursuant to this **Section 5.3**. Notwithstanding anything to the contrary set forth above, unless directed by Bond Owner to do so following Borrower's failure to pay the same, Bond Owner shall not be required to cause to be paid from Bond Loan proceeds on deposit with Trustee from the Interest Reserve or fees, charges, costs, expenses or other amounts of Bond Owner to be paid or reimbursed by Borrower pursuant to this Agreement or any other Bond Loan Document if and to the extent there is sufficient net operating income being generated by the Project to pay such amounts. Without limiting the foregoing, provided no Event of Default is then continuing, and without changing the requirements to convert to the Permanent Term, any unfunded portion of the interest reserve (or cost savings in any other Budget line item) may be disbursed pursuant to a Requisition therefor up to the day before the Permanent Term Commencement Deadline on terms and in a manner satisfactory to the Bond Owner.

**5.4 Protective Advances.** Borrower hereby authorizes Bond Owner to make Protective Advances in accordance with this **Section 5.4**. In addition, Bond Owner may make Protective Advances as determined to be appropriate by Bond Owner. Bond Owner shall make the Protective Advances directly to such third parties and for such matters which are the subject thereof; provided that, so long as no Event of Default then exists, Bond Owner shall give Borrower no less than ten (10) Business Days prior written notice (unless a different notice period is specifically provided for with respect to any such Protective Advance in which case such notice period will apply) of its intent to make such Protective Advance and will only make such Protective Advance if Borrower has failed to provide satisfactory evidence to Bond Owner that the amounts or matters which are the subject of that proposed Protective Advance have been paid and otherwise satisfied in full. If, however, Bond Owner has reasonably determined that such notice is not practical under the circumstances, Bond Owner may give such shorter notice and opportunity to pay to Borrower as Bond Owner reasonably determines appropriate. At any time an Event of Default is then existing, no notice to Borrower or any other Person shall be required with respect to the making of, or the intent to make, any Protective Advance. Borrower shall reimburse Bond Owner, on demand, for all Protective Advances, together with interest accruing thereon at the then applicable rate on which interest is accruing under the Bond Loan Note. All Protective Advances shall be secured by the Bond Loan Mortgage.

**5.5 Renewal Option.** The Permanent Term Commencement Deadline may be extended on a one time basis for up to six (6) calendar months from September 1, 2028, to March 1, 2028, provided that each of the following conditions have been fully,

completely, and timely satisfied or waived in writing by Bond Owner on or before September 1, 2029 (for purposes of clarity, the extension of the Permanent Term Commencement Deadline pursuant to this Section shall not have any effect on the Amortization Period Commencement Date and amortization schedule attached as Exhibit A-1 hereto and the Bond Loan shall continue to be due and payable as provided in **Section 6.2** hereof notwithstanding such extension):

(a) At least thirty (30) days prior to September 1, 2028, Borrower shall have notified Bond Owner in writing that it requests an extension of the Permanent Term Commencement Deadline for six calendar months until March 1, 2029;

(b) Substantial Completion of the Improvements shall have occurred (as evidenced by a temporary certificate of occupancy and a certificate of substantial completion from the Architect and concurred to by Bond Owner's construction consultant);

(c) The Project shall be in full compliance with all applicable Placed in Service requirements;

(d) No event which materially limits, reduces, or impairs the Low-Income Housing Tax Credit for the Project shall have occurred, and Borrower shall otherwise be in compliance with all then applicable requirements of law relating to the Low-Income Housing Tax Credit for the Project;

(e) The Bond Owner shall have received and approved evidence each of the AHFC Loans shall each be in full force and effect and no party shall be in default thereunder and any deadline for converting to a permanent phase shall have been extended to at least March 1, 2029;

(f) The Project must demonstrate the ability to achieve Lease Stabilization and to have all Capital Contributions and the AHFC Loans payable through and including stabilization/conversion to be paid by the Permanent Term Commencement Deadline (as extended in accordance with this Section);

(g) Borrower shall have delivered, at its sole cost and expense, all extension and other agreements, instruments, amendments, title insurance endorsements, and modifications required by Bond Owner in its reasonable discretion to effect such renewal and extension (which extension agreement will provide for, among other things, that interest shall continue to accrue on the Bond Loan Note at the applicable rate provided for in the Bond Loan Note, and the Bond Loan Note shall continue to be payable as provided for in this Agreement and the Bond Loan Note);

(h) Borrower shall have reimbursed Bond Owner, Issuer, and Trustee for all of their reasonable costs and expenses (including reasonable attorney's fees) relating to the preparation of the modification agreements for the Bond Loan extending the Permanent Term Commencement Deadline to March 1, 2029;

(i) The interest reserve for the Bond Loan shall be adequate for the renewal term as reasonably determined by Bond Owner, or Bond Owner shall have determined the projected Project Net Operating Income from the Project during the renewal term will be sufficient to pay estimated interest and fees on the Bond Loan Note during the renewal term;

(j) As independent consideration for the extension, Borrower shall have paid to Bond Owner an extension fee equal to 0.25% of the combined aggregate outstanding principal balance of the Bond Loan Note existing on the date the extension term commences, plus the amount of any unfunded commitment under the Bond Loan;

(k) If required by Bond Owner, a current Appraisal reflecting a Loan-to-Value Ratio of at least 80%;

(l) No Material Adverse Change shall exist with respect to Borrower, Guarantor, or the Project;

(m) No Unmatured Event of Default or Event of Default shall be then existing; and

(n) The Bond Loan shall then be in balance as required by this Agreement and all installments of the Capital Contribution and advances of the AHFC Loans then payable as provided in the Approved Flow of Funds shall have been funded as set forth in this Agreement.

**5.6 Disbursements.** Notwithstanding the foregoing or anything contained herein to the contrary, Bond Owner may, in its sole and absolute discretion, elect to use the Built online Construction Bond Loan platform ("**Built Platform**") as the exclusive method for Borrower's submission of Draw Request Packages. Borrower shall be responsible for any and all fees and costs arising from the Built Platform attributable to the Bond Loan. Borrower shall solely be responsible for the creation of an account on the Built Platform for Disbursements. In the event Bond Owner incurs any fees from the Built Platform directly related to the Bond Loan in connection with the Borrower's use thereof, Borrower shall reimburse Bond Owner for the same within fifteen (15) days of Bond Owner's written request. If Borrower does not reimburse Bond Owner within such fifteen (15) day period, Bond Owner may authorize disbursement of such amounts from

the Bond Loan on Borrower's behalf to Bond Owner to reimburse Bond Owner for such fees.

## **5.7 Recourse.**

**5.7.1 Construction Term.** During the Construction Term, the Bond Loan shall be a full recourse obligation of the Borrower.

**5.7.2 Permanent Term.** During the Permanent Term, except as otherwise provided in this **Section 5.7**, the Bond Loan shall be nonrecourse to Borrower and its partners, and Borrower and its partners shall have no personal liability under the Bond Loan Note, this Agreement, the Bond Loan Mortgage, or any Bond Loan Document for the repayment of the Bond Loan Note and other Bond Loan Documents, and Bond Owner's only recourse for the satisfaction of the Bond Loan Note, and the other Obligations the performance of such obligations during the Permanent Term shall be Bond Owner's exercise of its rights and remedies with respect to the Collateral.

**5.7.3 Permanent Loan Liability.** Notwithstanding anything to the contrary in **Section 5.7.2** above, during the Permanent Term, Borrower shall be personally liable to the Bond Owner for the repayment of loss relating to the following:

(i) fraud, material misrepresentation or failure to disclose a material fact by Borrower or any of its principals, officers, or members, any indemnitor, or any agent, employee or other person authorized to make statements, representations or disclosures on behalf of such persons;

(ii) waste, in any material respect, committed on the Collateral by, or damage, in any material respect, to the Collateral as a result of the intentional misconduct or gross negligence of, Borrower or any of its principals, officers, partners or members, or any agent or employee of such persons, or any removal of the Collateral in violation of the terms of the Bond Loan Documents, to the full extent of the losses or damages incurred by Bond Owner and/or Bond Owner on account of such occurrence;

(iii) failure to pay property or other taxes, assessments or charges and/or failure to procure and maintain the insurance policies for the Collateral required by the Bond Loan Documents (other than amounts paid to Bond Owner or Bond Owner for taxes, assessments or charges and/or insurance premiums pursuant to an impound account and where Bond Owner elects not to apply such funds toward payment of the taxes, assessments or charges and/or insurance premiums owed) which may create liens senior to the lien of the Bond Loan Mortgage on all or any portion of the Collateral;

(iv) failure to maintain insurance as required by this Agreement, the Bond Loan Documents or deliver any insurance or condemnation

proceeds or awards or, to the extent required within the Bond Loan Documents, any security deposits received by Borrower to Bond Owner or to otherwise apply such sums as required under the terms of this Agreement, the Bond Loan Documents, or any other instrument now or hereafter securing the Bond Loan Note;

(v) willful misappropriation or misapplication of any funds from any account pledged by Borrower to Bond Owner under the Bond Loan Documents;

(vi) gross negligence, willful misconduct or criminal acts perpetrated by Borrower resulting in the forfeiture, seizure, loss or diminution in value of all or any portion of the Collateral;

(vii) failure to apply any rents (including without limitation any rents and other lease payments received more than one (1) month in advance), royalties, accounts, revenues, income, issues, profits, sums received in consideration of any surrender or termination of any lease (or the release or discharge of any tenant thereunder) or material modification of any lease on the Collateral, and other benefits from the Collateral which are collected or received by Borrower (A) as required under the terms of the Bond Loan Documents or any other instrument now or hereafter securing the Bond Loan for the payment of the ordinary and necessary expenses of owning and operating the Collateral or paid to Bond Owner, or (B) either during the period of any Event of Default, or after the occurrence of any event which with the giving of notice or the passage of time, or both, would constitute a Default, or after acceleration of the indebtedness and other sums owing under the Bond Loan Documents, only to the payment of either such indebtedness or other sums, or the normal and necessary operating expenses of the Collateral;

(viii) failure by Borrower to comply with the single-purpose entity requirements, if any, set forth in the Bond Loan Documents;

(ix) failure of Borrower to satisfy any of its indemnification obligations under the Bond Loan Documents; and

(x) breach by Borrower, or any failure of Borrower, to comply with, the representations, warranties and covenants set forth in this Agreement relating to prohibited or illegal activities, regardless of whether such breach or failure results in the forfeiture, seizure, loss of all or any portion of the Collateral or the Issuer's security interest therein.

In addition to the foregoing, Borrower agrees to pay to Bond Owner (all fees and other collection costs (including without limitation attorneys' fees and/or expert witness fees) reasonably incurred by Bond Owner in any legal or equitable, judicial or non-judicial, action or proceeding (including without limitation any arbitration,

mediation, and/or any other alternative dispute resolution proceeding to enforce or defend any provisions of the foregoing (including attorneys' fees and costs reasonably incurred in any appeal proceedings or in any bankruptcy proceedings involving Borrower and/or any indemnitor or Borrower under any indemnity or guaranty to enforce the provisions of the foregoing), together with interest thereon from the date of such demand until paid at the rate of interest then applicable to the principal balance of the Bond Loan Note

Notwithstanding the foregoing limitation on the amount of the recourse nature of the Bond Loan shall become null and void and the Bond Loan shall be without limitation as provided for in **Sections 5.7.2** and **5.7.3** above upon the occurrence of any of the following:

(xi) After Bond Owner is entitled to pursue its rights and remedies pursuant to the terms and conditions of the Bond Loan Documents, and Applicable Law, Borrower or a Guarantor contests or in any way interferes with, directly or indirectly, any foreclosure action, UCC sale and/or deed in lieu of foreclosure transaction commenced by Bond Owner in accordance with Applicable Law or with any other enforcement of Bond Owner's rights (in accordance with applicable law), powers or remedies under the Bond Loan Documents or under any document evidencing, securing, or otherwise relating to any of the collateral (whether by making any motion, bringing any counterclaim, claiming any defense, seeking any injunction or other restraint, commencing any action, seeking to consolidate any such foreclosure or other enforcement with any other action, or otherwise); or

(xii) Borrower or any general partner of Borrower makes an assignment for the benefit of creditors, or admits in any legal proceeding, its insolvency or inability to pay its debts as they become due; or

(xiii) Any affiliate, officer, director, or representative which Controls Borrower or which Controls any general partner of Borrower or Borrower consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower, any general partner of Borrower or any portion of the Collateral except, if such custodian, receiver or trustee is appointed by Bond Owner; or

(xiv) Borrower shall voluntarily file or commence a petition, case or application for any bankruptcy, reorganization, dissolution or other relief for Borrower under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or

(xv) The filing of an involuntary petition against Borrower under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless it is dismissed within sixty (60) days of the filing thereof; or

(xvi) The filing of an involuntary petition by Bond Owner against Borrower under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors following the filing by Borrower of a voluntary petition under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, where Borrower or any Borrower files any motion contesting such petition filed by Bond Owner or Bond Owner; or

(xvii) The filing of an involuntary petition against under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors by any other party in which Borrower colludes with or otherwise assists such party, and/or Borrower solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower by any party; or

(xviii) Borrower files an answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it by any other Person under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or

(xix) There is substantive consolidation of Borrower or any general partner of: Borrower with any other person or entity in connection with any federal or state bankruptcy proceeding; or

(xx) The existence of an Event of Default resulting from a property transfer or equity transfer prohibited under the terms of this Agreement or any other Bond Loan Documents , including, without limitation, any transfer of the Collateral or any part thereof shall occur without the prior written consent of Bond Owner; or

(xxi) Borrower shall (1) incur any debt, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than the Bond Loan Note or trade debt incurred in the ordinary course of Borrower's business which shall be paid in accordance with terms of the Bond Loan Documents, or (2) permit the transfer, encumbrance, hypothecation or pledge of any of the membership, partnership or other ownership interests of Borrower in violation of the terms of the this Agreement or any of the other Bond Loan Documents.

**5.8 AHFC Loan.** As a condition to the Bond Owner's purchasing the Bonds and of Issuer's making of the Bond Loan, the Bond Owner shall have received and approved evidence that each AHFC Loan has closed on terms acceptable to the Bond Owner, and the Bond Owner shall have received and approved a fully executed original counterpart of an Intercreditor Agreement for each AHFC Loan, together with copies of the AHFC Loan Documents. Without limiting and subject to the other terms and provisions of this Agreement, the AHFC Loans will be fully funded based on the Approved

Flow of Funds, and in any event, no proceeds of the Bond Loan will be disbursed from the Project Fund after the Closing Date unless and until all of such proceeds of the AHFC Loans (being 90% of the combined amount of the AHFC Loans) have first been fully funded and used to pay budgeted items, and, to the extent not used on the Closing Date to pay closing costs or to pay budgeted costs then due, those proceeds from fundings of the AHFC Loans not immediately funded to and used by Borrower to pay budgeted items shall be deposited in separate blocked interest bearing account of the Borrower located at Bond Owner for later disbursement in connection with a Requisition made under the terms of this Agreement. Borrower shall provide the Bond Owner with invoices, receipts, purchase orders, or other evidence of the budgeted items paid with the proceeds of the AHFC Loans (including if used for predevelopment costs incurred and paid prior to the Bond Closing Date. At Borrower's request, Bond Owner has provided bridge financing as a disbursement of proceeds of the Bond Loan from the Project Fund with respect to the aforementioned 10% holdback of the AHFC Loan, and when such holdback is funded, the proceeds will be paid to the Bond Owner for application to the Bond Loan Note.

## **ARTICLE 6 INTEREST; PAYMENTS; MATURITY DATE YIELD PROTECTION**

### **6.1 Bond Loan Interest Rate and Related Terms.**

#### **6.1.1 Bond Loan Interest Rate.**

(i) **Interest Rate.** Subject only to **Sections 6.1.1(ii)** and **(iii)** and **Section 6.1.3**, interest shall accrue and be payable on the outstanding principal Bond Loan balance at that rate per annum which is equal to the Interest Rate, as calculated by Bond Owner as of each Interest Rate Determination Date and taking effect as of the Bond Closing Date.

(ii) **Unavailability of SOFR.** If Bond Owner determines on or before any Interest Rate Determination Date that the Daily Simple SOFR is unavailable, will become unavailable prior to the next Daily Simple SOFR Determination Date or that it is, or will be as of the next Daily Simple SOFR Determination Date, unlawful to use the Daily Simple SOFR (each a "**SOFR Unavailability Event**") because the Daily Simple SOFR (i) has been or imminently will be discontinued, (ii) is no longer an industry-accepted reference rate for loans of a similar type to the Bond Loan and/or has been superseded by an alternative reference rate, or (iii) is no longer representative or may not be used pursuant to a public statement by the administrator of the Daily Simple SOFR or other regulatory authority (e.g., the Federal Reserve), in each case with respect to any type of loan or transaction, then Bond Owner (in consultation with Borrower so long as no Event of Default or Known Unmatured Event of Default then exists but without any requirement of obtaining the consent of Borrower with respect thereto) may select an alternative reference rate to be used in lieu of the Daily Simple SOFR (the "**Pre-Substitute Rate**"), which may reflect

adjustments to the related spread or margin to the extent Bond Owner has determined necessary to reflect the economics of the Pre-Substitute Rate (collectively, the “**Substitute Index Rate**”) and may result in modifications to certain interest related definitions and provisions to the extent necessary to give effect to and implement such Substitute Index Rate, including without limitation, the definitions of Business Day, Daily Simple SOFR Determination Date and Daily Simple SOFR Rate Day, all of which Bond Owner is hereby authorized to make and to which Borrower will be bound so long as done in accordance with this Section. Borrower acknowledges that the discontinuation or unavailability of the Daily Simple SOFR is a future event over which no party hereto has influence but which will necessarily affect the Pre-Substitute Rate. Accordingly, Bond Owner shall use reasonable efforts to select a Substitute Index Rate that Bond Owner in good faith believes is a practical means of preserving the parties’ intent relative to the economics of the Pre-Substitute Rate and Bond Owner shall consider to what extent and the manner in which industry-accepted substitutes for the Interest Rate have been established, with Borrower acknowledging that different Substitute Index Rates may be selected for different types of loans and transactions. Notwithstanding the foregoing, the parties acknowledge that, initially and/or over time, the Substitute Index Rate will differ from the Pre-Substitute Rate. In selecting the Substitute Index Rate, Bond Owner shall consider to what extent and the manner in which industry-accepted substitutes for the Daily Simple SOFR have been established, and the parties acknowledge that different Substitute Index Rates may be selected for different types of loans and transactions. Borrower agrees that Bond Owner shall not be liable in any manner for its selection of a Substitute Index Rate, provided that Bond Owner makes such selection in good faith in accordance herewith. The Substitute Index Rate shall be used in lieu of the Pre-Substitute Rate, and all references in this Agreement and the Bond Loan Note to the Pre-Substitute Rate shall be deemed to refer to the Substitute Index Rate, effective as of the date specified by Bond Owner in a written notice given by Bond Owner to Borrower. To the extent practical, Bond Owner shall endeavor to provide Borrower at least ten (10) Business Days’ notice prior to such effective date. The Substitute Index Rate shall remain in effect from the effective date set forth in such notice until Maturity Date, as such may be extended, unless such an instance occurs where the Substitute Index Rate is no longer available, in which case the provisions of this Section will again apply for purposes of replacing the Substitute Index Rate. Notwithstanding anything herein to the contrary, to the extent the Hedge Transaction Documents are still in force and effect, Bond Owner shall select a Substitute Index Rate that matches the floating rate under the Hedge Transaction Documents.

(iii) **Late Charge.** If any monthly amount payable under the Bond Loan Note or under the Bond Loan Mortgage or any other Bond Loan Document is not received by Bond Owner (i) within fifteen (15) days after the scheduled due date, Borrower shall pay to Bond Owner, promptly and

without demand by the Bond Owner, Issuer, Trustee, or Bond Owner, a late charge equal to five percent (5%) of such amount. Borrower acknowledges that its failure to make timely payments will cause Bond Owner to incur additional expenses in servicing and processing the Indebtedness, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this subsection represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Agreement, of the additional expenses the Bond Owner, Bond Owner, Issuer, or Trustee, will incur by reason of such late payment. This late charge is in addition to, and not in lieu of, any other remedy Bond Owner may have and is in addition to any default interest, fees, charges and other costs which Bond Owner may be entitled to as a result of such failure to pay or any then existing Event of Default.

(iv) **Default Rate.** At any time an Event of Default has occurred and is continuing, interest shall accrue and be payable on the outstanding principal balance at the of the Bond Loan at the Default Rate with respect to the occurrence of an Event of Default (i) under **Section 8.1.1** or **Section 8.1.9(i), (iv) or (v)** and (ii) with respect to the occurrence of any other Event of Default not described in the above clause (i), interest shall accrue on the outstanding principal balance of the Bond Loan at the Default Rate immediately upon the election of Bond Owner. In addition to and without limitation of the above, Bond Owner may (but without any obligation to do so) further waive, defer or otherwise reduce the imposition of the Default Rate Spread and any amounts which may accrue, or may have accrued, at the Default Rate. Except to the extent prohibited by Applicable Law, from and after any judgment obtained by Bond Owner with respect to the Obligations, interest shall accrue and be payable on that judgment at that rate which is the greater of the applicable statutory post-judgment rate of interest or the Default Rate. When the interest rate has been increased due to the Default Rate, Bond Owner may invoice Borrower for a single amount of accrued interest that represents the sum of both (i) accrual under the interest rate applicable in the absence of default (“ordinary interest”), and (ii) additional accrual resulting from the default and interest rate increase (“default interest”). Alternatively, in Bond Owner’s sole discretion, Bond Owner’s invoice may identify the ordinary interest and default interest as separate amounts. Bond Owner’s invoice may caption default interest as “**Late Charges**” or the like but said amount shall in all respects constitute interest.

6.1.2 **Calculation.** The Interest Rate will be adjusted from time to time on each Interest Rate Determination Date (other than in connection with the Substitute Index Rate which may be determined by Bond Owner on a different date (as specified in **Section 6.1.1** above). It is understood and accepted by Borrower that Bond Owner may use different, lower and better index rates and rates of interest with respect to other customers and Borrower waives any claims that could

arise as a result thereof. All interest hereunder shall be computed on a 365/360 basis and shall be payable for the actual number of days elapsed. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Agreement is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Agreement. All determinations and calculations by Bond Owner under this **Section 6.1** shall be conclusive absent manifest error.

**6.1.3 Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the applicable Interest Rate, together with any fees, charges and other amounts which are required by Applicable Law, court order or judgment to be treated as interest (collectively, the “**Deemed Effective Rate**”), shall exceed the Maximum Rate, then the rate of interest payable with respect thereto, together with all such fees, charges and other amounts which were required to be treated as interest, shall be limited to the Maximum Rate and, to the extent any payments were made at a Deemed Effective Rate in excess of the Maximum Rate (collectively, the “**Excess Amounts**”), such Excess Amounts will be credited against future interest payments at the applicable Interest Rate (but not to exceed the Maximum Rate). Borrower hereby agrees that the foregoing remedy is fair and reasonable and, to the fullest extent permitted by Applicable Law, waives any right to demand or otherwise seek return of any Excess Amounts except to the extent Repayment in Full has previously occurred and further waives any right to seek compensatory, punitive or special damages with respect to the charging of any such Excess Amounts by Bond Owner.

## **6.2 Bond Loan Payments.**

### **6.2.1 Monthly Payments.**

(i) **Pre-Amortization Period Commencement Date Payments.** Commencing as of the first Payment Date (as set forth in the definition of Payment Date) and continuing on each Payment Date thereafter until and including the Amortization Period Commencement Date, Borrower shall be required to make monthly payments of interest on the outstanding principal balance of the Bond Loan, with interest payable in arrears (which payments will be made from the Interest Reserve to the extent available in accordance with **Section 5.3**).

(ii) **Post-Amortization Period Commencement Date Payments.** Beginning on the first day of the calendar month following the Amortization Period Commencement Date and continuing on the first day of each succeeding calendar month thereafter through but not including the Maturity Date, Borrower shall make principal payments on the dates and in the amounts indicated on Exhibit A-1, attached hereto and hereby incorporated herein (being the same schedule as the sinking fund schedule

attached to the Indenture), plus accrued interest which is subject to changes resulting from changes in SOFR. Any regularly scheduled monthly installment of principal and interest that is received by Bond Owner 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; and

(iii) **Maturity.** The entire unpaid principal sum of the Bond Loan Note and all interest accrued and unpaid thereon shall be fully and finally due and payable on the Maturity Date (or earlier redemption of the Bonds).

**6.2.2 Payments of Protective Advances.** Upon the approval of a Requisition by Bond Owner of any Protective Advance in accordance with **Section 5.4** of this Agreement or any other Bond Loan Document, such Protective Advance shall be added to the principal balance of the Bond Loan as of the date of such Protective Advance and interest shall accrue thereon at the applicable interest rate set forth in **Section 6.1** until repaid. Borrower shall, within ten (10) days written demand therefor by Bond Owner, pay to Bond Owner an amount equal to such Protective Advance, together with accrued interest and Bond Owner's costs and expenses incurred in connection therewith. Such Protective Advances, costs and expenses shall be secured by the Collateral.

**6.2.3 Payment of Fees, Charges, Costs, Expenses and Other Amounts.** Borrower agrees to pay to Bond Owner, for its own account, fees payable as and when due in accordance with the Bond Owner Fee Letter. With respect to any other fees, charges, costs, expenses or other amounts for which Borrower is obligated hereunder or in any other Bond Loan Document (whether to Bond Owner) to the extent no time period within which such amounts are required to be paid or reimbursed by Borrower is otherwise provided for in this Agreement or any other Bond Loan Document, such payment or reimbursement shall be made within ten (10) days of written demand therefor by Bond Owner.

**6.2.4 Prepayments.** Borrower shall have the right at any time and from time to time to prepay the Bond Loan in whole or in part without prepayment fee, premium or penalty; provided that (a) Borrower shall notify Bond Owner of any prepayment hereunder at least three (3) Business Days before the date of prepayment and shall specify the prepayment date and the principal amount to be prepaid, (b) such prepayment of principal shall be accompanied by accrued interest on the amount prepaid and any outstanding fees, costs or other amounts due and owing Bond Owner, including any breakage costs and fees to which Bond Owner may be subject as a result of such prepayment, including any breakage fees and costs related to any interest rate contracts which Bond Owner has obtained and is required to be broken as a result of such prepayment and (c) any amounts pre-paid may not be re-borrowed. Any such notice of prepayment may be revocable by written notice from Borrower to Bond Owner but Borrower shall be responsible for any actual, out-of-pocket expenses, costs or charges incurred by Bond Owner as a result of such revocation of such prepayment notice (or failure to prepay pursuant to such prepayment notice).

### 6.2.5 **Payments Generally.**

(i) **Payments Generally.** Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of any other amounts payable) prior to 11:00 a.m. on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of Bond Owner, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Bond Owner (on behalf of the Issuer and the Trustee) care of its Commercial Loan Servicing Department, TH-A007-1962, P.O. Box 3029, Houston, Texas 77253-3029, which payments may be made by wire or ACH pursuant to instructions provided by Bond Owner to Borrower, except that payments required to be made directly to any other Person pursuant to **Section 6.4** shall be made directly to such Persons entitled thereto. Bond Owner shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in U.S. Dollars.

(ii) **Application of Payments.** Except as otherwise provided in **Section 4.3** (Conditions to Conversion), all payments received by Bond Owner with respect to the Bond Loan, whether from Borrower, a Guarantor, or the Collateral, including any scheduled principal payments, any scheduled interest payments, any application of condemnation and/or insurance proceeds, any prepayments of principal, any proceeds from the foreclosure or sale of the Collateral and any net operating income from the Collateral during any period it is owned by Bond Owner (collectively, "**Payments**") shall be apportioned and applied as follows: first, to pay any fees, indemnities, costs, expenses and reimbursements then due to Bond Owner under the Bond Loan Documents, including pursuant to the Bond Owner Fee Letter; second, to pay any fees, costs, expenses and reimbursements then due under the Bond Loan Documents (except as provided for in **Section 6.2.1**); third, to pay any interest and late charges then due under the Bond Loan Documents; fourth, to repay any Protective Advances approved by Bond Owner in accordance with the terms of this Agreement; fifth, (Reserved); sixth, to pay any principal payments then due under the Bond Loan Documents; seventh, to pay any then due Hedging Transaction Obligations; eighth, (Reserved); ninth, to prepay principal then outstanding under the Bond Loan Documents; tenth; to pay any remaining Hedging Transaction Obligations as a result of any default thereunder or termination thereof and otherwise to cause Repayment in Full to occur; eleventh, to the extent the Project is no longer owned by Borrower and title thereto has been transferred to another Person as a result of the exercise

of the rights and remedies of Bond Owner under the Bond Loan Documents, to fullest extent permitted by Applicable Law, so long as the title to the Project has not been transferred to another Person as a result of the exercise of the rights and remedies of Bond Owner under the Bond Loan Documents, to Borrower and/or any other Person legally entitled thereto pursuant to Applicable Law. Payments made on the Bond Loan will in any event be applied first to unpaid and accrued interest on the Bond Loan Note, then to principal then due on the Bond Loan Note.

(iii) **(Reserved).**

(iv) **No Set-Off.** All Obligations shall be paid by Borrower without notice or demand (except for such notice or demand as may be expressly required hereunder or under the other Bond Loan Documents), counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Obligations shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any Taking of the Project or any part thereof; (ii) any restriction or prevention of, or interference by any Person with, any use of the Project or any portion thereof; (iii) any title defect or encumbrance or any eviction from the Project or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, Dissolution or other like proceeding relating to Bond Owner, or any action taken with respect to this Agreement by any trustee or receiver of Bond Owner, or by any court, in any such proceeding; (v) any claim that Borrower has or might have against Bond Owner; (vi) any default or failure on the part of Bond Owner to perform or comply with any of the terms of the Bond Loan Documents or of any other agreement with Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; in each case, whether or not Borrower shall have notice or knowledge of any of the foregoing. Borrower waives to the fullest extent permitted by Applicable Law (A) all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any payment required to be paid as and when due under the Bond Loan Documents and (B) any offset, cross-demand or affirmative defense rights or benefits which Borrower may have otherwise had under applicable law with respect to the payment in full of any and all payments as and when required to be paid under the Bond Loan Documents.

(v) **Evidence of Indebtedness; Interest and Payments.** The Bond Loan Note and the other Bond Loan Documents and shall bear interest calculated and payable as provided by this **Article 6**. Bond Owner shall maintain in accordance with its usual practice an account or accounts evidencing the Obligations of Borrower to Bond Owner, including the date and amount of each Bond Proceeds Disbursement and amounts of principal, interest, fees, costs, expenses and other charges payable and

paid to Bond Owner from time to time hereunder. Absent manifest error, the entries maintained in the accounts maintained by Bond Owner shall be final and conclusive proof of the amounts of, and of other information regarding, the Obligations therein recorded; provided, however, that the failure of Bond Owner to maintain such accounts, or any error therein, shall not in any manner affect the obligation of Borrower to repay the Obligations in accordance with their terms.

(vi) **Acknowledgment of Reasonableness of Additional Rates and Charges as Liquidated Damages; No Waiver.** Borrower hereby acknowledges and agrees that (i) the failure to pay as and when due under this Agreement, the Bond Loan Note, or any other Bond Loan Documents (after giving effect to any applicable notice and cure periods) or the occurrence of any Event of Default will result in Bond Owner and Trustee and Issuer incurring additional costs and expenses with respect to the maintenance, administration and reservations against the Bond Loan, including in servicing and administering the Bond Loan, meeting their respective financial obligations and in the loss of the use of the money due, (ii) Bond Owner is entitled to damages as a result thereof and (iii) that it would be extremely difficult and impractical to ascertain the extent of such damages, (iv) the imposition of the late charges, any compounding of interest and the increase of the interest rate to the Default Rate on the terms and conditions set forth herein are, individually and collectively, reasonably related to and a reasonable estimate of said damages to Bond and Bond Owner and (v) constitute liquidated damages which are reasonable, valid and enforceable under Applicable Law, with Borrower hereby unconditionally and irrevocably waiving any right to claim to the contrary. The imposition of such late charges, any compounding of interest and the increase of the interest rate to the Default Rate are in addition to separate from and without limitation of all other fees, costs and expenses to which Bond Owner may be entitled under the Bond Loan Documents, including **Section 10.4.2**. The imposition of, the payment by Borrower of, or any acceptance of by Bond Owner of, any late charge, prepayment charge, compounding of interest or imposition of the Default Rate shall not constitute a waiver, forbearance or forgiveness of any Event of Default, an extension of any kind, including any as to any required payment date or the Maturity Date, nor shall it constitute an amendment or modification of any provision contained in herein or in any other Bond Loan Document.

### **6.3 [RESERVED].**

### **6.4 Yield Protection.**

#### **6.4.1 Increased Costs.**

(i) **Increased Costs Generally.** If any Change in Law shall:  
(i) impose, modify or deem applicable any reserve, special deposit,

compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Bond Owner; (ii) subject Bond Owner to any Indemnified Taxes; or (iii) impose on Bond Owner any other condition, cost or expense (other than Taxes) affecting this Agreement or any Bond Proceeds Disbursement or portion of the Bond Loan made by Bond Owner; and the result of any of the foregoing shall be to increase the cost to Bond Owner of making, converting to, continuing or maintaining its ownership of the Bond or of maintaining its obligation to continue to hold its Bond, or to reduce the amount of any sum received or receivable by Bond Owner, whether of principal, interest or any other amount, then, upon request of Bond Owner, Borrower will pay to Bond Owner such additional amount or amounts as will compensate Bond Owner for those additional costs incurred or reduction suffered.

(ii) **Capital Requirements.** If Bond Owner determines that any Change in Law affecting Bond Owner or any lending office of Bond Owner or Bond Owner's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on Bond Owner's capital or on the capital of Bond Owner's holding company, if any, as a consequence of this Agreement, the commitments of Bond Owner or Bond Owner's ownership of its Bond, to a level below that which Bond Owner or Bond Owner's holding company could have achieved but for such Change in Law (taking into consideration Bond Owner's policies and the policies of Bond Owner's holding company with respect to capital adequacy), and Bond Owner gives notice to Bond Owner of such determination, then, upon Bond Owner's requirement therefor, Borrower will pay to Bond Owner such additional amount or amounts as will compensate Bond Owner or Bond Owner's holding company for any such reduction suffered.

(iii) **Certificates for Reimbursement.** A certificate of Bond Owner setting forth the amount or amounts necessary to compensate Bond Owner or its holding company, as specified in above clauses (a) or (b) of this Section and delivered to Borrower, with copy to Bond Owner, shall be conclusive absent manifest error. Borrower shall pay to Bond Owner, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.

(iv) **Delay in Requests.** Failure or delay on the part of Bond Owner to demand compensation pursuant to this Section shall not constitute a waiver of Bond Owner's right to demand such compensation; provided that Borrower shall not be required to compensate Bond Owner pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that Bond Owner notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Bond Owner's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or

reductions is retroactive, then the nine (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

#### 6.4.2 **Taxes.**

(i) **Payment of Taxes on Project.** Without limiting any other term or provision of this Agreement, Borrower shall pay and discharge before past due all of its indebtedness and obligations, assessments, taxes, governmental charges, levies and liens imposed upon Borrower or its assets, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's assets. Borrower shall provide, on demand of the Bond Owner, evidence of payment of all taxes and assessments, or satisfaction of liens. Notwithstanding the foregoing, Borrower will not be required to pay and discharge any of the foregoing so long as (1) it contests the legality of the same in good faith by appropriate proceedings, and (2) it shall have established adequate reserves with respect to such contested items in accordance with GAAP or such other accounting method reasonably acceptable to Bond Owner.

(ii) **Payments on Obligations Free of Taxes.** Any and all payments by or on account of any of the Obligations shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of Bond Owner) requires the deduction or withholding of any Tax from any such payment, then Bond Owner shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) Bond Owner(as applicable) receive an amount equal to the sum they would have received had no such deduction or withholding been made.

(iii) **Indemnification by Borrower.** Borrower shall indemnify Bond Owner, within ten (10) days after written demand therefor accompanied by reasonable evidence of there being Indemnified Taxes, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Bond Owner or required to be withheld or deducted from a payment to such Person and any reasonable expenses arising therefrom or with respect thereto. A certificate as to the amount of such payment or liability delivered to Borrower by Bond Owner (with a copy to Bond Owner), or by Bond Owner on its own behalf or on behalf of Bond Owner, shall be conclusive absent manifest error.

(iv) **(Reserved).**

(v) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section, Borrower shall deliver to Bond Owner the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Bond Owner.

(vi) **(Reserved).**

(vii) **Treatment of Certain Refunds.** If Bond Owner or any party determines, in its sole discretion exercised in good faith, that such party has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 6.4.2** (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (x) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (x), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (x) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(viii) **Survival.** Each party's obligations under this **Section 6.4.2** shall survive Repayment in Full.

6.4.3 **(Reserved).**

## **ARTICLE 7 COVENANTS OF BORROWER**

As an inducement for Bond Owner to purchase the Bonds, Borrower hereby makes the covenants to each of them as set forth in this **Article 7**, which covenants, unless fully

and finally satisfied, shall remain in full force and effect until Repayment in Full has occurred.

## **7.1 Construction Related Covenants.**

**7.1.1 Commencement, Performance and Completion of Construction.** Borrower shall cause commencement of construction of the Improvements to occur by no later than the Construction Commencement Deadline, cause construction to be diligently performed on the Improvements at all times in accordance with the Construction Schedule in all material respects and shall cause the Improvements to be Completed and the conditions of the final construction related Bond Proceeds Disbursement set forth in **Section 4.2.9** satisfied on or before the Completion Date; provided, that, such Completion Date may be extended for a period of up to an additional sixty (60) days as a result of any delays caused by a Force Majeure Event; provided that Borrower has notified Bond Owner of such Force Majeure Event within ten (10) days of Borrower's knowledge thereof.

### **7.1.2 Construction Contracts and Plans; Change Orders.**

(i) **General Contractor Agreement.** Borrower will continue to timely perform its obligations and duties in all material respects, including timely making all required payments, with respect to the General Contractor Agreement and will require General Contractor to timely perform all of its obligations and duties thereunder in all material respects, subject to extension for delays caused by a Force Majeure Event; provided that Borrower has notified Bond Owner of such Force Majeure Event within ten (10) days of Borrower's knowledge thereof. Borrower will not terminate, restate, amend or otherwise modify the General Contractor Agreement or enter into any new general contractor's construction agreement, except (i) to the extent permitted with respect to change orders pursuant to clause (iii) below or (ii) otherwise with the prior written consent of Bond Owner, which consent shall not be unreasonably withheld so long as (A) such proposed termination, restatement, amendment or modification, or new agreement as applicable, (I) does not create a Lien other than a Permitted Lien, (II) is consistent with the intended development, construction, use, operation and occupancy of the Project and (III) would not result in any Material Adverse Change, or Event of Default and (B) Borrower has delivered to Bond Owner such additional assignments, subordinations and third party consents as Bond Owner may reasonably require, using forms prepared by Bond Owner subject only to reasonable revisions thereto.

(ii) **Other Construction Contracts.** Borrower will, and will use commercially reasonable efforts to cause General Contractor to, (i) continue to timely perform in all material respects any and all obligations and duties as applicable to each of them respectively, including timely

making all required payments, with respect to any subcontracts and any other Construction Contracts and (ii) require each of the third parties thereto to timely perform in all material respects their respective obligations and duties, subject to extension for delays caused by any Force Majeure Event; provided that Borrower has notified Bond Owner of such Force Majeure Event within ten (10) days of Borrower's knowledge thereof. Borrower shall not, and shall not permit General Contractor to, terminate, restate, amend or otherwise modify any of the other Construction Contracts to which it is a party or enter into any other new Construction Contracts to the extent such proposed termination, restatement, amendment or modification, or new agreement as applicable, would (i) result in a Lien other than a Permitted Lien, (ii) be inconsistent with the intended development, construction, use, operation or occupancy of the Project, (iii) result in the required Retainage being less than the amount required hereunder, (iv) would result in a violation of the change order limitations set forth in clause (iii) below or (v) would likely result in any Material Adverse Change, Known Unmatured Event of Default or Event of Default.

(iii) **Plans; Change Order Limitations.** Borrower shall not make or consent to any change or modification to the Plans, the General Contractor Agreement or Budget, and no work shall be performed with respect to any such change or modification, without the prior written consent of Bond Owner if such change or modification would (i) in any material way, alter the design, integrity, structure, configuration or architectural design of the Project, (ii) result in a material diminution in the quality or utility of construction materials, (ii) change the usable or leasable space in any material respect, (iv) result in a Material Adverse Change, Event of Default or violation of any Applicable Law, (v) result in the required Retainage under the General Contractor Agreement being less than the amount required hereunder or (vi) result in either (1) an increase or decrease in any line item in the Budget equal to or greater than the Threshold Change Order Amounts or (2) when added to the cumulative amount of all prior net increases or decreases in the Budget (which have not been approved by Bond Owner), a net increase in the total Budget equal to or greater than the Threshold Change Order Amounts (in each case, a "**Material Change Order**").Bond Owner

(iv) **Budget, Construction Schedule, etc.** Borrower will comply with the conditions, requirements and limitations with respect to any construction related Bond Proceeds Disbursement set forth in **Section 5.2.2**, including with respect to the Budget and any proposed revisions thereto. Borrower will not revise the Construction Schedule in a manner which would extend Completion beyond the Completion Date without Bond Owner's consent.

(v) **Delivery of Construction Documents.** Whether or not Bond Owner's consent or approval is required with respect thereto, prior to

or concurrent with any Draw Request Package, Borrower shall deliver to Bond Owner copies of all changes to the Plans or work to be completed under the above-referenced Construction which has not been previously delivered to Bond Owner, except for minor deviations from the Plans in the nature of “field changes” that would not result in a Material Change Order and does not, in Borrower’s reasonable and good faith judgment, impair the value of the Project or change the scope of the Project in any material respect.

(vi) **(Reserved).**

(vii) **Compliance With Regulatory and other Agreements.**

As it relates to Borrower or the Project, comply with each Regulatory Agreement and all other restrictions, covenants and easements affecting the Project or the Improvements and cause the satisfaction of all conditions of this Agreement.

7.1.3 **Ground Lease.** Borrower shall perform in accordance with the terms and requirements of the Ground Lease and cause the Ground Lease to remain in full force and effect.

7.1.4 **(Reserved).**

7.1.5 **Post-Completion Deliveries.** By the earlier of completion of the below items or sixty (60) days after Completion, to the extent requested by Bond Owner, Borrower shall have delivered the following to Bond Owner:

(i) **As-Built Survey.** An as-built Survey or other satisfactory evidence showing that the Improvements have been built in accordance with the Plans, within the boundaries of the Property and any set-back requirements and do not encroach on any other legal parcel or property or any easement or public or private right of way, together with such endorsements to each Title Insurance Policy as Agent may reasonably require, including an Accuracy of Survey Endorsement;

(ii) **As-Built Plans.** “As-built” Plans, showing the final as built specifications of all Improvements; and

(iii) **Warranty Book.** A warranty book, together with all guaranties and maintenance agreements, on all applicable Improvements.

## 7.2 **Project Related Covenants.**

7.2.1 **Maintenance of Project.** Borrower shall cause the Project to be maintained in a good and safe condition in compliance with all Applicable Laws and Project Related Documents at all times, to the extent that Borrower’s failure to do so is reasonably likely to result in a Material Adverse Change. Absent the consent of Bond Owner, none of the Improvements shall be demolished or

materially altered except as required in connection with the construction and Completion of the Improvements in compliance herewith (including **Section 7.2.8**); provided, that, for avoidance of doubt, to the extent necessary to construct the Improvements, Borrower shall be entitled to demolish any improvements which were located on the Real Property as of the Bond Closing Date. No FF&E or personal property will be removed, demolished or materially altered except as part of the use, consumption and replacement thereof in the ordinary course of business and consistent with customary practice for projects similar to the subject Project. Without limiting the foregoing, Borrower shall maintain and preserve all its real and personal property which is used or useful in its normal and customary business operations in good working order and condition, ordinary wear and tear excepted and shall make all necessary repairs thereto and renewals and replacements thereof so long as, to the extent applicable, insurance proceeds are disbursed in accordance with this Agreement to pay the costs of such repairs, renewals or replacements, except where the failure to do so would not reasonably be expected to have, either individually or in the aggregate, a material adverse effect, as determined by Bond Owner in its discretion, on the Borrower's ability to perform its obligations under any Bond Loan Document.

**7.2.2 Waste.** Borrower shall not commit or suffer any physical waste of the Project or make any change in the use of the Project which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Project, or take any action that might invalidate or give cause for cancellation of any insurance policy required under **Section 7.13**, or do or permit to be done thereon anything that may in any way materially and adversely impair the value of the Project or the security for the Bond Loan. Borrower will not, without the prior written consent of Bond Owner, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Project, regardless of the depth thereof or the method of mining or extraction thereof.

**7.2.3 Hazardous Substances.** Borrower will not use, and will not permit the use of, any Hazardous Substances (as defined in the Environmental Indemnity Agreement with such meaning used herein) at the Project except in the ordinary course of its business and development of the Project and in compliance with all applicable Environmental Regulations (as defined in the Environmental Indemnity Agreement). Borrower shall comply in all respects with any and all such Environmental Regulations; and Borrower shall furnish to Bond Owner promptly and in any event within thirty (30) days after receipt thereof a copy of any notice or other communication from any governmental body regarding the same. Further, Borrower shall complete, at Borrower's expense, all such investigations and testing as may be requested by Bond Owner or any Governmental Authority relative to any toxic or any such Hazardous Substances under Applicable Law, rule or regulation, at or affecting any property or any facility owned, leased or used by Borrower.

**7.2.4 Actions Affecting Project.** Borrower shall appear in and contest any action or proceeding purporting to affect the Project or any other Collateral or the rights or powers of Bond Owner and shall pay all costs and expenses (including costs of evidence of title, litigation, and attorneys' fees) in any such action or proceeding in which Bond Owner may appear or in which Bond Owner is required to appear.

**7.2.5 Management Agreements; Property Management Agreement.** On or before the Bond Closing Date, Borrower shall have (a) entered into a Management Agreement with a Qualified Property Manager for the management of the Project (the "**Property Management Agreement**"), which Property Management Agreement shall be consistent with the intended ownership, use, operation and occupancy of the Project, terminable without cause upon no more than sixty (60) written notice and otherwise on terms acceptable to Bond Owner, which acceptance shall not be unreasonably withheld, delayed or conditioned and (b) executed and delivered to Bond Owner an assignment thereof, together with a consent thereto by the Qualified Property Manager, using forms prepared by Bond Owner subject only to reasonable revisions thereto. Borrower shall not terminate the Property Management Agreement unless a replacement Qualified Property Manager is in place effective upon such termination pursuant to a Property Management Agreement satisfying the requirements set forth above. Without the prior written consent of Bond Owner (which consent shall not be unreasonably withheld, delayed or conditioned so long as no Event of Default then exists) (x) Borrower shall not enter into any other Management Agreements with respect to the Project and (y) Borrower shall not enter into, terminate (except for cause), restate, amend or otherwise modify any existing Management Agreements. Borrower will timely perform its material obligations and duties, including timely making all required payments, with respect to each Management Agreement and will use commercially reasonable efforts to require each counterparty thereto to perform all of its material obligations and duties as and when required (subject to any notice and cure rights).

**7.2.6 Project Related Documents.**

(i) Borrower will continue to timely perform its obligations and duties in all material respects, including timely making all required payments, with respect to the existing Project Related Documents and will require each of the third parties thereto to timely perform all of their respective obligations and duties in all material respects, to the extent that Borrower's failure to do so would cause a Material Adverse Change.

(ii) Without Bond Owner's prior written consent, Borrower shall not enter into (or thereafter terminate, restate, amend or otherwise modify) any easement, declaration of covenants, conditions and restrictions, map, lot line adjustment, or private or public dedication affecting the Property (collectively, "**Future Liens**") or any Material Project Related Documents, which consent shall not be unreasonably withheld, conditioned or delayed,

but may be conditioned upon receiving such assignments, subordinations and third-party consents as may be reasonably required by Bond Owner, upon receiving a drawing or survey showing the precise location of each proposed Future Lien and upon receiving such Title Policy endorsements as Bond Owner may reasonably require.

#### 7.2.7 Leasing.

(i) **Lease Approval.** Except as provided in clause (ii) below and in the normal and customary manner in which the Borrower conducts its business, Borrower shall not enter into, extend, terminate or otherwise modify any Lease for the Project without the prior written consent of Bond Owner, which approval shall not be unreasonably withheld, delayed or conditioned. Any Lease (as a sublease under the Ground Lease), including any residential, retail or commercial Lease, approved, or deemed approved, pursuant to this **Section 7.2.7** shall constitute an **“Approved Lease”**.

(ii) **No Lease Approval Required.** Notwithstanding above clause (a), Borrower may enter into any new Lease or extend, terminate or otherwise modify any Approved Lease with respect to any residential apartment unit from time to time without the prior consent of Bond Owner so long as such new Lease or extension, termination or modification satisfies the General Leasing Requirements and (i) with respect to the leasing of any residential premises, satisfies the Residential Leasing Requirements and (ii) with respect to any non-residential premises, satisfies the Commercial Leasing Requirements. Any Lease which does not satisfy the Leasing Requirements shall constitute a **“Material Lease”**. As used herein the following definitions shall mean as follows:

(1) The term **“General Leasing Requirements”** means satisfaction of the following requirements with respect to any proposed lease, whether such Lease is for residential or commercial purposes: (1) such proposed lease is consistent with or otherwise in a form consistent with the Form Lease previously approved by Bond Owner; (2) such proposed lease is in compliance with the requirements of TDHCA; (3) such proposed lease is entered into only in good faith, in an arm’s-length transaction with an unrelated third party in the ordinary course of operating the Project and is otherwise on terms and conditions consistent with affordable housing standards for senior low income tax credit projects; (4) rent shall not be required to be paid more than one (1) month in advance; and (5) the security deposit shall be in an amount equal to or greater than one (1) month of rent and shall not be credited to any payment obligations of Tenant during the term of the Lease.

(2) The term **“Residential Leasing Requirements”** means satisfaction of the following requirements with respect to any proposed lease for any residential unit: (1) such proposed lease is for a single residential apartment unit; and (2) the term of such proposed lease shall be for a period which is no less than six (6) months and no greater than two (2) years. Any Lease which satisfies the requirements of this clause (ii) shall constitute an Approved Lease.

(3) (Reserved).

(iii) **Leasing Covenants.** With respect to each Approved Lease, Borrower shall (i) duly and punctually observe, perform and discharge in all material respects the obligations, terms, covenants, conditions and warranties of Borrower as landlord thereunder, (ii) using commercially reasonable means, if Borrower reasonably deems the same to be appropriate in the ordinary course of operating the Project, enforce the performance of each and every material obligation, term, covenant, condition and agreement in such lease to be performed by any Tenant or Guarantor, (iii) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Approved Leases or the obligations, duties or liabilities of Borrower thereunder and, upon the request of Bond Owner, do so in the name and on behalf of Bond Owner to the extent applicable, all at the expense of Borrower (and pay all costs and expenses of Bond Owner, including reasonable attorneys’ fees and disbursements, in any action or proceeding in which Bond Owner may appear or, in the case Bond Owner is required to appear), (iv) not receive or collect any rents for a period of more than one (1) month in advance and (v) not permit any Tenant to take possession of any portion of the Project prior to the that date which the Lease qualifies as an Approved Lease.

(iv) **SNDA and Estoppels.** With respect to any proposed lease for any non-residential unit (if any), Bond Owner may require as a condition of its approval of such lease, that (i) the lease is entered into only in good faith, in an arm’s-length transaction with an unrelated third party in the ordinary course of operating the Project and is otherwise on market terms and conditions, (ii) does not contain any option to purchase, (iii) is at a rental rate which is consistent with the then current market rates, (iv) the lease contain appropriate mortgagee protections, including subordination, non-disturbance and attornment provisions and provisions that require Tenant to execute, to the extent required by any mortgagee, (A) a separate Subordination, Non-Disturbance and Attornment Agreement in form and content reasonably acceptable to such mortgagee (an **“SNDA”**) and (B) from time to time at the request of such mortgagee, estoppel certificates in form and content reasonably acceptable to mortgagee (an **“Estoppel Certificate”**) and (v) delivery to Bond Owner of a separate SNDA and/or

Estoppel Certificate, each in form and content reasonably acceptable to Bond Owner.

(v) **Lease Termination; Lease Termination Payments.** Notwithstanding anything to the contrary set forth in this **Section 7.2.7**, except in the ordinary course of business, without the prior written consent of Bond Owner, which consent shall not be unreasonably withheld or delayed so long as no Event of Default then exists, Borrower shall not enter into any agreement with any Tenant for the termination of any Lease or with respect to any other Lease.

(vi) **No Prohibited Drug Activities.** Notwithstanding anything to the contrary set forth elsewhere herein, Borrower shall not enter into any Lease with any Person which would result in the violation of any Applicable Law, including any violation of any state or Federal laws relating to the use, sale, possession, cultivation or distribution of any controlled substances and every Approved Lease shall expressly prohibit Tenant from engaging or permitting any activity that would do so. If Borrower becomes aware from any source that any Tenant is engaged in any such prohibited activities, Borrower shall immediately and strictly enforce the terms of the subject Approved Lease, including termination as appropriate.

**7.2.8 Post Completion – Works of Improvement.** From and after Completion of the Improvements and completion of any approved Punch List Items, except for any tenant improvement work with respect to any non-residential unit pursuant to an Approved Lease or except as set forth in **Section 7.13.4**, Borrower shall not commence, cause to be performed or permit to be commenced or performed, any capital improvements, repairs or other works of improvement to the Project or any portion thereof without the prior consent of Bond Owner if (a) such work is structural in nature or would otherwise affect the existing structural integrity of the Project or any material portion thereof, (b) such work would result in a material change to the Project or the market value, quality appearance or conditions of the Project, including any reduction in leasable square feet (other than in de minimis amounts) of the Project or (c) an Event of Default then exists. Bond Owner may subject its consent to such terms and conditions as it reasonably deems appropriate based on the size, scope and extent of such work, including review and approval of the plans and specifications, prove-up by Borrower that it has sufficient funds to complete such work, a construction budget, and a construction schedule, assignment of contracts and agreements with respect to such work, and receipt of such third party consents and subordinations with respect to such contracts and agreements as Bond Owner may reasonably require. All such work shall be done in accordance with any plans and specifications prepared with respect thereto (and approved by the Bond Owner as part of its approval of such work, as applicable) and otherwise in compliance with all Applicable Laws.

**7.2.9 Business Affairs.** Borrower shall conduct its business affairs in a reasonable and prudent manner with executive and management personnel of substantially similar qualifications and experience as that of Borrower's management as of the date of this Agreement.

**7.3 Financial Statements and Reports.** Borrower shall promptly furnish to Bond Owner such information regarding the business affairs, financial condition, assets, liabilities, operations, and transactions of Borrower and Guarantors as Bond Owner may reasonably request, and, without limiting the foregoing, furnish to Bond Owner the following:

**7.3.1** As soon as available, and in any event within 30 days from the end of each calendar month (until the Conversion Date at which time the following shall be provided on a quarterly basis within 30 days from the end of each calendar quarter), an operating statement for the calendar month then ending (or calendar quarter, as applicable), prepared by Borrower detailing the revenues received, the expenses incurred and the net operating income before and after debt service (principal and interest) and major capital improvements, and all other matters as Bond Owner may reasonably request;

**7.3.2** As soon as available, and in any event within 30 days from the end of each calendar month (until the Conversion Date at which time the following shall be provided on a quarterly basis within 30 days from the end of each calendar quarter), a rent roll prepared by Borrower for the calendar month then ending (or calendar quarter, as applicable) to include the names of tenants of the Improvements, the portion of Improvements occupied by each tenant, the base rent and any other charges payable under each Approved Lease and the term of each lease including the expiration date, and all other matters as Bond Owner may reasonably request;

**7.3.3** Upon Bond Owner's written request, within 30 days of receipt thereof, Low-Income Housing Tax Credits Compliance Audits prepared by the TDHCA and/or the Investor Limited Partner, and/or the Special Limited Partner, and/or a third party asset manager;

**7.3.4** Beginning with the fiscal year ending December 31, 2025, to the extent available, and, if not then available, December 31, 2026, as soon as available and in any event within 120 days from the end of each fiscal year, an audited financial statement prepared by a third party accounting firm approved by the Bond Owner, showing the financial condition of Borrower at the close of such fiscal year and the results of operation during such fiscal year, which audited financial statement shall include a balance sheet, profit and loss statement and statement of cash flows (sources and uses);

**7.3.5** Beginning with the fiscal year ending December 31, 2025, as soon as available and in any event within 45 days from the end of each fiscal year of

Borrower, company prepared financial statements (balance sheet and profit and loss statement).

7.3.6 Beginning with the calendar year ending December 31, 2025, as soon as available, and in any event within 45 days from the end of each calendar year ending prior to the Conversion Date, a signed personal financial statement for each Individual Guarantor, prepared on a form and in a manner satisfactory to the Bond Owner, showing the financial condition of that Individual Guarantor at the close of such calendar year, which financial statement shall include a balance sheet, income and expense statement, and statement of cash flows (sources and uses) and be accompanied by a schedule of contingent liabilities, and any additional supporting information reasonably required by Bond Owner;

7.3.7 Beginning with the fiscal year ending December 31, 2025, as soon as available, and in any event within 90 days from the end of each fiscal year ending prior to the Conversion Date, a company prepared financial statement for the Entity Guarantor prepared on a form and in a manner satisfactory to the Bond Owner, showing the financial condition of the Entity Guarantor at the close of such fiscal year and the results of operation during such fiscal year, which company prepared financial statement shall include a balance sheet, profit and loss statement and statement of cash flows (sources and uses);

7.3.8 Upon the written request of Bond Owner, thereof, within thirty (30) days of filing but no later than October 31<sup>st</sup> of each year, copies of Borrower's filed federal income tax returns (and all K-1's used for preparation, as applicable) and all requests for extensions to the filing thereof;

7.3.9 Upon the written request of Bond Owner therefor, within thirty (30) days of filing but no later than October 31<sup>st</sup> of each year copies of each Guarantor's filed federal income tax returns (and all K-1's used for preparation, as applicable) and all requests for extensions to the filing thereof; and

7.3.10 Borrower agrees to promptly notify Bond Owner (A) of any change in direct or indirect ownership interests in the Borrower after the Bond Closing Date as certified to Bond Owner in the Beneficial Ownership Certification prior to or in connection with the execution of this Agreement, or (B) if the individual with significant managerial responsibility identified in the Beneficial Ownership Certification ceases to have that responsibility or if the information reported about that individual changes, and in connection with foregoing, Borrower hereby agrees to provide such information and documentation as Bond Owner may request during the term of the Bond Loan to confirm or update the continued accuracy of the information provided in connection with the foregoing.

7.3.11 Borrower shall promptly inform Bond Owner in writing of any Material Adverse Change of any Borrower's or Guarantor's financial condition.

7.3.12 Borrower shall promptly inform Bond Owner in writing of all existing and all threatened litigation, claims, investigations, proceedings or similar actions affecting Borrower or Guarantor which could materially affect the financial condition of any Borrower or Guarantor.

7.3.13 Borrower shall provide Bond Owner with such other financial statements, tax returns, and other related information at such frequencies and in such detail as Bond Owner may reasonably require.

7.3.14 All tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Borrower that is unrelated to the Project, and shall be maintained in a reasonable condition for proper audit and be subject to examination during business hours by representatives of the Issuer or the Trustee.

Each report and financial statement delivered to Bond Owner pursuant to this **Section 7.3** shall be accompanied by a Compliance Certificate and signed by an Authorized Representative of the reporting party certifying that: (a) the attached statements and reports are complete and correct in all material respects and are otherwise in compliance with the reporting requirements of this **Section 7.3**, (b) except as disclosed in the subject certification, all of the representations and warranties of Borrower and Guarantors, as applicable, contained in this Agreement and other Bond Loan Documents are true and correct in all material respects as of the date such certification is given (except to the extent any representation and warranty is made as of a specified date, in which case, such representation and warranty shall have been true, correct and complete in all material respects as of such specified date as if made on such date), and (c) except as disclosed in such certification, there is no existing Event of Default and reporting party is not aware of any existing Unmatured Event of Default or Material Adverse Change. Notwithstanding anything herein to the contrary, Borrower shall maintain its books and records in accordance with GAAP and permit Bond Owner to examine and audit Borrower's books and records at all reasonable times.

#### **7.4 Financial Covenants.**

7.4.1 **Borrower Financial Covenants.** [Reserved]

7.4.2 **Guarantor Financial Covenants.** [Reserved]

**7.5 OFAC.** Borrower and each Guarantor (and their Affiliates) must comply in all material respects with all U.S. economic sanctions laws, Executive Orders and implementing regulations as promulgated by the U.S. Treasury Department's Office of Foreign Assets Control, and all applicable anti-money laundering and counter-terrorism financing provisions of the Bank Secrecy Act and all regulations issued pursuant to it. Neither Borrower nor Guarantor (or their Affiliates) may be (i) a person or entity designated by the U.S. government on the list of the Specially Designated Nationals and Blocked Persons (the "**SDN List**") with which a U.S. Person cannot deal with or otherwise

engage in business transactions, (ii) is a person or entity who is otherwise the target of U.S. economic sanctions laws such that a U.S. Person cannot deal or otherwise engage in business transactions with such person or entity or (iii) is controlled by (including without limitation by virtue of such person being a director or owning voting shares or interests), or acts, directly or indirectly, for or on behalf of, any person or entity on the SDN List or a foreign government that is the target of U.S. economic sanctions prohibitions such that the entry into, or performance under, this Agreement or any other Bond Loan Document would be prohibited under U.S. law.

## **7.6 Accounts and Reserves.**

**7.6.1 Borrower's Operating Account.** Borrower shall establish and thereafter maintain with Bond Owner at all times, during the term of the Bond Loan, the Construction Operating Account into which (a) unless otherwise provided herein or agreed to by Borrower and Bond Owner, all Bond Proceeds Disbursements to Borrower will be deposited (excluding any Bond Proceeds Disbursements of interest from the Interest Reserve, Protective Advances and any other Bond Proceeds Disbursements to third Persons as provided herein) and (b) any and all revenues, expense reimbursements, and other funds and proceeds received by Borrower or on account of Borrower (including all rents generated by the Project) shall be deposited. So long as no Event of Default then exists, Borrower shall have the right to withdraw and use the funds within the Construction Operating Account at any time and from time to time so long as such use is in compliance with the terms and conditions of the Bond Loan Documents and all Applicable Laws.

**7.6.2 Borrower's Funds Account.** Borrower hereby authorizes and instructs Bond Owner, as and when Bond Owner deems necessary, to establish and maintain at Bond Owner's offices a deposit account for the deposit and maintenance of any Borrower's funds (the "**Borrower's Funds Account**"), which disbursement and use thereof will be governed by **Section 5.2.3**.

**7.6.3 Reserve and Escrow Accounts.** In connection with the occurrence of Lease Stabilization, Borrower shall fund a replacement reserve and operating reserve as and when required by **Exhibit "T."**

**7.6.4 Grant of Security Interest.** As additional security for the payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations, Borrower hereby collaterally assigns, transfers, pledges and grants to Bond Owner a first priority security interest in and to all of Borrower's right, title and interest, in and to any and all deposit, checking and other bank accounts in the name of Borrower maintained at Bond Owner, including the Borrower's Funds Account, Construction Operating Account, Capital Contribution Account, and any reserve account described in **Exhibit "T"**, whether presently existing or hereafter created, together with all amounts on deposit or hereinafter deposited therein and any interest or other amounts accrued thereon (in the event such account is an interest bearing account) and any and all proceeds thereof and

rights and privileges attendant thereto (collectively, the “**Accounts**”). In the event any of the Accounts shall be an interest-bearing account, then such interest shall constitute part of the pledged collateral hereunder. The Accounts constitute accounts under the exclusive control, dominion and possession of Bond Owner subject only to the access rights thereto of Borrower as expressly set forth in this **Section 7.6**, and Bond Owner shall be deemed to have a perfected security interest therein. At any time an Event of Default then exists, Bond Owner may, without further notice to or the consent of Borrower, (a) terminate any such right of access by Borrower and Borrower shall have no further rights thereto, (b) freeze such Accounts, (c) apply any and all funds therein to the outstanding Obligations in such order and priority as Bond Owner determines (subject only to **Section 6.2.5(ii)**) and/or (d) exercise such other rights, powers and remedies of an owner of the Accounts and of a secured party under the UCC and any other Applicable Law. Notwithstanding anything to the contrary set forth elsewhere herein or in any other Bond Loan Document, nothing contained herein shall obligate Bond Owner to take any such action or exercise any such remedy and no such action or exercise (or the failure to act or exercise) by Bond Owner shall reduce or otherwise release Borrower’s liability with respect to any obligation of Borrower arising out of or related to the Accounts or with respect to the Obligations.

**7.6.5 Other Account Terms.** In the event any Account is an interest-bearing account, Bond Owner shall not be liable to Borrower with respect to the rate of interest at which such interest accrues and any tax liability with respect to any accrued interest shall be the sole responsibility of Borrower. Borrower will at all times own and maintain the Accounts free and clear of any and all Liens or interests of any other Person (other than Bond Owner) and Borrower will, at Borrower’s expense, take all actions necessary or advisable from time to time to maintain the first priority and perfection of said security interest and shall not take any actions that would alter, impair or eliminate said priority or perfection, and, in furtherance thereof, Borrower hereby authorizes Bond Owner to file such financing statements as Bond Owner deems necessary or appropriate with respect to the Accounts. Borrower will promptly sign and deliver such additional forms, certificates, instruments, endorsements and other documents as Bond Owner may require with respect to the opening, maintenance or administration of any Account, all in form and content reasonably required by Bond Owner. Any and all funds within the Accounts shall be made available to Borrower without restriction upon Repayment in Full and, at the request of Borrower such Accounts shall be closed.

**7.6.6 (Reserved).**

**7.6.7 Ground Lease.**

(a) Borrower agrees to perform and fully comply in all material respects with all material agreements, covenants, terms, and conditions imposed on or assumed by Borrower as the lessee under the Ground Lease; and if Borrower fails to do so, Bond Owner may, but shall not be obligated to, take any action Bond Owner

deems necessary to prevent or to cure any default by Borrower in the performance of or compliance with any of Borrower's covenants or obligations under the Ground Lease. On receipt by Bond Owner from the Authority, as lessor under the Ground Lease, of notice of any default by Borrower thereunder pursuant to the terms of the Ground Lease or otherwise, Bond Owner may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof is questioned or denied by Borrower or by any party on behalf of Borrower. Borrower hereby expressly grants to Bond Owner, and agrees that Bond Owner shall have, the absolute and immediate right to enter in and on the Project to such extent and as often as Bond Owner, in its sole discretion, deems necessary in order to cure any such default by Borrower. Bond Owner may pay such sums of money as Bond Owner in its sole discretion deems necessary for any such purpose, and Borrower hereby agrees to pay to Bond Owner, immediately and without demand, all such sums so paid and expended by Bond Owner, together with interest thereon from the date of each such payment at the lessor of the Default Rate or the Maximum Rate. If Bond Owner takes any action necessary to cure any default by Borrower, Bond Owner shall be subrogated to any and all of the rights of the person or persons to whom any payment is made by Bond Owner and all of the rights of Borrower under the terms and provisions of the Ground Lease.

(b) Borrower agrees to deliver Bond Owner copies of all notices of default or foreclosure received by Borrower from the Ground Lessor.

(c) Borrower shall not surrender the leasehold estate created by the Ground Lease (collectively, the "**Leasehold Estate**") or terminate or cancel the Ground Lease.

(d) Without the express written consent of Bond Owner, which shall not be unreasonably withheld, Borrower will not modify, change, supplement, alter or amend in any material respect the Ground Lease, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease without the prior written consent thereto by Bond Owner shall be void and of no force and effect.

(e) No release or forbearance of Borrower's obligations under the Ground Lease, pursuant to the provisions of the Ground Lease or otherwise, shall release Borrower from any of its obligations hereunder, including, without limitation, Borrower's obligations with respect to the payment of rent as provided for in the Ground Lease and the performance of all the terms, provisions, covenants,

conditions, and agreements contained in the Ground Lease to be kept, performed and complied with by the Ground Lease therein.

(f) Unless Bond Owner shall otherwise expressly consent in writing, the fee title to the Real Property and the Leasehold Estate shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the Ground Lessor or in the Borrower, or any third party by purchase or otherwise.

(g) Borrower expressly acknowledges that all of the provisions of the assignment of leases in the Bond Loan Mortgage are applicable with respect to any sub-subleases or sub-subtenants now occupying or who may hereafter occupy all or part of the Project.

(h) A default of any kind whatsoever in the payment or performance of any of the duties or obligations imposed upon Borrower by the terms, covenants, agreements or provisions of the Ground Lease, which is continuing beyond the expiration of all applicable notice, grace and cure periods, shall be and constitute an Event of Default hereunder.

**7.7 Negative Covenants.** Borrower shall not, without the prior written consent of Bond Owner, do or permit to be done any of the following at any time either Loan remains outstanding:

**7.7.1 No Prohibited Transfers.**

(i) **Project Transfers.** No Transfer with the respect to the Project shall occur other than a Permitted Project Transfer.

(ii) **Ownership Transfers.** No Transfer with respect to the direct or indirect ownership or management interests in Borrower shall occur other than a Permitted Ownership Transfer. Notwithstanding anything to the contrary contained in any Bond Loan Document, (a) Investor Limited Partner and Special Limited Partner shall be permitted to remove the general partner and/or Administrative Limited Partner of Borrower for cause in accordance with the terms of the Partnership Agreement and shall be able to replace the general partner and/or Administrative Limited Partner with a general partner and/or Administrative Limited Partner selected by the Investor Limited Partner or the Special Limited Partner all without the consent or approval of the Bond Owner if the replacement is controlled by the Investor Limited Partner, the Special Limited Partner or either of their respective Affiliates, (b) at all times, direct and indirect transfers of interest in Investor Limited Partner and Special Limited Partner to an entity controlled by the Investor Limited Partner, the Special Limited Partner or either of their respective Affiliates shall be permitted without the consent or

approval of the Bond Owner, (c) prior to the Conditions to Conversion being satisfied, Investor Limited Partner and Special Limited Partner may each Transfer its limited partnership interest in Borrower to an entity controlled by the Investor Limited Partner, the Special Limited Partner or either of their respective Affiliates without the consent of Bond Owner, (d) after the Conditions to Conversion have been satisfied, Investor Limited Partner and Special Limited Partner may each Transfer its limited partnership interest in Borrower in accordance with the terms of the Partnership Agreement without the consent of Bond Owner, and (e) after the tax credit compliance period has terminated, the general partner of Borrower may exercise its purchase option to purchase the interest of the Investor Limited Partner and the Special Limited Partner in accordance with the terms of the Partnership Agreement without the consent of Bond Owner (“**Equity Permitted Transfers**”). Notwithstanding anything herein to the contrary, prior to the satisfaction of the Conditions to Conversion, no Transfer of any ownership interest of Borrower (except for Transfers of the investor partner interest of Borrower to an entity controlled by the Investor Limited Partner, the Special Limited Partner or either of their respective Affiliates or Transfers of interests within the Investor Limited Partner and Special Limited Partner to an entity controlled by the Investor Limited Partner, the Special Limited Partner or either of their respective Affiliates) greater than twenty percent (20%) shall be permitted without Bond Owner’s prior written consent. Notwithstanding anything to the contrary herein or in any Bond Loan Document, amendments to the Partnership Agreement solely effectuating such Equity Permitted Transfers shall not require the prior written consent of Bond Owner or constitute an Event of Default hereunder or under any Bond Loan Document.

(iii) **Loans.** Borrower, without Bond Owner’s prior written consent, may not (1) loan, invest in or advance money or assets to any other third party, (2) purchase, create or acquire any interest in any other third party, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

(iv) **Information.** To the extent not previously provided, Borrower shall provide to Bond Owner such additional information and documentation as it may be reasonably request with respect to any Permitted Transfer, including, with respect to any Permitted Ownership Transfer, the continued compliance with the covenants set forth in **Section 7.13.1** (and the underlying representations in **Section 2.5**), together with customary “know your customer” information and, to the extent applicable, an updated Ownership Interest Certificate. Borrower agrees to promptly notify Bond Owner (A) of any change in direct or indirect ownership interests in the Borrower as reported in any Ownership Interest Certification provided to Bond Owner in connection with the execution of this Agreement or the Bond Loan, or (B) if the individual with significant managerial responsibility identified in the Ownership Interest Certification

ceases to have that responsibility or if the information reported about that individual changes. Borrower hereby agrees to provide such information and documentation as Bond Owner may request during the term of the Bond Loan to confirm or update the continued accuracy of the any information provided in connection with the foregoing.

(v) **No Prohibited Indebtedness.** Borrower shall not incur or become liable for any Indebtedness, whether secured or unsecured, in favor of any Person, other than Permitted Indebtedness. Neither Borrower nor Guarantor shall, directly or indirectly, prepay any indebtedness, without the prior written consent of Bond Owner. Neither Borrower nor Guarantor shall cancel any indebtedness or claim for indebtedness owing to them, except as negotiated on an arm's length basis and within the ordinary course of borrower's or guarantor's business.

7.7.2 **Leases.** Borrower shall not enter into any leases with tenants for any income restricted unit in the Project if such tenant is not an eligible tenant under Section 42 of the Code or as may be required by any Regulatory Agreement.

7.7.3 **Loan to Value Ratio.** Borrower shall not allow the Bond Loan-to-Value Ratio to exceed 80% prior to the Conversion Date.

7.7.4 **Ground Lease.** Borrower shall not modify, amend, terminate, cancel, or allow to expire (or permit to be modified, amended, terminated, cancelled, or to expire) the Ground Lease.

7.7.5 **[Reserved].**

7.7.6 **No Prohibited Liens or Impositions; No Stop Notice Claims.**

(i) The Lien of Bond Owner in and to the Collateral shall be at all times a first-in-priority Lien subject only to the Permitted Title Exceptions and Regulatory Agreements, which Regulatory Agreements Bond Owner understands and acknowledges are prior and superior to the lien of the Bond Loan Mortgage. Except for the Permitted Liens, Borrower shall own the Project free and clear of all Impositions and Liens.

(ii) To the extent permitted by Applicable Law, Borrower shall have the right to contest in good faith the validity of any Imposition, any involuntary Lien, or any stop notice claim which may arise after the Bond Closing Date ("**Contested Claims**") without first paying such Contested Claim so long as Borrower shall have, within thirty (30) days of its actual knowledge thereof, (i) notified Bond Owner of such Contested Claim (which notice shall include the underlying claim documentation, a description of facts and circumstances surrounding such Contested Claim and the basis for such contest) and (ii) Borrower shall have bonded over and obtained the release of such Contested Claim from the Collateral in accordance with Applicable Law (with such Contested Claim thereafter attaching to the

applicable bond thereto and, to the extent Bond Owner is named as a defendant in any litigation, the dismissal thereof); provided that Bond Owner may (but without any obligation to do so) waive the requirement to post such bond to the extent Bond Owner has determined that (A) the continued existence of such Contested Claim is reasonably likely not to result in a Material Adverse Change and (B) Borrower has adequate funds reserved by it to contest and otherwise pay such Contested Claim if determined adversely against Borrower or the Project (including from revenues and Loan proceeds to the extent applicable). If no bond is required to be posted pursuant hereto, Bond Owner may withhold Bond Loan proceeds in an amount to cover such Contested Claim unless and until such Contested Claim is either bonded or otherwise satisfied and discharged in full. Notwithstanding the foregoing, Borrower shall pay and discharge, and obtain the satisfaction and release of any Contested Claim within the earlier of thirty (30) days prior to any threatened foreclosure thereof or ten (10) Business Days written demand therefor by Bond Owner if, at any time during the contesting of such Contested Claim Bond Owner has reasonably determined that (x) there is an imminent risk of loss of the Collateral which is the subject of such Contested Claim, (y) there is a demand for immediate payment thereof that has been made upon Bond Owner, and Bond Owner has reasonably determined that Bond Owner is required to make immediate payment thereunder or (z) the continued existence thereof has resulted in a Material Adverse Change.

(iii) If Borrower shall fail to remove and discharge any Imposition, Lien or other claim in accordance with clauses (i) and (ii) above, then, in addition to any other right or remedy of Bond Owner, Bond Owner may, after only such notice to Borrower as may be reasonable under the then existing circumstances, but without any obligation to do so, discharge same, either by paying the amount claimed to be due, or by procuring the discharge of such Imposition, Lien or stop notice claim 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 Applicable Law. Any such payment shall constitute a Protective Advance and shall be required to be repaid by Borrower pursuant to **Section 6.2.2**. In settling, compromising or arranging for the discharge of any such Imposition, Lien or stop notice claim under this Section, Bond Owner shall not be required to establish or confirm the validity or amount thereof.

**7.7.7 No Prohibited Associations etc.** Without the prior written consent of Bond Owner, Borrower shall not consent to, or vote in favor of, the inclusion of all or any part of the Project in any association, community facilities district, cooperative or other co-use or co-development agreement which is not already identified on each Title Insurance Policy as a Permitted Title Exception or otherwise vote in favor of any material change to, including any material increase in the cost of, any such existing Permitted Title Exception.

**7.7.8 No Prohibited Distributions.** Except for distributions expressly permitted under the Partnership Agreement during times when an Event of Default does not then exist and to pay taxes for current tax year, Borrower will not declare or pay any distributions or redeem, repurchase or otherwise acquire or retire any of its ownership interest (each a “**Distribution**”) at any time prior to the Conversion Date.

**7.7.9 No Prohibited Amendments to Organizational Documents.** Except with respect to any amendments, restatements or other modifications limited to evidencing or otherwise confirming any Permitted Transfer, that do not materially or adversely affect the rights of Bond Owner, or that are not required by the terms of the Partnership Agreement to be consented to by Bond Owner, Borrower shall not make or otherwise permit any material amendments, restatements or other modifications to be made in the terms of its Organizational Documents without the written consent of Bond Owner, which consent shall not be unreasonably withheld, delayed or conditioned so long as no Event of Default then exists and so long as it will not result in or permit a prohibited Transfer, the incurrence of any Indebtedness (except for Permitted Indebtedness), the incurrence of any Liens other than Permitted Liens, any violation of any SPE Requirement or any Material Adverse Change. Promptly after any amendment, restatement or other modification to any Organizational Documents of Borrower or Guarantor, Borrower or Guarantor as applicable shall promptly deliver a copy of same to Bond Owner. Borrower shall not issue new shares, partnership interests, or other ownership interests or make any changes in its equity capital structure without Bond Owner’s prior written consent. Borrower may not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower’s obligations under this Agreement or in connection herewith.

**7.8 [RESERVED].**

**7.9 Single Purpose Entity Covenants.** In addition to the other covenants set forth herein, Borrower covenants and agrees to maintain itself as a separate and distinct entity whose single purpose is the ownership, management, leasing, operation and ultimate sale (if applicable) of the Project including by Borrower’s compliance at all times with the following provisions (collectively, the “**SPE Requirements**”):

(i) **Separate Records.** Borrower will maintain and prepare all of its books, records, financial statements, financial reports and bank accounts separate from those of its Affiliates, Guarantors, any of Borrower’s or a Guarantor’s members, managers, partners or shareholders or any other Person. Borrower shall maintain its books, records and resolutions and agreements as official records. Borrower will file its own tax returns to the extent required by Applicable Law.

(ii) **Separate Entity.** Borrower shall, at all times, (a) preserve its existence as an entity duly organized, validly existing and in good

standing in all applicable states, (b) hold itself out to the public as a legal entity, separate and distinct from any other entity (including any Affiliate of Borrower or a Guarantor) and (c) correct any known misunderstanding regarding its status as a separate entity.

(iii) **Dissolution; Fundamental Changes.** Borrower will not affect a Dissolution; provided, however, that the foregoing shall not operate to prevent a transaction otherwise prohibited pursuant to this Section so long as such transaction results in Repayment in Full.

(iv) **Investments and Acquisitions.** Borrower will not own any asset or property other than the Project, FF&E and incidental personal property necessary for the ownership or operation of the Project). Borrower will not (a) make or suffer to exist any investments or commitments of Borrower in any other Person, (b) own or create any subsidiary, (c) become or remain a partner in any partnership or joint venture or (d) make any acquisition except any investment in the Project as contemplated herein.

(v) **Affiliates.** Borrower will not enter into any transaction (including the purchase or sale of any property or service) with, allocate overhead, including for common employees, shared office space or other administrative expense or make any payment or transfer to, any Affiliate of Borrower except in the ordinary course of business and pursuant to the reasonable requirements of Borrower's business and upon fair and reasonable terms no less favorable to Borrower than Borrower would obtain in a comparable arms-length transaction.

(vi) **No Other Business.** Borrower will not engage in any business other than the ownership, management, leasing, operation and sale of the Project for its intended purpose in accordance with this Agreement and the other Bond Loan Documents. Further, neither Borrower nor a Guarantor may (i) make any material change in any line of business from those carried on as of the date of this Agreement, (2) change its accounting treatment, (3) change its fiscal year, (4) change its name as it appears in official filings in its jurisdiction of organization, or (5) change its jurisdiction of organization, in any such event, without the prior written consent of Bond Owner.

## **7.10 Title Insurance.**

**7.10.1 Title Insurance at Closing.** On the Bond Closing Date, Borrower shall, at Borrower's sole cost and expense, deliver or cause to be delivered to Bond Owner each paid Title Insurance Policy: (a) in the Texas Land Title Association form requested by Bond Owner; (b) with extended coverage (without revision, modification or amendment); (c) issued by the Title Company (with reinsurance and/or coinsurance issued by such reinsurers and coinsurers as Bond Owner may require); (d) with a liability limit of not less than the combined amount of the Bond

Loan; and (e) containing zoning, comprehensive, access, survey, pending disbursements and such other endorsements as Bond Owner may require; said Title Insurance Policy, the coverage thereunder and all endorsements thereto being in form and substance satisfactory to Bond Owner. Provided that, on the Bond Closing Date, Bond Owner may accept in lieu of a Title Insurance Policy a commitment for the issuance of that Title Insurance Policy, as determined by Bond Owner, establishing that the Title Company is prepared to issue that Title Insurance Policy on the terms stated above without qualification or conditions, and thereafter the Title Insurance Policy shall be promptly issued. Each Title Insurance Policy shall insure Bond Owner's security interests under the Bond Loan Mortgage as a valid first lien on the Project, free and clear of all easements, restrictions, defects, Liens, claims, charges and encumbrances except for the Permitted Title Exceptions. Each Title Insurance Policy shall otherwise satisfy the requirements of **Exhibit "O"**.

**7.10.2 Post-Closing.** From and after the Bond Closing Date, Borrower shall, at its own cost and expense, (a) obtain such title insurance endorsements as Bond Owner may reasonably require and (b) do all things necessary to maintain the Bond Loan Mortgage as a valid first lien on the Project subject only to the Permitted Title Exceptions and ensure Borrower's and the Project's compliance with each of the material Permitted Title Exceptions in all material respects.

## **7.11 Insurance; Eminent Domain.**

### **7.11.1 Insurance Coverages.**

(a) **Maintenance of Insurance.** Borrower shall procure and maintain policies as required by **Exhibit F**, including of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property, in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Bond Owner. Borrower shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Agent may request with Trustee and Bond Owner being named as additional insureds in such liability insurance policies. Additionally, Borrower shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Bond Owner may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Bond Owner and issued by a company or companies reasonably acceptable to Bond Owner. All policies shall provide that the policies shall not be invalidated by any waiver of the right of subrogation by any insured and shall provide that the carrier shall have no right to be subrogated to Bond Owner. Borrower, upon request of Bond Owner, will deliver to Bond Owner from time to time the policies or certificates of insurance in form satisfactory to Bond

Owner, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Bond Owner. Each insurance policy also shall include an endorsement providing that coverage in favor of Bond Owner will not be impaired in any way by any act, omission or default of Borrower or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Borrower agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Bond Owner that the Property is located in a special flood hazard area, for the full unpaid principal balance of the Bond Loan and any prior liens on the property securing the Bond Loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Bond Owner, and to maintain such insurance for the term of the Bond Loan.

(b) **Application of Proceeds.** Borrower shall promptly notify Bond Owner of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$50,000.00. Bond Owner may make proof of loss if Borrower fails to do so within fifteen (15) days of the casualty. Whether or not Bond Owner's security is impaired, Bond Owner may, at Bond Owner's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Bond Owner elects to apply the proceeds to restoration and repair, Borrower shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Bond Owner. Bond Owner shall, upon satisfactory proof of such expenditure, pay or reimburse Borrower from the proceeds for the reasonable cost of repair or restoration if Borrower is not in default under the Bond Loan Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Bond Owner has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Bond Owner under the Bond Loan Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Bond Owner holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Borrower as Borrower's interests may appear.

(c) **Unexpired Insurance at Sale.** Any unexpired insurance shall inure to the benefit of, and pass to, the purchaser of the Property covered by the Bond Loan Mortgage at any trustee's sale or other sale held under the provisions of the Bond Loan Mortgage, or at any foreclosure sale of such Property.

(d) **Borrower's Report on Insurance.** Upon request of Bond Owner, however not more than once a year, Borrower shall furnish to Bond Owner a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Borrower shall, upon request of Bond Owner, have an independent appraiser satisfactory to Bond Owner determine the cash value replacement cost of the Property.

(e) **Insurance Requirements.** Notwithstanding the foregoing, Borrower shall maintain all insurance required in the Insurance Requirements and shall deliver to Bond Owner current evidence of all such insurance as set forth in the Insurance Requirements. Without limiting the foregoing, Borrower shall maintain fire and other risk insurance, public liability insurance, and such other insurance as Bond Owner may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Bond Owner and deliver to Bond Owner such policies or certificates of insurance in form satisfactory to Bond Owner. Coverages may not be cancelled or diminished without at least ten (10) days prior written notice to Bond Owner. Each insurance policy also shall include an endorsement providing that coverage in favor of Bond Owner will not be impaired in any way by any act, omission or default of Borrower or any other person. Borrower must provide Bond Owner with such loss payable or other endorsements as Bond Owner may require for policies covering loan collateral. Upon request of Bond Owner, provide reports on each existing insurance policy showing such information as Bond Owner may reasonably request. In addition, upon request of Bond Owner (not more often than annually), Borrower will have an independent appraiser satisfactory to Bond Owner determine, as applicable, the actual cash value or replacement cost of any collateral. The cost of such appraisal shall be paid by Borrower.

7.11.2 **Claims; Eminent Domain; Taking.** In the event of any casualty loss or other covered claim, or in the event any proceeding or action is commenced for the taking of the Project, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation (including inverse condemnation) or otherwise (hereinafter collectively referred to as a "**Taking**" and together with any casualty loss or covered claim, a "**Claim Proceeding**"), or if the Project or any portion thereof is taken or damaged by reason of any public improvement or Taking, or should Borrower receive any notice or other information regarding such Claim Proceeding or any written threatened Claim Proceeding, Borrower shall give prompt written notice thereof to Bond

Owner. All compensation, awards, damages, rights of action and proceeds awarded to Borrower by reason of any Claim Proceeding (“**Claim Proceeds**”) are hereby assigned to Bond Owner (or Trustee or Issuer, as the case may be as determined by the Bond Owner and Bond Counsel) as additional collateral for the Bond Loan and Borrower agrees to execute such further assignments thereof as Bond Owner may require.

**7.11.3 Prosecution of Claims.** Borrower shall diligently defend against and prosecute any Claim Proceeding, shall reasonably cooperate with Bond Owner with respect to any such proceeding and shall not litigate, settle, adjust or compromise or otherwise resolve any such proceeding without the prior written consent of Bond Owner, not to be unreasonably withheld or delayed so long as no Event of Default then exists. At Borrower’s sole cost and expense, Bond Owner shall be entitled to engage its own counsel to review, participate in and otherwise defend Bond Owner with respect to any Taking, proposed Taking or Claim Proceeding.

**7.11.4 Application of Claim Proceeds.**

(i) All Claim Proceeds (i) shall be payable to Bond Owner (for its own account or on behalf of Issuer and/or Trustee) and Borrower hereby irrevocably and unconditionally authorizes and directs any affected insurance company or Governmental Authority to make payment of such proceeds directly to Bond Owner (in its own name or on behalf of Trustee and/or Issuer) and (ii) if Borrower receives any such Claim Proceeds, such funds shall be deemed to be held in trust by Borrower for the benefit of Bond Owner and paid over to Bond Owner within three (3) Business Days from Borrower’s receipt thereof. Unless permitted by Bond Owner to be used by Borrower to repair and otherwise restore the Project (as set forth below in this Section), all Claims Proceeds will be applied by Bond Owner to payment of the Obligations in such order as Bond Owner shall determine. Borrower shall not be excused from repairing or maintaining the Project or restoring all damage or destruction to the Project, regardless of whether or not such Claim Proceeds are made available to Borrower, whether any such proceeds are sufficient in amount or whether Bond Owner applies such proceeds to the payment of the Obligations; however, Borrower will not be required to repair, replace or restore the Project if Bond Owner is required to make such Claim Proceeds available to Borrower for such restoration or repair but fails to do so. The application or release by Bond Owner of any Claim Proceeds shall not cure or waive any then existing Event of Default or invalidate any act done during the existence of an Event of Default.

(ii) Notwithstanding the other provisions of this Agreement to the contrary, Bond Owner agrees that Borrower shall have the right to the use and application of Claims Proceeds for the repair, replacement or restoration of the Project so long as (i) Bond Owner has reasonably determined that the collateral value of its security interest in the Project has

not been adversely and materially impaired (taking into account any available Repair Funds) and the contemplated restoration or repair thereof in accordance with this **Section 7.11.4** and (ii) each of the conditions set forth in **Section 7.11.4(iii)** have been satisfied.

(iii) Upon the request of Borrower to use any Claim Proceeds for the repair, replacement or restoration of the Project, Bond Owner shall make such amounts available to Borrower so long as: (i) Borrower has delivered to Bond Owner notice of its intention to repair, replace or restore the Project prior to or within ten (10) Business Days after receipt of such funds; (ii) the Project can be repaired, replaced or restored to its condition prior to the Taking or casualty within twenty-four (24) months of such Taking or casualty loss and the Project can be Completed by no later than three (3) months prior to the then applicable Maturity Date; (iii) no Event of Default then exists; (iv) all such Claim Proceeds are deposited with Bond Owner and (v) to the extent Bond Owner reasonably determines that such Claim Proceeds are insufficient to complete such work, either (I) Borrower has deposited with Bond Owner additional proceeds in an amount required to complete such repair and restoration ("**Additional Proceeds**") within ten (10) Business Days of its request therefor, which Additional Proceeds will be held and disbursed in accordance with **Section 5.2.3** or (II) Borrower has delivered evidence of payments for work or materials in an amount sufficient that remaining Claim Proceeds, are sufficient to complete such work, which amounts shall be paid from sources other than the Bond Loan. Borrower confirms to Bond Owner (and Trustee and Issuer, as applicable), has a duly created and perfected security interest in any and all Claim Proceeds and Additional Proceeds (collectively, the "**Repair Funds**"). In connection with the use of any Repair Funds and as a condition precedent thereto, Borrower shall have (1) promptly delivered to Bond Owner all material plans, specifications, budgets, construction schedules and proposed material Construction Contracts for such restoration or repair (but only to the extent not previously delivered) and Bond Owner shall have reasonably approved same and Borrower shall have obtained all necessary permits and other approvals with respect to same by the applicable Governmental Authorities and, to the extent required by Bond Owner, the material Construction Contracts shall have been assigned to Bond Owner as additional collateral for the Bond Loan (together with any third party consents thereto as may be reasonably required by Bond Owner), (2) Borrower shall have commenced, or caused to commence, and at all times thereafter diligently pursue, completion of such restoration and repairs in accordance with all Applicable Laws and this Agreement, (3) with respect to any requested approval of funds to be used for such Repair Funds, the delivery of such invoices, contractor and architect certifications and sworn statements as customarily provided with respect to such work, appropriate lien releases, and appropriate endorsements to each Title Insurance Policy, all as may be reasonably required or otherwise waived by Bond Owner, with Borrower executing such documents regarding such

disbursements and requirements as Bond Owner may reasonably request and (4) Bond Owner has reasonably determined that the Bond Loan continues to be adequately secured by the Collateral (including the Repair Funds) notwithstanding such Taking or casualty loss.

(iv) Upon satisfaction of the conditions precedent set forth in **Section 7.11.4(iii)**, Bond Owner will disburse the Repair Funds until exhausted pursuant to fund the approved repair, replacement and restoration of the Project, with such disbursements to be (i) no more frequently than once per month, (ii) in an amount of not less than the least of \$50,000.00, the total cost of repair, replacement or restoration or the remaining unfunded Repair Funds. So long as no Event of Default then exists, any Repair Funds remaining after completion of such repairs, replacement or restoration, or after Repayment in Full, will be paid to Borrower (unless another Person is legally entitled thereto, in which case to such Person).

(v) If any of the above conditions are not satisfied, or, if after satisfaction of the above conditions, Borrower does not (i) subject to extension (but not to exceed ninety (90) days) due to any Force Majeure Event; provided that Borrower has notified Bond Owner of such Force Majeure Event within ten (10) days of Borrower's knowledge thereof, prosecute through completion thereof, the repair, replacement or restoration of the Project with due diligence and in accordance with the plans and specifications, and such failure continues for thirty (30) days after written notice thereof from Bond Owner to Borrower or (ii) deposit additional funds as and when required pursuant to **Section 7.11.4(iii)**, such failure shall be an Event of Default and Bond Owner may, at any time during the existence of such Event of Default, apply all or any portion of the Repair Funds to the payment of the Obligations, whether or not then due, and Bond Owner shall have no obligation to disburse such Repair Funds to Borrower. If any Repair Funds remain after completion of such repairs, replacement or restoration, or upon Repayment in Full, such Repair Funds shall be paid to Borrower (unless another Person is legally entitled thereto, in which case to such Person).

**7.11.5 Assignment of Policies and Proceeds Upon Foreclosure.** In addition and without limitation of any other granting clause contained in the Bond Loan Documents, Borrower hereby assigns to Bond Owner all of its rights, title and interests in and to any and all Repair Funds. In the event of foreclosure of the Bond Loan Mortgage, as a mortgage, by judicial proceedings, by a sale under any power of sale, by any sale by advertisement or by any other transfer of title or assignment of the Project in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all policies of insurance required under this Agreement, any Claims Proceeds, and/or any rights thereto or claims thereto, including any other Repair Funds, shall inure to the exclusive and sole

benefit of, and pass to, Bond Owner or their respective successors in interest (in their own right and for and on behalf of Trustee and Issuer, as applicable).

**7.11.6 Rights Upon Event of Default.** Notwithstanding anything to the contrary set forth elsewhere in this **Section 7.11**, at any time an Event of Default then exists, (a) Bond Owner is authorized and empowered by Borrower, as attorney-in-fact for Borrower to (but is not obligated to) litigate, settle, adjust or compromise any Claim Proceeding, (b) without regard to the adequacy of its security, to commence, appear in and prosecute in its own name and/or on behalf of Borrower any such Claim Proceeding, and (c) receive and apply any Claim Proceeds in to the Project or to the Bond Loan, all in such amounts, order and priority as Bond Owner deems appropriate (subject only to **Section 6.2.5**). Borrower waives any and all right to claim or recover against Bond Owner, and their respective successors and assigns and their respective directors, officers, employees, agents and representatives, with respect to any loss of or damage to Borrower, the Project, Borrower's property or the property of others under Borrower's control resulting from any actions and applications by Bond Owner in accordance with this **Section 7.11**.

**7.11.7 Rental Loss Proceeds.** So long as no Event of Default then exists, any Claims Proceeds which constitute rental loss and business interruption insurance proceeds paid to or held by Bond Owner shall, after reserving therefrom adequate amounts to pay debt service on the Bond Loan as and when due (taking into account any then existing interest reserves), with Bond Owner being authorized to make such payments from such reserve during such repair period, be made available to Borrower, upon request from time to time therefor, for payment of ordinary operating expenses for the Project.

**7.12 Maintenance of Records, Inspections and Appraisals.** Borrower further covenants and agrees as follows:

**7.12.1 Bond Owner's Consultants.** Bond Owner may retain Bond Owner's Consultants as it deems reasonably necessary or convenient to perform such services as may, from time to time, be required or otherwise reasonably deemed appropriate by Bond Owner in connection with the Project, the Bond Loan, this Agreement, the other Bond Loan Documents or Borrower's and Guarantor's respective compliance therewith. Bond Owner's Consultants shall have the same protections as Bond Owner under this Agreement and the other Bond Loan Documents. Notwithstanding anything to the contrary set forth elsewhere herein, no Bond Owner's Consultant shall have any authority to bind Bond Owner nor shall any such authority be implied. For avoidance of doubt, it is acknowledged and agreed by Borrower that Bond Owner's Consultants will include a construction consultant who will assist Bond Owner in its cost review and assessment of the Project in connection with the Closing, review of Draw Request Package, satisfaction of the conditions precedent to funding, the costs of construction and Borrower's compliance with the construction related covenants set forth herein,

including monthly site inspections of the Project, and its determination of whether Completion has occurred.

**7.12.2 Maintenance of Records.** Borrower shall set up and maintain accurate and complete books, accounts and records pertaining to Borrower and the Project in accordance with GAAP, including records related to the ownership, leasing, operation and maintenance of the Project, the financial and operating history and performance of the Project and of Borrower, and Borrower's compliance with the terms and conditions of the Bond Loan Documents and all Applicable Laws (whether physically maintained or electronically maintained, collectively, the "**Borrower Records**").

**7.12.3 Access to Borrower and Project.** Upon prior reasonable notice and at reasonable times, Borrower shall make Borrower's Records available to Bond Owner upon reasonable request therefor and shall permit, and Bond Owner and Bond Owner's Consultants will have the right, at any time and from time to time during normal business hours and upon at least two (2) Business Days' prior written notice (provided no such prior notice shall be required during the continuance of an Event of Default) and subject only to the rights of any unrelated, third party Tenants under Approved Leases) to enter and inspect the Project and to enter Borrower's offices in order to inspect, audit, verify, examine and, as applicable, copy Borrower's Records. At the request of Bond Owner, Borrower shall also make its Authorized Representatives (and any other of its officers, directors, employees, consultants and contracting parties to the extent they are considered "most knowledgeable" on the applicable subject matter) available to Bond Owner at reasonable times and upon reasonable notice to discuss any of the foregoing.

**7.12.4 Appraisals.** During the term of the Bond Loan, Bond Owner may obtain one or more Appraisals of any real or personal property constituting collateral for the Bond Loan: (a) if any Applicable Law, rule, regulation, regulator recommendation or audit standard requires or encourages Bond Owner to obtain an appraisal, or (b) Bond Owner believes that an Event of Default has occurred under the Bond Loan Documents, or (c) Bond Owner reasonably believes conditions exist that, with the passage of time and giving any required notice, will constitute an event of default under the Bond Loan Documents. Borrower shall reimburse Bond Owner for the cost of such appraisals (but not more than one per calendar year), and Bond Owner may in its discretion charge that reimbursement to any credit facility outstanding with Borrower. Appraisals under this Section will be ordered, reviewed and accepted by Bond Owner from an appraiser (and in a form and substance) satisfactory to Bond Owner in its sole discretion. Borrower shall cooperate in the conduct of the Appraisal, including but not limited to granting the appraiser access to the real property and providing the appraiser with all records or information requested in connection therewith.

**7.12.5 Borrower Cooperation.** Borrower shall cooperate fully with any of Bond Owner's Consultants, including any appraiser or inspector, such that they can fully and timely complete their assignments.

**7.12.6 Fees and Costs.** Subject only to the limitations set forth in **Section 7.14**, Borrower will be responsible, and will reimburse Bond Owner, for all reasonable fees, costs and charges incurred by Bond Owner and Bond Owner's Consultants with respect to any of the actions and matters set forth in this **Section 7.12**.

**7.12.7 No Reliance by Borrower or Third Parties; No Waiver.** Borrower shall be solely responsible for conducting its own due diligence and making its own investigations and inspections of the Project. All Appraisals, evaluations and inspections by Bond Owner, or by Bond Owner's Consultants, together with any statements or actions which may be made or taken in connection therewith, are for the sole purpose of providing information to Bond Owner and protecting the security interests granted to them under the Bond Loan Documents. Any inspections, approvals, consents, acceptances or determinations made by Bond Owner, or by or on behalf of Bond Owner with respect to the Budget, the Plans, the Construction Schedule, any Construction Contract, Project Related Document or otherwise with respect to the Project, or any lien waivers, receipts, or other agreements, documents, and instruments obtained by any of them, (a) are made or obtained solely for their own benefit, (b) are not in any way for the benefit or protection of Borrower or Guarantor, (c) do not constitute a representation or warranty, express or implied of any kind (including with respect to structural integrity, value, satisfaction of any standard or requirement, quality of work or services and compliance with the Bond Loan Documents or any Applicable Law), (d) may not be relied on in any way by Borrower, Guarantor or any other Person and (e) unless expressly acknowledged in writing to Borrower by Bond Owner, do not constitute a waiver of any Material Adverse Change, Unmatured Event of Default or Event of Default that may then exist. To the fullest extent not prohibited by Applicable Law, Borrower hereby waives any statutory, legal or equitable right to view, receive or otherwise obtain a copy of any such Appraisal, evaluation or inspection. No such inspections or review will limit any of the rights and remedies of Bond Owner pursuant to this Agreement or the other Bond Loan Documents.

**7.12.8 Disclaimer.** Bond Owner each shall not be liable to any supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project by, on behalf of or at the direction of any Borrower Related Party nor shall Bond Owner be liable for any Indebtedness with respect thereto. Borrower is not and shall not be an agent of Bond Owner for any purpose, Bond Owner is not a joint venture partner with Borrower or with the partners, members, managers or shareholders in Borrower in any manner whatsoever. Bond Owner shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to any provider of services be deemed to create any third-party agent status or recognition of same by Bond Owner.

7.12.9 **Inspections.** In addition to and without limiting any other term or provision in this Agreement or any other Bond Loan Document, Borrower shall subject to the rights of any unrelated, third party residential tenants under Approved Leases) allow Bond Owner to visit and inspect any of the Project, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the reasonable expense of the Borrower ,upon two (2) Business Days' prior written notice to Borrower (provided no such prior notice shall be required during the continuance of an Event of Default), and at such reasonable times during normal business hours and as often as may be reasonably requested.

**7.13 Low-Income Housing Tax Credit.** The Borrower promises to keep each of the following covenants relating to the Low-Income Housing Tax Credit:

7.13.1 To observe and perform all obligations imposed on the Borrower in connection with the Low-Income Housing Tax Credit, including the "placed in service" requirements under and as defined in Section 42 of the Code, and under the Partnership Agreement in a timely manner to ensure the availability of the Low-Income Housing Tax Credit; and to operate the residential units of the Project or to use the Borrower's best efforts to ensure the appropriate parties operate the same in accordance with all applicable statutes and regulations governing the Low-Income Housing Tax Credit;

7.13.2 To preserve at all times the availability to the Project of the Low-Income Housing Tax Credit;

7.13.3 Following the Bond Closing Date, not to release, forego, alter, amend, or modify its rights to the Low-Income Housing Tax Credit, without the Bond Owner's prior written consent, which the Bond Owner may give or withhold in the Bond Owner's reasonable discretion;

7.13.4 Not to execute any residential lease not complying fully with all requirements and regulations governing the Low-Income Housing Tax Credit, except with the Bond Owner's prior written consent, which the Bond Owner may give or withhold in the Bond Owner's sole and reasonable discretion;

7.13.5 Keep all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income levels of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the availability of each of the Low-Income Housing Tax Credit applicable to the Improvements;

7.13.6 Comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations ("**Federal Laws**"),

if any, applicable to the creation, maintenance and continued availability of the Low-Income Housing Tax Credit; and

7.13.7 Certify compliance with the set-aside requirement and report the dollar amount of qualified basis and maximum applicable percentage, date of “placed in service” under and as defined in Section 42 of the Code, as applicable, and any other information required, and as applicable, for each of the Low-Income Housing Tax Credit at such time periods as required by Federal Laws, or state laws, as applicable.

**7.14 Equity Funding.** On or before the Bond Closing Date, the Investor Limited Partner shall provide Bond Owner with a written certification that partners and/or members owning in the aggregate not less than 75% of the investment fund which owns the Investor Member (the “**Investment Fund**”) are Investment Grade. If requested by Bond Owner prior to the end of a particular calendar year, within 60 days after the end of that calendar year, the Investor Limited Partner shall provide to Bond Owner an annual certification that since the Bond Closing Date (or the most recent annual certification as the case may be) certifying there has been no change in the ownership of the Investment Fund or if there has been a change in the ownership of the Investment Fund since the Bond Closing Date (or the most recent annual certification as the case may be), certifies to Bond Owner in writing that the partners and/or members owning in the aggregate at least 75% of the ownership interests in the Investment Fund are themselves (or such partner’s ultimate parent) Financial Institutions or Investment Grade. All information received in connection with the foregoing shall be kept confidential by Bond Owner, unless required to be disclosed by applicable law and/or bank regulations.

**7.15 Deposits For Taxes, Insurance, and Other Charges.**

7.15.1 **Creation of Reserve with Bond Owner.** Borrower shall deposit with Bond Owner amounts as set forth in **Exhibit “T”** to pay when due (1) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Bond Owner may require under this Agreement, and (2) Taxes. The amounts deposited under the preceding sentence are collectively referred to in this Agreement as the “**Imposition Deposits**”. The amount of the Imposition Deposits shall be sufficient to enable Bond Owner to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Bond Owner shall maintain records indicating how much of the monthly Imposition Deposits and how much of the aggregate Imposition Deposits held by Bond Owner are held for the purpose of paying Taxes, insurance premiums and each other Imposition for which Imposition Deposits are required. Any waiver by Bond Owner of the requirement that Borrower remit Imposition Deposits to Bond Owner may be revoked by Bond Owner, in Bond Owner’s discretion, at any time upon notice to Borrower.

7.15.2 **[RESERVED].**

**7.15.3 Setoff Rights.** If an Event of Default has occurred and is continuing, Bond Owner may instruct the Trustee in writing to apply any Imposition Deposits, in any amounts and in any order as Bond Owner determines, in Bond Owner's discretion, to pay any Impositions or as a credit against the Obligations. Upon payment in full of the Obligations, Bond Owner shall refund to Borrower any Imposition Deposits held by Bond Owner.

**7.16 General Covenants.** Borrower further covenants and agrees as follows:

**7.16.1 Compliance with Applicable Laws.**

(i) **Governmental Regulations.** Borrower will at all times comply with all applicable Governmental Regulations, including maintenance of the continued truth and accuracy of each of the representations and warranties set forth in **Section 2.5**.

(ii) **Other Applicable Laws.** In addition to **Section 7.16(i)**, Borrower will at all times comply with all other Applicable Laws; provided that, notwithstanding any provision of this Agreement or any of the other Bond Loan Documents to the contrary, no Material Adverse Change, Unmatured Event of Default or Event of Default shall be deemed to have occurred as a result of the failure of Borrower or the Project to comply with any such Applicable Law so long as Borrower has promptly notified Bond Owner thereof and Bond Owner shall have reasonably determined that each of the following conditions are satisfied: (i) Borrower is contesting in good faith any claim that it is not in compliance with such law or is contesting in good faith the applicability thereof to Borrower or the Project; (ii) Borrower has properly commenced and is diligently pursuing such contest; (iii) such contest will not prohibit or impair in any material respect Borrower's ability to Complete the Project by the Completion Date or own, lease, operate and maintain the Project or otherwise perform its other Obligations under the Bond Loan Documents as and when required; (iv) Borrower demonstrates to Bond Owner's reasonable satisfaction that Borrower has the financial capability to undertake and pay for such contest and any corrective or remedial action then or thereafter likely to be necessary; (v) Bond Owner will not be exposed to any liability due to such contest; and (vi) such contest, if determined against Borrower, will not result in any Lien or Imposition on the Project (unless Borrower has complied with the Lien contest provisions set forth in **Section 7.7.6(ii)** above) or a Material Adverse Change (taking into account any reserves and any remedial plans put in place by Borrower to address any such adverse decision which have been reasonably approved by Bond Owner).

(iii) **Know Your Customer Compliance.** In addition to the foregoing, but without limiting such statements and agreements, Borrower and Guarantor and each of their owners, officers and directors are in compliance with (a) the Trading with the Enemy Act, and each of the foreign

assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B Chapter V, as amended) and any other enabling legislation or executive order relating thereto, (b) the Patriot Act and (c) other federal or state laws relating to “*know your customer*” and anti-money laundering rules and regulations. No part of the proceeds of the Bond Loan will be used directly or indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977.

**7.16.2 Payment of Obligations.** Borrower shall pay all of its current obligations before delinquency, including all federal, state and local taxes, all Indebtedness permitted pursuant to **Section 7.7.1**, and all other payments required under federal, state or local law; subject only to Borrower’s right to contest the same in the manner provided in **Section 7.7.6** to the extent such contest is permitted by Applicable Law.

**7.16.3 Notices to Bond Owner.** Promptly, and in no event later than fifteen (15) days of Borrower obtaining actual knowledge thereof, Borrower will give, or cause to be given, written notice to Bond Owner of (a) any Event of Default or Material Adverse Change, (b) any material breach or claimed material breach under the General Contractor Agreement, any subcontract, or any existing Management Agreement and the expiration of all applicable notice and cure periods or, to the extent such breach results in a Material Adverse Change, any other Construction Contract, any Project Related Document or other agreement to which Borrower or its assets is subject, (c) any violation or claimed violation of any Applicable Law or any action or proceeding which is instituted or threatened by or against Borrower or Guarantor to the extent any of the foregoing could, if adversely determined, result in an Event of Default or a Material Adverse Change, (d) (i) the insolvency of Borrower or Guarantor or (ii) any of Borrower, Guarantors, any Manager, the General Contractor, or any subcontractor becomes the subject of a Bankruptcy Event, (e) any breach or default of a third party agreement or the commencement of any litigation or proceeding against Borrower or the commencement of any litigation or proceeding against Borrower or a Guarantor to the extent reasonably likely to result in a Material Adverse Change or an Event of Default if determined adversely to Borrower or a Guarantor and (f) any other actions, proceedings, changes in Applicable Law or notices adversely affecting the Project or any other Collateral, or Bond Owner’s interest therein, whether by any zoning, building or other Governmental Authority having jurisdiction with respect to the Project or otherwise to the extent, in each case, it is reasonably likely to result in a Material Adverse Change or an Event of Default if determined adversely to Borrower.

**7.16.4 Maintenance of Existence; Trade Names.** Borrower shall maintain and preserve its existence and all rights and franchises material to its business, if any. Borrower shall immediately notify Bond Owner of any change in

the legal, trade or fictitious business names used by Borrower. At the request of Bond Owner from time to time, Borrower shall execute a certificate in form reasonably satisfactory to Bond Owner listing the trade names or fictitious business names under which Borrower intends to operate the Project or any business located thereon and representing and warranting that Borrower does business under no other trade names or fictitious business names with respect to the Project. Borrower shall, upon Bond Owner's reasonable request, execute any additional certificates and documents necessary to reflect any change in trade names or fictitious business names.

**7.16.5 Keeping Guarantor and Indemnitors Informed.** Borrower shall keep Guarantors and all indemnitors informed of Borrower's financial condition and business operations, the condition and use of the Project, and all other circumstances which may affect Borrower's ability to pay or perform the Obligations.

**7.16.6 Publicity Releases.** After the execution of this Agreement, any and all publicity releases by Borrower or a Guarantor to newspapers of general or limited circulation or trade publications announcing any of the financing by Bond Owner provided for herein shall be issued by or subject to prior approval by Bond Owner. In addition, subject to the reasonable consent of Borrower and so long as not interfering with Borrower's or any Tenant's use and occupancy of the Project and is otherwise in compliance with all Applicable Laws, Bond Owner may, at Bond Owner's sole expense and without reimbursement by Borrower, erect a temporary sign on the Project indicating that Bond Owner is the source of the financing for the Project.

**7.16.7 Further Assurances.** Borrower shall, at its sole cost and expense, cooperate with Bond Owner at all times and shall, promptly after any reasonable request therefor by Bond Owner, (a) deliver to Bond Owner copies of any Leases, any Construction Contracts, any Management Agreements, any Project Related Documents, and any other instruments, agreements and documents related to Borrower, Guarantors, the Project or the development, construction, use, leasing, occupancy, operation or condition thereof not previously delivered to Bond Owner, together with copies of any changes, revisions, amendments or modifications to any of the foregoing, (b) deliver any and all instruments, agreements and documents, and take such other action, as may be necessary or desirable in the opinion of Bond Owner to maintain or perfect the security interests of Bond Owner provided for herein and in the other Bond Loan Documents and (c) execute and deliver and cause Guarantor to execute and deliver, such modifications as necessary to correct any scrivener's error and to otherwise confirm, ensure the validity and enforceability of the Bond Loan Documents. Borrower further authorizes Bond Owner to, at Borrower's sole cost and expense, file and record such UCC Financing Statements, including continuation statements, that Bond Owner may reasonably deem appropriate to perfect, preserve or otherwise reflect such security interests in the appropriate public records.

**7.16.8 Hedging Transactions.** Borrower may but is not required to enter into, or cause its Affiliates to be entered into, any Hedging Transaction with respect to the Bond Loan. To the extent any Hedging Transaction is entered into between Borrower and Bond Owner (or any Affiliates thereof), it shall constitute an independent agreement governed by the written provisions thereof, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of the Bond Loan Documents; provided that such Hedging Transaction shall be secured by the lien of the Bond Loan Mortgage as set forth therein. In connection with any Hedging Transaction, Borrower shall secure an IRMA to provide financial services on terms and in a manner acceptable to Bond Owner, and Borrower shall pay all associated fees (estimated to be \$25,000.00). Except as otherwise expressly provided such Hedging Transaction, and any payoff statement from Bond Owner relating to the Bond Loan shall not apply to any Hedging Transaction Obligation.

## **ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES**

**8.1 Events of Default.** The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement (each, an “**Event of Default**”):

**8.1.1 Failure to Pay.** (a) Failure to pay the Bond Loan in full by the Maturity Date; (b) failure to pay when due any of the scheduled monetary payment obligations set forth in **Section 6.2.1**; or (c) failure to pay any other fees, costs, charges and other amounts as and when due to Bond Owner under any other provision of this Agreement or any other Bond Loan Document; provided that, with respect to this clause (c) only, in the absence of any specified notice and cure period, such failure will not be an Event of Default if fully paid within ten (10) days of written demand therefor.

**8.1.2 Failure to Balance.** Failure to make any deposit into the Borrower’s Funds Account as and when required pursuant to **Section 5.2.3(ii)** or **Section 7.14**.

**8.1.3 Specific Construction Related Events of Default.** The following specified Events of Default are in addition and without limiting the other Events of Default under this Section:

(i) **Change Orders.** Any breach of the change order limitations set forth in **Section 7.1.2(iii)**; provided such breach shall not result in an Event of Default if such breach is cured within thirty (30) days of demand therefor by Bond Owner or Bond Owner has determined that the Bond Loan remain In Balance notwithstanding, such breach does not result in a Material Adverse Change, no other Events of Default then exist or will result as a result of such breach and, to the extent an updated Budget and/or updated Plans are required as a result thereof, such Budget and/or Plans have been approved by Bond Owner.

(ii) **Permits.** If and to the extent Bond Owner does not require on the Bond Closing Date, the failure of Borrower to obtain any Construction Approval, material permit, license, consent or approval required for the continued development, construction, Completion or operation of the Improvements for their intended purpose within thirty (30) days after the Bond Closing Date, or upon obtaining, the neglect, failure or refusal to keep in full force and effect any Construction Approval, material permit, license, consent or approval required for the continued development, construction, Completion or operation of the Improvements for their intended purpose hereunder that is not fully reinstated within thirty (30) days after demand therefor by Bond Owner; provided, however, that if Bond Owner has reasonably determined that such failure is capable of being remedied but not within such thirty (30) day period and the continued existence thereof during such cure period will not result in irreparable harm, then so long as Borrower is diligently pursuing such cure at all times during such cure period, Borrower or such Guarantor, as applicable, shall have up to an additional thirty (30) days within which to remedy such failure, but in no event more than a total of sixty (60) days after the initial demand from Bond Owner to Borrower.

(iii) **Cessation of Construction.** Cessation of the work of construction or any material part thereof prior to Completion for any reason for a continuous, consecutive period of twenty (20) Business Days unless such cessation is caused by a Force Majeure Event, in which case such period shall be extended as necessary as a result thereof, but not to exceed sixty (60) Business Days of cessation; provided that Borrower has notified Bond Owner of such Force Majeure Event within ten (10) days of Borrower's knowledge thereof.

(iv) **Failure to Complete.** Failure to Complete the Project by the Completion Date and satisfy all conditions precedent for the final construction related Bond Proceeds Disbursement as set forth in **Section 4.2.8.**

#### 8.1.4 **Breach of Specific Covenants.**

(i) **Reporting Requirements.** The breach of any of the reporting requirements set forth in **Section 7.3**; provided that, such breach shall not result in an Event of Default if such breach is cured within five (5) Business Days of demand therefor by Bond Owner.

(ii) **Accounts.** The breach of any of the covenants and requirements set forth in **Section 7.6**; provided such breach shall not result in an Event of Default if such breach is cured within five (5) Business Days of demand therefor by Bond Owner.

(iii) **Negative Covenants.** The breach of any of the negative covenants set forth in **Section 7.7** (i.e., Prohibited Transfers, Prohibited Liens or Impositions, Prohibited Indebtedness, Prohibited Associations, Prohibited Distributions and Prohibited Amendments to Organizational Documents) but excluding any breach of **Section 7.7.1(i)** with respect to any Transfer of an immaterial part of the Project or any breach of **Section 7.7.1(iii)**, any of which shall constitute a non-monetary default subject to the notice and cure provisions set forth in **Section 8.1.7**.

(iv) **Single Purpose Entity Covenants.** The breach of any of the single purpose entity covenants set forth in **Section 7.9**; provided that, if such failure is inadvertent, is otherwise capable of cure and Bond Owner has reasonably determined that the continued existence thereof will not result in a Material Adverse Change or create a reasonable risk of substantive consolidation with any other Person, then Borrower shall have thirty (30) days from demand therefor by Bond Owner to cure such failure before such failure shall constitute an Event of Default hereunder.

(v) **Maintenance of Insurance.** The failure of Borrower to maintain any insurance required to be maintained under **Section 7.11.1** and such failure is not cured within the earlier of (i) prior to any lapse or expiration of such insurance or (ii) ten (10) Business Days after written demand therefor by Bond Owner.

(vi) **Application of Proceeds.** The failure of Borrower to turnover, use or otherwise apply any Claims Proceeds as and when required in accordance with **Section 7.11.4**; provided that, to the extent there is no specified notice and cure period with respect thereto in **Section 7.11.4**, then within ten (10) Business Days of demand therefor by Bond Owner.

**8.1.5 Representations and Warranties.** Any representation or warranty of Borrower or a Guarantor contained herein or in any of the other Bond Loan Documents, or in any certificate or other document executed by Borrower or a Guarantor and delivered to Bond Owner pursuant to or in connection with this Agreement or any other Bond Loan Document, fails to be true, correct and complete in all material respects as; provided that, if such failure is inadvertent and capable of cure, and Bond Owner has reasonably determined that the continued existence thereof during such cure period will not result in irreparable harm, then Borrower shall have thirty (30) days from demand therefor by Bond Owner to cure such failure before such failure shall constitute an Event of Default hereunder, and if the representation or warranty at issue was made by a Guarantor, it shall not be an Event of Default if Borrower provides a substitute guarantor reasonably acceptable to Bond Owner for that Guarantor within thirty (30) days after notice is provided by Bond Owner to Borrower and Guarantors.

8.1.6 **AHFC Loans.** The failure of Borrower to timely pay and perform under and with respect to any term or requirement of the AHFC Loan Document which is not fully cured within any applicable grace or cure period.

8.1.7 **Other Nonmonetary Defaults.** Any breach by Borrower or a Guarantor of any of the nonmonetary covenants and conditions of this Agreement or of the other Bond Loan Documents to which is a party (other than those specific breaches described in this **Section 8.1**), which breach is not cured to Bond Owner's satisfaction on or before the expiration of any applicable cure period set forth herein or in the other Bond Loan Documents, or, if none is so specified, within fifteen (15) days following Borrower's or such Guarantor's, as applicable, receipt of written notice thereof by Bond Owner; provided, however, that no such notice and cure period will be required if a notice has been provided under this **Section 8.1.7** in the prior twelve calendar months.

8.1.8 **Commencement of Foreclosure.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any Collateral. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Bond Owner. However, if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Bond Owner written notice of the creditor or forfeiture proceeding and deposits with Bond Owner monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Bond Owner, in its sole discretion, as being an adequate reserve or bond for the dispute then this paragraph shall not apply.

8.1.9 **Bankruptcy; Litigation; Judgments; etc.**

(i) **Bankruptcy Event.** Borrower, or prior to the Conversion Date, the Investor Limited Partner or a Guarantor, (a) is unable to remain, or admits in writing that it is not, Solvent, (b) makes a general assignment for the benefit of creditors or (c) become the subject of a Bankruptcy Event; provided that if such Bankruptcy Event is involuntary and not otherwise caused by any Borrower Related Person, such Bankruptcy Event shall not constitute an Event of Default if it is dismissed within sixty (60) days of the filing thereof; provided that, and if the Bankruptcy Event at issue involves a Guarantor, it shall not be an Event of Default if Borrower provides a substitute guarantor reasonably acceptable to Bond Owner for that Guarantor within thirty (30) days after notice is provided by Bond Owner to Borrower and Guarantors.

(ii) **Material Litigation.** The failure of Borrower to diligently defend at all times any litigation or proceeding before any Governmental Authority which has been commenced against or affecting Borrower, the

Project or any other Collateral, but only to the extent, if adversely determined, would result in a Material Adverse Change.

(iii) **Levy, Etc.** All or any material part of the property of Borrower is attached, levied upon, garnished or otherwise seized by legal process, and such attachment, levy, garnishment or seizure is not quashed, stayed, or released within sixty (60) days of the date thereof.

(iv) **Bond Loan Documents; Injunction.** (i) Any Borrower Related Person shall claim or assert in any legal proceeding that the Bond Loan Documents are not legal, valid and binding agreements enforceable against Borrower and/or a Guarantor in accordance with their respective terms, (ii) to the extent caused by any Borrower Related Person, the Bond Loan Documents shall in any way be terminated (except in accordance with their terms), revoked or become or be judicially declared ineffective or inoperative in any material respect or shall in any way fail to give or provide the respective liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby; provided that if such termination or failure is capable of being cured, such termination or failure shall not constitute an Event of Default if cured within ten (10) days of demand therefor by Bond Owner or (iii) any Person shall obtain an order or decree in any court of competent jurisdiction enjoining or prohibiting Bond Owner, Borrower or a Guarantor from carrying out the terms and conditions of any of the Bond Loan Documents and such order or decree is not vacated, bonded over or stayed within sixty (60) days after the entry thereof.

(v) **Judgment.** A final judgment or decree for monetary damages or a monetary fine or penalty is entered against Borrower and/or a Guarantor (individually or in the aggregate when combined with any other judgment, decree, fine or penalty) and is not paid and discharged, or bonded over or stayed, within thirty (30) days after the entry thereof; provided that if the judgment or decree relates to a Guarantor, it shall not be an Event of Default if Borrower provides a substitute guarantor reasonably acceptable to Bond Owner for that Guarantor within thirty (30) days after notice is provided by Bond Owner to Borrower and Guarantors.

(vi) **Dissolution.** (1) Commencement of any action or proceeding which seeks as one of its remedies for the Dissolution of Borrower, Investor Limited Partner or the Entity Guarantor and such action or proceeding is not defended diligently and in good faith by Borrower or the Entity Guarantor as applicable or (2) a final judgment is entered against Borrower or a Guarantor decreeing any such Dissolution, or (3) failure by Borrower to comply with the single-purpose entity requirements, if any, set forth in the Loan Documents.

(vii) **Indemnification.** Failure of Borrower to satisfy any of its indemnification obligations under the Loan Documents.

(viii) **Death.** The death or legal incapacity of an Individual Guarantor and that Guarantor is not replaced with a substitute guarantor acceptable to Bond Owner within thirty (30) days after any such death or incapacity.

**8.1.10 Material Adverse Change.** The occurrence of any Material Adverse Change as to the Project, Borrower or a Guarantor; provided that, if Bond Owner has determined that such Material Adverse Change is subject to cure and the continued existence thereof will not result in irreparable harm during such cure period, it shall not constitute an Event of Default hereunder if Borrower and/or Guarantor as applicable is diligently pursuing such cure and it is cured within a reasonable time not to exceed sixty (60) days from the initial demand of Bond Owner to cure such Material Adverse Change.

**8.1.11 Destruction of Project.** If the Project, or a material portion thereof, is destroyed by fire or other peril, and Borrower fails to comply with the requirements set forth in **Section 7.11.4** as and when required thereunder or, if no time period is provided for therein, within ten (10) Business Days of written demand therefor by Bond Owner, or if Borrower ceases business operations as contemplated as of the date of this Agreement.

**8.1.12 Forfeiture of Collateral.** The seizure of the Project or any material portion thereof by any Governmental Authority or the forfeiture of Project or any material portion thereof as a result of any enforcement action by any Governmental Authority.

**8.1.13 Hedging Transaction Obligations.** To the extent a Hedging Transaction exists, the occurrence or existence of any default, breach or call event (however described) beyond any applicable grace or cure period with respect to the Hedging Transaction Obligations under such Hedging Transaction, whether or not Bond Owner (or an Affiliate thereof) is a party thereto.

**8.1.14 Default Under Loan Document or Bond Document.** The occurrence of any Event of Default under and as defined in any Bond Loan Document, or the occurrence of an Event of Default under and as defined in the Financing Agreement, the Indenture, or any other Bond Document.

**8.1.15 Misappropriation.** Borrower's use of any Borrower's Funds or Loan proceeds for any purpose other than pursuant to the Budget and any Draw Request Package.

**8.1.16 Equity and Partnership Defaults.** (i) any material reduction in the portion of the Capital Contributions to be used for budgeted items and to pay the Loan (except as a result of an adjustment due to a shortfall in or late delivery of tax credits as provided for in the Partnership Agreement) or a change in the federal tax rate to be made by the Investor Limited Partner which is not consented to by the Bond Owner in writing (unless the amount of the reduction is made by

the General Partner and/or the Administrative Limited Partner as a Capital Contribution in a manner satisfactory to Bond Owner or the amount of the reduction is otherwise made available in the manner satisfactory to Bond Owner or the reduction does not affect the amount of the scheduled Capital Contributions listed in **Exhibit "L"** which are to be applied to budgeted items or to the Bond Loan Note, or (ii) the Investor Limited Partner withdraws as the Investor Limited Partner of Borrower under the Partnership Agreement except as expressly permitted by the terms of this Agreement.

8.1.17 **Completion.** Completion does not occur by the Completion Date and in accordance with all Applicable Laws (including all requirements for the preservation of the Low Income Housing Tax Credit) and such failure is not fully cured within thirty (30) days after written notice thereof is provided by Bond Owner to Borrower.

8.1.18 **Bond Owner Determination.** A reasonable determination by Bond Owner (or its construction consultant) that Completion cannot occur by the Completion Date and in accordance with all Applicable Laws (including all requirements for ensuring the preservation of the Low-Income Housing Tax Credit), or all the Conditions to Conversion cannot be fully completed and satisfied on or before the Permanent Term Commencement Deadline (regardless of whether or not as a result of any casualty or condemnation), and any such situation is not corrected in a manner reasonably satisfactory to Bond Owner within 30 days after written notice thereof is provided by Bond Owner to Borrower.

8.1.19 **Low Income Tax Credit.** A reasonable determination by the TDHCA that Borrower has failed to satisfy the requirements for obtaining and maintaining the Low-Income Housing Tax Credit for the Project, and all applicable notice, grace, and cure periods have expired.

8.1.20 **Ground Lease.** The cancellation, termination, or expiration of the Ground Lease, the modification or amendment of the Ground Lease in any material respect (including, without limitation, increasing the rent due thereunder), or the failure of Borrower to pay and perform under the terms of the Ground Lease and such failure shall not have been cured within any applicable grace or cure period.

8.1.21 **(Reserved).**

Notwithstanding anything to the contrary in any Bond Loan Document, if an Event of Default relates solely to a Guarantor, then Bond Owner shall not exercise its rights and remedies under the Bond Loan Documents for such Event of Default if Borrower provides a substitute guarantor reasonably acceptable to Bond Owner for that Guarantor within thirty (30) days after notice is provided by Bond Owner to Borrower and Guarantors.

## 8.2 Remedies.

8.2.1 **Rights and Remedies.** Notwithstanding any provision to the contrary herein or in any of the other Bond Loan Documents, at any time (1) an Event of Default or Unmatured Event of Default is then existing, (2) the Borrower or Guarantor becomes incompetent or insolvent, files a petition in bankruptcy or is adjudged bankrupt; (3) a Material Adverse Change in either a Borrower's or a Guarantor's financial condition, as determined by Bond Owner in its sole discretion; or (4) a Guarantor seeks or attempts to limit, modify, or revoke its Guaranty of the Bond Loan or any other loan with Bond Owner, any commitment of Bond Owner to approve Requisitions or to disburse deposits of the Capital Contributions in the Capital Contribution Account, as provided for herein shall be suspended, Bond Owner will not have any further obligation to Borrower to approve a Requisition or to make any further disbursements of deposits of the Capital Contributions as provided for herein until such Event of Default or Unmatured Event of Default is cured, and, in addition to the foregoing, at the election of Bond Owner during the continuance of the Event of Default: (a) Bond Owner may exercise any and all of the rights and remedies of Bond Owner provided under any and all of the Bond Loan Documents, at law or in equity, including (i) to declare all outstanding Obligations to be immediately due and payable without presentment, demand, protest or notice of any kind and (ii) the right to appoint a receiver; (b) exercise any and all of the rights and remedies of a secured party under the UCC or other Applicable Law; (c) apply any Reserves in its possession, including any accounts, Claims Proceeds or any other funds or amounts) to the outstanding Obligations, whether or not such Obligations are then due and payable; and (d) charge interest on any or all of the Obligations at the Default Rate, provided the Default Rate will not exceed the Maximum Rate under any circumstances. Notwithstanding anything in the foregoing or elsewhere in any Bond Loan Document to the contrary, (x) upon the occurrence of an Event of Default under **Section 8.1.9(i), (iv) or (v)**, the commitment of Bond Owner to approve Requisitions or to disburse deposits of the Capital Contributions in the Capital Contribution Account, as provided for herein shall be automatically terminated and the Bond Loan and any other outstanding Obligations (and shall be automatically deemed to have become immediately due and payable upon the occurrence of such Event of Default and a redemption shall have been deemed to be made on the Bonds), all without any action by or notice to any Person and (y) upon the automatic acceleration of the Bond Loan as set forth above or if Bond Owner accelerates the Bond Loan by written notice to Borrower and Trustee (with respect to the Bond Loan) before the Event of Default is cured, Bond Owner may (in its sole discretion but without any obligation to do so), to the extent permitted by the Bond Documents and applicable law, by written notice to Borrower and Trustee, elect to rescind or annul any acceleration of the Bond Loan and related Obligations (and the associated notice of redemption of the Bonds) and reinstate all or some portion of the commitment of Bond Owner to approve Requisitions or to disburse deposits of the Capital Contributions; provided that neither Borrower nor any other Person shall have any right to demand any such rescission,

annulment or reinstatement and is not, nor shall be deemed to be, a third party beneficiary of this provision.

**8.2.2 Other Actions.** Without limiting Bond other rights and remedies under this Agreement, the other Bond Loan Documents and the Bond Documents, at law or in equity, during the existence of any Event of Default, Bond Owner may (but is not obligated to), and without releasing Borrower from any Obligation, make any payment or perform any act, covenant or condition that Borrower is required to pay or perform under any of the Bond Loan Documents and the Bond Documents, in such manner and to such extent Bond Owner may deem necessary or appropriate. In connection therewith, Bond Owner may (but is not obligated to): (a) enter upon and take possession of the Project; (b) commence, prosecute and complete construction of the Project (or suspend any such construction); (c) secure, winterize, preserve and protect the Collateral; (d) make repairs and other reasonable improvements to the Project that are necessary to keep the Project in good condition and repair for its intended purpose; (e) employ any contractors, subcontractors, agents, architects and inspectors required for the purposes set forth in clauses (a) through (d) above; (f) pay, settle or compromise all existing bills and claims which are or may be Liens against the Project or may be necessary or desirable for such completion of the Improvements or clearance any Liens on title; (g) appear, prosecute, defend and settle any actions or proceedings in connection with the Project, (h) take such action, require such performance and do any and every other act as Bond Owner deems necessary under this Agreement or any other Bond Loan Document ; and (i) employ Bond Owner's Consultants, including attorneys, to carry out any of the foregoing, including defending against attempts to interfere with the exercise of power granted hereby.

**8.2.3 Protective Advances.** All sums expended by Bond Owner in connection with the exercise of their rights and remedies during the existence of any Unmatured Default or any Event of Default shall constitute Protective Advances, shall accrue interest thereon until paid at the Default Rate and shall be secured by Collateral.

**8.2.4 Power of Attorney.** Without limiting Bond Owner's other rights and remedies under this Agreement, the other Bond Loan Documents, at law or in equity, during the existence of any Event of Default, Borrower hereby irrevocably constitutes and appoints Bond Owner, as its true and lawful attorney-in-fact, coupled with an interest and with full power of substitution, for the purposes of exercising any and all of Bond Owner's rights and remedies as set forth herein, any other Bond Loan Document, at law or in equity in the name of Borrower.

**8.2.5 Impounds and Reserve Account Requirements as Condition of Cure.** As a condition to any cure of any then existing Event of Default, Bond Owner may require that Borrower establish with Bond Owner, and thereafter fund and maintain pursuant to procedures established by Bond Owner in connection with such proposed cure, such impounds and reserve accounts as Bond Owner

determines appropriate given the payment and performance history of Borrower and the Project and the financial condition of the Project, Borrower and Guarantors, including tax and insurance imposition accounts, and leasing commission reserves, repair reserves and capital expense reserves.

**8.2.6 No Liability.** If Bond Owner elects to commence or continue with the improvement of the Project or any construction related thereto, Bond Owner will not be deemed to have assumed any liability of Borrower or any other Person for operation of the Project or for the manner or quality of the Project and Borrower expressly waives any such liability, except to the extent that such liability shall be caused directly by the gross negligence or willful misconduct of Bond Owner.

**8.2.7 Cumulative Remedies.** To the fullest extent permitted by Applicable Law, all of the rights and remedies under this Agreement and the other Bond Loan Documents shall be cumulative and non-exclusive and may be exercised successively, concurrently or in any order as Bond Owner may elect.

**8.2.8 Notice and Cure Rights of Investor Limited Partner, Special Limited Partner and Guarantors.** Notwithstanding anything to the contrary contained herein or in any other Documents, the Bond Owner agrees to accept performance on the part of a Guarantor, Investor Limited Partner or any of the Investor Limited Partner's Affiliates as though the same had been performed by the Borrower under any of the Bond Loan Documents. The Bond Owner will allow the Guarantor, the Investor Limited Partner and the Investor Limited Partner's Affiliates ten (10) days after giving the Guarantor, Special Limited Partner and the Investor Limited Partner notice to cure a monetary default under the Bond Loan Documents (other than the payment due at maturity) and except as to the Borrower's filing of a voluntary bankruptcy petition, up to thirty (30) days after giving the Guarantor, Special Limited Partner and the Investor Limited Partner notice to cure of any non-monetary default under the Bond Loan Documents. If the Guarantor, Investor Limited Partner, or any of the Investor Limited Partner's Affiliates makes any such payment or otherwise offers cure of a default, the Bond Owner will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by the Borrower. The foregoing notice and cure periods shall run simultaneously with any grace and cure periods provided to the Borrower in **Section 8.1** or otherwise for the applicable occurrences.

**8.2.9 Relationship to Bonds.** Notwithstanding the foregoing or anything else herein to the contrary, Issuer agrees that the Bond Owner in exercising its rights and/or remedies hereunder may (depending on the circumstances by acting in its own right or in the name of Issuer and/or Trustee. The Bond Owner has been and is duly authorized to administer and service the Bond Loan for and on behalf of the Trustee and the Issuer pursuant to the terms of the Bond Documents.

8.2.10 **No Merger of Estates.** If Bond Owner shall acquire title to the Collateral by accepting a deed-in-lieu of foreclosure or entering into a new lease with the Ground Lessor upon the termination of the Ground Lease, unless Bond Owner shall then release the Bond Loan Mortgage, such acceptance of the Collateral shall be subject to the Bond Loan Mortgage and the liens and security interests granted and created therein.

**ARTICLE 9  
(RESERVED)**

**ARTICLE 10  
MISCELLANEOUS**

**10.1 Notices.**

10.1.1 **Generally.** Except in the case of notices and other Communications expressly permitted to be given through Electronic Systems and any Communications between Bond Owner and Borrower via email in the ordinary course of the Bond Loan's administration (including with respect to any Draw Request Package and any required consents or approvals with respect to Material Change Orders, the Budget, the Plans or the General Contractor Agreement), all notices, demands, requests and other Communications to any party hereunder shall be in writing (including email or similar writing) and shall be given to such party at the address or email address set forth on Schedule 1. Each such notice, request or other Communication shall be effective (a) if given by personal delivery, upon delivery thereof, (b) if delivered by overnight delivery from a recognized overnight delivery company (including UPS and Federal Express), the next Business Day, (c) if given by email transmission shall be deemed complete only upon a reply email transmission acknowledging receipt thereof (but excluding any automatically generated reply) and delivery thereafter pursuant to the immediately preceding clause or (d) if given by any other means, upon actual delivery thereof.

10.1.2 **Electronic Notices.** In addition to and without limiting the effect of any provision herein, notices and other Communications to Borrower hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by Bond Owner (and with respect to Communications to Borrower, Borrower); provided that approval of such procedures may be limited to particular notices or Communications. Unless Bond Owner otherwise prescribes, (a) notices and other Communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment) and (b) notices or communications posted to an Electronic System shall be deemed received upon the receipt by the intended recipient, at its e-mail address as described in the foregoing clause (a), of notification that such notice or communication is available and identifying the Electronic System where located, whether by link or otherwise; provided that, for both clauses (a) and (b) above, if such notice e-mail or other communication is not

sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day of the recipient.

**10.1.3 Change in Address.** Any party hereto may change its address, telecopy number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

## **10.2 No Deemed Waivers; Waivers and Amendments.**

**10.2.1 No Deemed Waivers.** No failure or delay by Bond Owner in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. No waiver of any provision of this Agreement or consent to any departure by Borrower therefrom shall in any event be effective. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Event of Default, Unmatured Event of Default or Material Adverse Change, regardless of whether Bond Owner may have had any notice or knowledge thereof at the time.

### **10.2.2 (Reserved).**

**10.3 Consents, Approvals and Actions.** Consents, determinations and approvals given, made or granted by Bond Owner for any matters covered under this Agreement must be in writing (which may include email delivery), shall be narrowly construed to cover only the parties and facts expressly identified in such written approval, determination or consent, shall be solely for the benefit of Bond Owner and Borrower (or Guarantor as applicable) and no third party is intended to be nor may be a third-party beneficiary thereof nor rely thereon for any purpose. Unless another standard is otherwise expressly provided in this Agreement, all determinations, consents, approvals, disapprovals, calculations, requirements, requests, acts, actions, elections, selections, opinions, judgments, options, exercise of rights, remedies or indemnities, satisfaction of conditions or other decisions of or to be made by Bond Owner in accordance with this Agreement or any of the other Bond Loan Documents shall be made in its respective sole and absolute, but good faith discretion.

## **10.4 Payment of Expenses/Indemnitee.**

**10.4.1 Payment of Expenses.** In addition to and without limitation of any other provision set forth in this Agreement or any other Bond Loan Document, Borrower shall pay on demand all reasonable costs and expenses of Bond Owner and Bond Owner's Consultants incurred in connection with (a) the negotiation, preparation, execution, delivery and administration of this Agreement, the other Bond Loan Documents, and any other required documents in connection therewith, or any extensions, amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby

or thereby shall be consummated) including appraisal fees, inspection fees, Bond Owner's Consultant's charges, title and escrow charges, the cost of any Electronic System, the reasonable fees, charges and disbursements of counsel for Bond Owner, (b) any Material Adverse Change, any Unmatured Event of Default or any Event of Default, and (c) the reasonable fees and expenses of Bond Owner and Bond Owner's Consultants with respect to the defense, protection and enforcement of the interests, rights and remedies of Bond Owner with respect to the Bond Loan, the Bond Loan Documents, Borrower, Guarantor or the Collateral, whether in connection with any consensual restructure or workout, any out-of-court workout, any litigation or administrative proceeding, any mediation, any arbitration, any bankruptcy proceeding or any other action or proceeding, all irrespective of whether any litigation, proceeding or other action has been commenced or otherwise instituted. In addition, Borrower shall pay all taxes and assessments and all expenses, charges, costs and fees provided for in this Agreement or relating to the Bond Loan, including any fees incurred for recording or filing any of the Bond Loan Documents, title insurance premiums and charges, tax service contract fees, documentation and processing fees, printing, photostating and duplicating expenses, air freight charges, escrow fees, costs of surveys, premiums of hazard insurance policies and surety bonds, fees for any appraisals, fees for market or feasibility studies required pursuant to the Bond Loan Documents and costs, fees and expenses incurred in collecting the Obligations and realizing upon the Collateral.

**10.4.2 INDEMNIFICATION.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AGREES TO PROTECT, INDEMNIFY, DEFEND AND SAVE HARMLESS BOND OWNER, ISSUER AND TRUSTEE AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") FOR, FROM AND AGAINST ANY AND ALL LIABILITY, EXPENSE OR DAMAGE OF ANY KIND OR NATURE (COLLECTIVELY "LOSSES"), AND FOR, FROM AND AGAINST ANY SUITS, CLAIMS OR DEMANDS, INCLUDING REASONABLE LEGAL FEES AND COSTS ON ACCOUNT OF OR ARISING OUT OF: (A) THIS AGREEMENT OR THE BOND LOAN DOCUMENTS OR OTHERWISE IN CONNECTION HERewith OR IN CONNECTION WITH THE PROJECT, ANY COLLATERAL OR ANY OBLIGATION, INCLUDING ANY SUIT, CLAIM OR DEMAND ARISING OUT OF THE REMOVAL OF, OR FAILURE TO REMOVE, ANY AND ALL NUCLEAR, TOXIC, RADIOACTIVE OR OTHER HAZARDOUS WASTE FROM THE PROJECT; (B) ANY LOAN OR THE USE OF THE PROCEEDS THEREFROM; (C) ANY MANAGEMENT AGREEMENTS, PROJECT RELATED AGREEMENTS, ANY APPROVED LEASES OR ANY OTHER LEASE INCLUDING ANY SUIT, CLAIM OR DEMAND THAT BORROWER HAS VIOLATED ANY SUCH LEASE; (D) ANY APPLICABLE ASSOCIATION, COMMUNITY FACILITIES DISTRICT, COOPERATIVE OR OTHER CO-USE OR CO-DEVELOPMENT AGREEMENT, INCLUDING ANY SUIT, CLAIM OR DEMAND THAT BORROWER, ANY BUYER OR ANY OTHER PERSON HAS VIOLATED OR FAILED TO COMPLY THEREWITH; (E) ANY APPLICABLE APPROVALS BY ANY GOVERNMENTAL

AUTHORITY, INCLUDING ANY SUIT, CLAIM OR DEMAND THAT SEEKS TO CHALLENGE ANY APPROVAL (INCLUDING ZONING APPROVALS) ISSUED OR GRANTED BY ANY SUCH GOVERNMENTAL AUTHORITY WITH RESPECT TO THE PROJECT; AND (F) ANY MATTER ARISING FROM OR RELATED TO ANY PERSON PROVIDING LABOR, SERVICES OR MATERIALS WITH RESPECT TO THE PROJECT, INCLUDING ANY SUIT, CLAIM OR DEMAND THAT BOND OWNER, OR TRUSTEE IS OBLIGATED TO APPROVE ANY BOND PROCEEDS DISBURSEMENTS OR MAKE ANY DISBURSEMENTS OF OTHER FUNDING SOURCES TO OR FOR THE BENEFIT OF ANY SUCH PERSON; PROVIDED THAT SUCH INDEMNITY SHALL NOT, AS TO SUCH INDEMNITEE, BE AVAILABLE TO THE EXTENT ANY LOSSES ARE FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE. THE FOREGOING INDEMNITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO ANY LOSSES WHICH ARE THE SUBJECT OF THE ENVIRONMENTAL INDEMNITY AGREEMENT, IT BEING THE INTENTION OF THE PARTIES HERETO THAT BORROWER'S LIABILITY FOR ENVIRONMENTAL MATTERS BE GOVERNED EXCLUSIVELY BY THE ENVIRONMENTAL INDEMNITY AGREEMENT. THE OBLIGATIONS ON THE PART OF BORROWER UNDER THIS SECTION SHALL SURVIVE CLOSING AND REPAYMENT IN FULL AND THE RESIGNATION OR REMOVAL OF THE TRUSTEE.

**10.5 Brokers.** Borrower and Bond Owner each represent to each other that none of them knows of any brokerage commissions or finders' fee due or claimed with respect to the transaction contemplated hereby. Borrower and Bond Owner shall indemnify and hold harmless the other parties for, from and against any and all loss, damage, liability, or expense, including costs and attorneys' fees, which such other party may incur or sustain by reason of or in connection with any misrepresentation by the indemnifying party with respect to the foregoing.

**10.6 Borrower Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Bond Owner (and any attempted assignment or transfer by Borrower without such consent shall be null and void) and (ii) Bond Owner may not assign or otherwise transfer its rights or obligations hereunder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Eligible Participants any legal or equitable right, remedy or claim under or by reason of this Agreement.

**10.7 USA Patriot Act.** Bond Owner hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Bond Owner to identify Borrower in accordance with the Patriot Act.

## **10.8 Documentation.**

**10.8.1 Replacement Documentation.** Upon receipt of an affidavit of an officer of Bond Owner as to the loss, theft, destruction or mutilation of a Bond, the Bond Loan Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, Borrower will issue, or cause the Issuer to issue, in lieu thereof, a replacement Bond, replacement Bond Loan Note or other security document in the same principal amount thereof and otherwise of like tenor. Upon the issuance of any such replacement Bond, replacement Bond Loan Note, or other security document, such replacement note or security document shall amend, restate and supersede each prior Bond, Bond Loan Note or security document being replaced thereby but without any novation of the obligations evidenced thereby, with such obligations being deemed continuing obligations such replacement Bond, replacement Bond Loan Note, or security document as such obligations have been amended and restated thereunder. In the event that Borrower issues such replacement note or other security document, the Bond Owner who is the payee on the lost, destroyed, mutilated or stolen Note or security document shall indemnify and hold harmless Borrower from any liability incurred by Borrower in connection with the lost, stolen, destroyed or mutilated Note or security document.

**10.8.2 Document Imaging.** Bond Owner shall each be entitled, in their sole discretion, to image or make copies of all or any selection of the agreements, instruments, documents, and items and records governing, arising from or relating to the Bond and the Bond Loan, including, without limitation, this Agreement, the Bond Documents, and the Bond Loan Documents, and Bond Owner may destroy or archive its paper originals. The parties hereto (a) waive any right to insist or require that Bond Owner produce paper originals, (b) agree that such images shall be accorded the same force and effect as the paper originals, (c) agree that the Bond Owner is entitled to use such images in lieu of destroyed or archived originals for any purpose, including as admissible evidence in any demand, presentment or other proceedings, and (d) further agree that any executed facsimile (faxed), scanned, pdf or other imaged copy of this Agreement or any Bond Loan Document shall be deemed to be of the same force and effect as the original manually executed document.

**10.8.3 Originally Executed Documents.** As an express condition to Bond Owner purchasing the Bonds based upon Bond Owner's receipt of fully-executed imaged copies of the Bond Loan Documents, Borrower shall deliver to Bond Owner fully-executed Bond Loan Documents with original hand-written signatures (i.e., wet signatures) of all Loan Parties on or before thirty (30) days from the date of this Agreement, and Borrower's failure to do so on or before such date shall constitute an Event of Default under this Agreement and the Bond Loan Documents. Notwithstanding the foregoing, Borrower and Bond Owner agree that this Agreement and the Bond Loan Documents may be signed and transmitted by electronic mail of a .PDF document and thereafter maintained in imaged or electronic form, and that such imaged or electronic record shall be valid and

effective to bind the party so signing as a paper copy bearing such party's hand-written signature. Borrower and Bond Owner further agree that the signatures appearing on this Agreement and the Bond Loan Documents (whether in imaged or other electronic format) shall be treated, for purpose of validity, enforceability and admissibility, the same as hand-written signatures. This Agreement and the Bond Loan Documents may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument.

**10.9 Statements.** Bond Owner may from time to time provide Borrower with account statements or invoices with respect to any of the Obligations (the "**Statements**"). Bond Owner is under no duty or obligation to provide Statements, which, if provided, will be solely for Borrower's convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Obligations. If Borrower pays the full amount indicated on a Statement on or before the due date indicated on such Statement, Borrower shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by Bond Owner of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of Bond Owner's right to receive payment in full at another time. The foregoing shall supplement and be in addition to the terms of the Indenture.

**10.10 Authority to File Notices.** Borrower irrevocably appoints Bond Owner in its own name or as attorney-in-fact for Borrower, with full power of substitution, to file for record, at Borrower's cost and expense and in Borrower's name, any UCC Financing Statements, notices of completion, notices of cessation of labor, or any other notices that Bond Owner considers necessary or desirable to protect or perfect its security interests in the Project and any other Collateral.

**10.11 Confidentiality.**

10.11.1 Bond Owner agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the Obligations or the enforcement of rights under the Bond Loan Documents or any Hedging Transaction Obligations, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Eligible Participant in, or any prospective assignee of or Eligible Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective

counterparty (or its advisors) to any Hedging Transaction relating to Borrower and its obligations, (g) with the consent of Borrower, (h) to holders of equity interests in Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to Bond Owner on a non-confidential basis from a source other than Borrower. For the purposes of this Section, “**Information**” means all Financial Statements and other information received from Borrower relating to Borrower or its business, other than any such information that is available to Bond Owner on a non-confidential basis; provided that, except for the Financial Statements and reports, any information received from Borrower or Guarantor after the date hereof shall not constitute confidential information subject to the above restrictions unless it is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

10.11.2 BOND OWNER ACKNOWLEDGES THAT INFORMATION (AS DEFINED ABOVE) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING BORROWER, THE GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

10.11.3 ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY BORROWER PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT BORROWER, GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES.

**10.12 Bond Owner Determination of Facts.** Bond Owner shall at all times be free to establish independently, to its satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition, term or requirement of this Agreement.

**10.13 Time is of the Essence.** Time is of the essence of this Agreement and every other Bond Loan Document.

**10.14 Survival.** All covenants, agreements, representations and warranties made by Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Bond Proceeds Disbursement, regardless of any

investigation made by any such other party or on its behalf and notwithstanding that Bond Owner may have had notice or knowledge of any Event of Default, Unmatured Event of Default, Material Adverse Change or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect until Repayment in Full.

**10.15 Counterparts.** This Agreement and any other Bond Loan Document may be executed in one or more counterparts, all of which when fully executed and delivered by all parties hereto and taken together shall constitute a single agreement, binding against each of the parties. Escrow holder or Bond Owner, after verifying that the counterparts are identical except for the signatures, is authorized and instructed to combine the signed signature pages on one or more of such counterparts, which shall then constitute one or more original agreements. To the maximum extent permitted by Applicable Law or by any applicable Governmental Authority, any document may be signed and transmitted by e-mailed PDF or telecopy with the same validity as if it were an ink-signed document. Each signatory below represents and warrants by his or her signature that he or she is duly authorized (on behalf of the respective entity for which such signatory has acted) to execute and deliver this instrument and any other document related to this transaction, thereby fully binding each such respective entity.

#### **10.16 UNLAWFUL USE MARIJUANA, CONTROLLED SUBSTANCES AND PROHIBITED ACTIVITIES.**

The undersigned shall not use, occupy, or permit the use or occupancy of any of the Property by the undersigned or any lessee, tenant, licensee, permittee, agent, or any other person in any manner that would be a violation of any applicable federal, state or local law or regulation, regardless of whether such use or occupancy is lawful under any conflicting law, including without limitation any law relating to the use, sale, possession, cultivation, manufacture, distribution or marketing of any controlled substances or other contraband (whether for commercial, medical, or personal purposes), or any law relating to the use or distribution of marijuana (collectively, "**Prohibited Activities**"). Any lease, license, sublease or other agreement for use, occupancy or possession of any of the Project (collectively a "**lease**") with any third person ("**lessee**") shall expressly prohibit the lessee from engaging or permitting others to engage in any Prohibited Activities. The undersigned shall upon demand provide Bond Owner with a written statement setting forth its compliance with this Section and stating whether any Prohibited Activities are or may be occurring in, on or around the Property or Collateral. If the undersigned becomes aware that any lessee is likely engaged in any Prohibited Activities, the undersigned shall, in compliance with applicable law, terminate the applicable lease and take all actions permitted by law to discontinue such activities. The undersigned shall keep Bond Owner fully advised of its actions and plans to comply with this Section and to prevent Prohibited Activities.

This Section is a material consideration and inducement upon which Bond Owner relies in extending credit and other financial accommodations to the undersigned. Failure by the undersigned to comply with this Section shall constitute a material non-curable Event of Default. Notwithstanding anything in this agreement, the Bond Loan Documents

regarding rights to cure Events of Default, Bond Owner is entitled upon breach of this Section to immediately exercise any and all remedies under this agreement, the Bond Loan Documents, and by law.

In addition and not by way of limitation, the undersigned shall indemnify, defend and hold Bond Owner and Trustee harmless from and against any loss, claim, damage, liability, fine, penalty, cost or expense (including attorneys' fees and expenses) arising from, out of or related to any Prohibited Activities at or on the Property or Collateral, Prohibited Activities by the undersigned or any lessee of the Property or Collateral, or the undersigned's breach, violation, or failure to enforce or comply with any of the covenants set forth in this section. This indemnity includes, without limitation any claim by any governmental entity or agency, any lessee, or any third person, including any governmental action for seizure or forfeiture of any Property or Collateral (with or without compensation to Bond Owner, and whether or not Property or Collateral is taken free of or subject to Bond Owner's lien or security interest). As used in this section, the word "undersigned" includes the Borrower but does not include Bond Owner or any individual signing on behalf of Bond Owner.

**10.17 Inconsistencies with the Loan Documents.** Except as expressly provided to the contrary in any Bond Loan Document or in any Bond Document, in the event of any inconsistencies between any terms of this Agreement and any terms of any of the Bond Loan Documents or any of the Bond Documents, the terms of this Agreement shall govern and prevail.

Notwithstanding anything to the contrary contained herein or in any of the Bond Loan Documents, (a) the parties acknowledge that all determinations, consents, approvals, disapprovals, calculations, requirements, requests, acts, actions, elections, selections, opinions, judgments, options, exercise of rights, remedies or indemnities, satisfaction of conditions or other decisions of Trustee hereunder and under any of the Bond Loan Documents shall be solely at the written direction of Bond Owner and subject to receipt by Trustee of security or indemnity satisfactory to Trustee in its sole discretion, (b) Trustee shall be entitled to request, receive, conclusively rely on and act pursuant to written direction of Bond Owner and shall have no responsibility or liability for any losses or damages of any nature that may arise from any action taken or not taken by the Trustee in accordance therewith, and (c) the provisions of the Indenture and Financing Agreement with respect to the rights, protections, benefits, immunities and indemnification afforded the Trustee in its capacity as the trustee under the Indenture are incorporated by reference herein and in each of the Bond Loan Documents.

**10.18 Incorporation of Preamble, Recitals and Exhibits.** The preamble, recitals and exhibits hereto are hereby incorporated into this Agreement.

**10.19 Severability of Provisions.** Any provision in any Bond Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision

in any other jurisdiction, and to this end the provisions of all Bond Loan Documents are declared to be severable.

## **10.20 Governmental Regulation Terms and Acknowledgements.**

**10.20.1 Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Bond Loan Document, or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Bond Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable; (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Bond Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**10.20.2 Supported QFC.** To the extent that the Bond Loan Documents provide support, through a guarantee or otherwise, for any other agreement or instrument that is a “qualified financial contract” (as defined and interpreted pursuant to 12 U.S.C. 5390(c)(8)(D), a “**QFC**”) with any such support being a “**QFC Credit Support**” and each such QFC being a “**Supported QFC**”) and a Covered Person that is party to a Supported QFC becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under a U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States notwithstanding any governing law provisions to the contrary set forth elsewhere in the Bond Loan Documents. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights under the Bond Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Bond Loan Documents were governed by the laws of the

United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Bond Owner shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support. As used herein, the following terms have the following meanings: (a) **"BHC Act Affiliate"** means an "affiliate" (as such term is defined and interpreted pursuant to 12 U.S.C. 1841(k)); (b) **"Covered Person"** or **"Covered Party"** means any of the following: (i) a "covered entity" as that term is defined and interpreted pursuant to 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined and interpreted pursuant to 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined and interpreted pursuant to 12 C.F.R. § 382.2(b), (c) **"Default Right"** means as defined and interpreted pursuant to 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable; and (d) **"U.S. Special Resolution Regimes"** means the resolution powers and regimes of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, together with the regulations promulgated thereunder, all as may be amended or otherwise modified from time to time.

**10.21 Governing Law.** This Agreement shall be construed in accordance with and governed by the federal laws to which Bond Owner may be subject and otherwise pursuant to the internal laws (without regard to conflict of law provisions thereof) of the State of Texas.

**10.22 Integration.** The Bond Loan Documents contain the complete understanding and agreement of Borrower and Bond Owner and supersede all prior representations, warranties, agreements, arrangements, understandings, and negotiations.

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**10.23 Dispute Resolution.** DISPUTE RESOLUTION PROVISION. This Dispute Resolution Provision contains a jury waiver, a class action waiver, and an arbitration clause (or judicial reference agreement, as applicable), set out in four Sections. READ IT CAREFULLY.

## **SECTION 1. GENERAL PROVISIONS GOVERNING ALL DISPUTES.**

**PRIOR DISPUTE RESOLUTION AGREEMENTS SUPERSEDED.** This Dispute Resolution Provision shall supersede and replace any prior “Jury Waiver,” “Judicial Reference,” “Class Action Waiver,” “Arbitration,” “Dispute Resolution,” or similar alternative dispute agreement or provision between or among the parties. Parties, as used in this Section, are the parties to this Agreement unless otherwise specifically noted.

**“DISPUTE” defined.** As used herein, the word “Dispute” includes, without limitation, any claim by either party against the other party related to this Agreement, any Related Document, and the Bond Loan evidenced hereby. In addition, “Dispute” also includes any claim by either party against the other party regarding any other agreement or business relationship between any of them, whether or not related to the Bond Loan or other subject matter of this Agreement. “Dispute” includes, but is not limited to, matters arising from or relating to a deposit account, an application for or denial of credit, warranties and representations made by a party, the adequacy of a party’s disclosures, enforcement of any and all of the obligations a party hereto may have to another party, compliance with applicable laws and/or regulations, performance or services provided under any agreement by a party, including without limitation disputes based on or arising from any alleged tort or matters involving the employees, officers, agents, affiliates, or assigns of a party hereto.

If a third party is a party to a Dispute (such as a credit reporting agency, merchant accepting a credit card, junior lienholder or title company), each party hereto agrees to consent to including that third party in any arbitration or judicial reference proceeding for resolving the Dispute with that party.

**Jury Trial Waiver.** Each party waives their respective rights to a trial before a jury in connection with any Dispute, and all Disputes shall be resolved by a judge sitting without a jury. If a court determines that this jury trial waiver is not enforceable for any reason, then **at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable**, any party shall be entitled to move the court for an order, as applicable: (A) compelling arbitration and staying or dismissing such litigation pending arbitration (“**Arbitration Order**”) under **Section 2** hereof, or (B) staying such litigation and compelling judicial reference under **Section 3** hereof.

**CLASS ACTION WAIVER.** If permitted by applicable law, **each party waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.**

**SURVIVAL.** This Dispute Resolution Provision shall survive any termination, amendment or expiration of this Agreement, or any other relationship between the parties.

**SECTION 2. Arbitration IF JURY WAIVER UNENFORCEABLE.** If (but only if) a state or federal court located inside the state of Texas determines for any reason that the jury trial waiver in this Dispute Resolution Provision is not enforceable with respect to a Dispute, then any party hereto may require that said Dispute be resolved by binding arbitration pursuant to this **Section 2** before a single arbitrator. An arbitrator shall have no authority to determine matters (i) regarding the validity, enforceability, meaning, or scope of this Dispute Resolution Provision, or (ii) class action claims brought by either party as a class representative on behalf of others and claims by a class representative on either party's behalf as a class member, which matters may be determined only by a court without a jury. **By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.**

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, National Arbitration Forum ("**NAF**") or Judicial Arbitration and Mediation Service, Inc. ("**JAMS**") ("**Administrator**") as selected by the initiating party. However, if the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. If NAF and JAMS both decline to administer arbitration of the Dispute, and if the parties are unable to mutually agree upon a licensed attorney to act as arbitrator with an Administrator, then either party may file a lawsuit (in a court of appropriate venue inside the state of Texas) and move for an Arbitration Order. The arbitrator, howsoever appointed, shall have expertise in the subject matter of the Dispute. Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where Bond Owner or Bond Owner is headquartered. The arbitrator shall apply the law of the state specified in the agreement giving rise to the Dispute.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the **moving** party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect

to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of **three** arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. If the terms of this **Section. 2** vary from the Administrator's rules, this **Section 2** shall control.

**SECTION 3. Reliance.** Each party (i) certifies that no one has represented to such party that the other party would not seek to enforce a jury waiver, class action waiver, arbitration provision or judicial reference provision in the event of suit, and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, material reliance upon the mutual waivers, agreements, and certifications in the four Sections of this DISPUTE RESOLUTION PROVISION. By initialing below, each party agrees it understands the terms of this Section and has had the opportunity to discuss the provision with counsel.

Borrower Initials: \_\_\_\_\_

Bond Owner Initials: \_\_\_\_\_

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**10.24 Electronic Execution.** The words “execution,” “signed,” “signature,” and words of like import in any Bond Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.24.1 The provisions of this Section shall be applicable in the event that Borrower delivers any (i) financial statements of Borrower or any other Person (“**Financial Statement**”), (ii) no default or compliance certificates (“**No Default Certificates**”), or (iii) borrowing base certificates, and together with the Financial Statements, the No Default Certificates, and any other documents or information regarding Borrower or any other Person delivered to Bond Owner pursuant to this Agreement, collectively, the “**Financial Information**”) in electronic form (by “email”).

10.24.2 The Financial Information delivered in electronic form shall, for all purposes, be the same as if, and shall have the same validity, force and effect as if, such Financial Information had been delivered in paper or other tangible form. Each item of Financial Information delivered in electronic form shall be deemed to have been originally signed by Borrower for all purposes (including all purposes and interpretations of federal and state law), whether or not there is an electronic name or signature of Borrower thereon, and Borrower waives any right it may have to claim that the electronic documents are not original documents or valid documents.

10.24.3 Borrower shall deliver Financial Information to Bond Owner in, and only in, a format that Bond Owner may both retain in its own records (i.e. save as a file on its own system) and print. In the event that at any time, under the electronic format then currently used by Bond Owner, Bond Owner is unable to save or print Financial Information delivered in electronic form, Borrower shall no longer be permitted to deliver Financial Information in electronic form.

10.24.4 This Section constitutes an agreement between the parties to conduct transactions by electronic means pursuant to the Texas Uniform Electronic Transactions Act, Chapter 43, Texas Business & Commerce Code, and the provisions of such Act shall be applicable to the delivery of Financial Information by Borrower to Bond Owner in electronic form.

**10.25 WAIVER OF DEFENSES AND RELEASE OF CLAIMS.** The undersigned hereby (i) represents that neither the undersigned nor any Affiliate or principal of the Undersigned has any defenses to or setoffs against any indebtedness or other obligations owing by the undersigned, or by the undersigned’s Affiliates or principals, to the Bond Owner or to any Affiliates of Bond Owner (the “**Obligations**”), nor any claims against Bond Owner or against any Affiliates of Bond Owner for any matter whatsoever, related

or unrelated to the Obligations, and (ii) releases Bond Owner and all Affiliates of Bond Owner and its respective affiliates, officers, directors, employees and agents from all claims, causes of action, and costs, in law or equity, known or unknown, whether or not matured or contingent, existing as of the date hereof that the undersigned has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Obligations, including the subject matter of this Agreement. The foregoing release does not apply, however, to claims for future performance of express contractual obligations that mature after the date hereof that are owing to the undersigned by Bond Owner or by any Affiliates of Bond Owner. As used in this paragraph, the word "undersigned" includes Borrower but does not include Bond Owner or any individual signing on behalf of Bond Owner. The undersigned acknowledges that Bond Owner has been induced to enter into or continue the Obligations by, among other things, the waivers and releases in this paragraph.

**10.26 NO ORAL AGREEMENT.** THIS WRITTEN AGREEMENT AND THE OTHER BOND LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

**10.27 ON-LINE BANKING LOAN PAYMENTS.**

10.27.1 From time to time, Bond Owner may (but shall not be required to) permit loan payments to be made through its online banking website. Bond Owner may impose and change limitations on making online loan payments, such as minimum or maximum payment amounts, the types of accounts from which loan payments may be made, and the types of payments that may be made online (i.e., ordinary installment payments, principal only payments, or other types of payments). Whether online payments are permitted, and Bond Owner's applicable terms and restrictions if such payments are permitted, will be reflected in the features available online when a user logs into the online banking website. From time to time, Bond Owner may (but shall not be required to) permit Requisitions to be approved through its online banking website. Bond Owner may impose and change limitations on online Requisitions, such as minimum or maximum Requisition dollar amounts, and the types of accounts into which advances may be transferred. Whether online Requisitions are permitted, and Bond Owner's applicable terms and restrictions if such Requisitions are permitted, will be reflected in the features available online when a user logs into the online banking website, and/or as Bond owner may otherwise advise Borrower.

10.27.2 From time to time, Bond Owner may (but shall not be required to) permit loan payments to be made through its online banking website. Bond Owner may impose and change limitations on making online loan payments, such as minimum or maximum payment amounts, the types of accounts from which loan payments may be made, and the types of payments that may be made online (i.e., ordinary installment payments, principal-only payments, or other types of

payments). Whether online payments are permitted, and Bond Owner's applicable terms and restrictions if such payments are permitted, will be reflected in the features available online when a user logs into the online banking website.

## **ARTICLE 11 EXHIBITS AND SCHEDULES**

The following exhibits and schedules to this Agreement are fully incorporated herein as if set forth at length:

- Schedule 1 Addresses for Notices
- Schedule 2 (Reserved)
- Exhibit A [Form of] Note
- Exhibit A-1 Permanent Term Amortization Schedule
- Exhibit B (Reserved)
- Exhibit C Budget
- Exhibit D Signature Authorization Form
- Exhibit E Form of Request for Disbursement
- Exhibit F Insurance Requirements
- Exhibit G-1 Form of] Reporting Compliance Certificate for Borrower
- Exhibit G-2 Form of] Reporting Compliance Certificate for Limited Guarantors
- Exhibit H-1 through H-4 Form of U.S. Tax Compliance Certificate
- Exhibit I Waiver of Lien to Date
- Exhibit J Affidavit of Commencement
- Exhibit K Affidavit and Certificate of Completion
- Exhibit L Investor Capital Contribution Schedule
- Exhibit M Survey Requirements
- Exhibit N Tax Credit Allocation
- Exhibit O Title Insurance and Escrow Closing Requirements
- Exhibit P Conversion Certificate

- Exhibit Q Contractor Bills Paid Affidavit
- Exhibit R Owner Bills Paid Affidavit
- Exhibit S Beneficial Ownership Certification
- Exhibit T Conditions Relating to Reserve Accounts

*[Signature Pages Follow]*

IN WITNESS WHEREOF, Borrower and Bond Owner have caused this Agreement to be duly executed and delivered as of the date first above written.

**BORROWER:**

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit  
Corporation, a Texas nonprofit  
corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

*[Continued on following pages]*

**BOND OWNER:**

**ZIONS BANCORPORATION, N.A.,  
dba AMEGY BANK**

By: \_\_\_\_\_  
Name: Ray Miller  
Title: Senior Vice President

:

**ISSUER:**

**AUSTIN HOUSING FINANCE  
CORPORATION**

By: \_\_\_\_\_  
Name: Georgia Barzilay  
Title: President

**SCHEDULE 1**  
**ADDRESSES FOR NOTICES**

Bond Owner:

Zions Bancorporation, N.A,  
dba Amegy Bank  
4576 Research Forest Drive  
The Woodlands, Texas 77381  
Attn: Real Estate Loan Administration  
Email: ray.miller@amegybank.com

with copy to:

Greenberg Traurig  
1000 Louisiana, Suite 6700  
Houston, Texas 77002  
Attn: Wayne A. Yaffee  
Email: wayne.yaffee@gtlaw.com

Borrower:

c/o JCM Ventures, LLC  
11705 Wenonga Circle  
Leawood, KS 66211  
Attention: Jacob Mooney  
Telephone: (913) \_\_\_\_\_  
E-Mail: jake@jcm.ventures

With copies to:

Rosenblum Goldenherch  
7733 Forsyth Bulevard, 4th Floor  
Saint Louis, MO 63105  
Attention: David Lang  
Telephone: (314) 854-0416  
Email: [dsl@rgsz.com](mailto:dsl@rgsz.com)

and

Austin Housing Finance Corporation  
1000 Eat 11<sup>th</sup> Street  
Austin, Texas 78702  
Attention: Ellis Morgan  
Telephone: (512) 919-4774

Email: [ellis.morgan@austintexas.gov](mailto:ellis.morgan@austintexas.gov)

Austin Housing Finance Corporation  
1000 East 11<sup>th</sup> Street  
Austin, Texas 78702  
Attention: Shannon "Shay" Kackley  
Telephone: (512) 974-2317  
Email: [shay.kackley@austintexas.gov](mailto:shay.kackley@austintexas.gov)

and

Red Stone  
7130 Avenida Encinas, Suite 201  
Carlsbad, CA 92011  
Attention: Andy Markenson  
Telephone: (619) 535-3904  
Email: [andy.markenson@redstoneequity.com](mailto:andy.markenson@redstoneequity.com)

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Guarantors:

Jake Mooney  
c/o JCM Ventures, LLC  
11705 Wenonga Circle  
Leawood, KS 66211  
Telephone: (913) \_\_\_\_\_  
E-Mail: [jake@jcm.ventures](mailto:jake@jcm.ventures)

JCM Ventures, LLC  
11705 Wenonga Circle  
Leawood, KS 66211  
Attention: Jacob Mooney  
Telephone: (913) \_\_\_\_\_  
E-Mail: [jake@jcm.ventures](mailto:jake@jcm.ventures)

Sarah Andre  
c/o Structure Finance

\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

East 43<sup>rd</sup> St., LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attn: Sarah Andre  
Email: sarah@structuretexas.com

Issuer:

Austin Housing Finance Corporation  
1000 Eat 11<sup>th</sup> Street  
Austin, Texas 78702  
Attention: Genaro Pena  
Telephone: (512) \_\_\_\_\_  
Email: [genaro.pena@austintexas.gov](mailto:genaro.pena@austintexas.gov)

With a copy to:

McCall Parkhurst & Horton  
717 North Harwood, Suite 900  
Dallas, Texas 75201  
Attention: Mark Malveaux  
Telephone: (214) 754-9221  
Email: mmalveaux@mphlegal.com

**SCHEDULE 2**  
**(Reserved)**

**EXHIBIT A**

**NOTE**

September \_\_\_\_, 2025

\$14,800,000.00

FOR VALUE RECEIVED, 5900 PLEASANT VALLEY, LP, a Texas limited partnership ("**Borrower**"), promises to pay to AUSTIN HOUSING FINANCE CORPORATION, a Texas nonprofit housing finance corporation ("**Issuer**"), Fourteen Million Eight Hundred Thousand and No/100 Dollars (\$14,800,000.00) (the "**Loan**") or if less, the aggregate unpaid principal amount of all loans made by Issuer to Borrower pursuant to the Financing Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Bond Purchase and Funding Agreement (as hereinafter defined). Borrower shall make payments on this Note as follows:

(i) Commencing as of the first Payment Date and continuing on each Payment Date thereafter until and including the Amortization Period Commencement Date, Borrower shall be required to make monthly payments of interest on the outstanding principal balance of the Bond Loan, with interest payable in arrears;

(ii) Beginning on the first day of the calendar month following the Amortization Period Commencement Date and continuing on the first day of each succeeding calendar month thereafter through but not including the Maturity Date, Borrower shall make principal payments on the dates and in the amounts indicated on Exhibit A-1 to the Bond Purchase and Funding Agreement, plus accrued interest; and

(iii) the unpaid principal of and accrued and unpaid interest on the Bond Loan in full on the Maturity Date (or earlier redemption of the Bonds).

This Note is the Bond Loan Note issued pursuant to, and is entitled to the benefits of, the Financing Agreement dated as of September 1, 2025, by and between Borrower and Issuer and joined in and acknowledged by Bond Owner (as may be amended or modified from time to time, the "**Financing Agreement**"), and of the Bond Purchase and Funding Agreement dated as of September 1, 2025, among Borrower, Issuer and the Bond Owner (the "**Bond Purchase and Funding Agreement**"), to which Financing Agreement and Bond Purchase and Funding Agreement reference is hereby made for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its Maturity Date accelerated. This Note is evidenced by, secured and guaranteed pursuant to the Bond Loan Documents, all as more specifically described in the Bond Purchase and Funding Agreement, and reference is made thereto for a statement of the terms and provisions thereof. All capitalized terms used but not otherwise defined herein shall mean as defined in the Bond Purchase and Funding Agreement.

IN WITNESS WHEREOF, Borrower has executed and delivered this Note as of the day and year first above written.

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit Corporation, a  
Texas nonprofit corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

**ENDORSEMENT**

Pay to the order of Zions Bancorporation, N.A., without representation, recourse, or warranty, as Trustee under the Indenture referred to in the within mentioned Bond Purchase and Funding Agreement, as security for the Bonds issued under the Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Bond Loan Note.

**AUSTIN HOUSING FINANCE CORPORATION**

By: \_\_\_\_\_  
Mandy DeMayo,  
Treasurer

**EXHIBIT A-1**

**PERMANENT TERM AMORTIZATION SCHEDULE**

**EXHIBIT B**

**[RESERVED]**

**EXHIBIT C**

**BUDGET**

**EXHIBIT D**

**SIGNATURE AUTHORIZATION FORM  
AND DISBURSEMENT INSTRUCTIONS**

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

- Re: (a) \$14,800,000 loan ("**Bond Loan**") relating to the Project designated in **Section 2** below to 5900 Pleasant Valley, LP ("**Borrower**") from AUSTIN HOUSING FINANCE CORPORATION ("**Issuer**"), to be funded from the proceeds of the Issuer's \$14,800,000 Multifamily Housing Revenue Bonds (Sycamores at Pleasant Valley Project), Series 2025 ("**Bonds**"), as provided for in the Bond Funding and Purchase Agreement dated as of September 1, 2025 ("**Bond Purchase and Funding Agreement**"), among Zions Bancorporation, N.A. dba Amegy Bank ("**Bond Owner**"), Issuer, and Borrower, and any and all agreements, documents and/or instruments executed in connection with the Bond Loan (collectively with the Bond Purchase and Funding Agreement, the "**Bond Loan Documents**").
- (b) Onboarding of Built online construction draw platform ("**Built Platform**") for the Bond Loan.

Ladies and Gentlemen:

Notwithstanding anything to the contrary in the Bond Loan Documents, the individuals described below are hereby authorized by Borrower to request from Bond Owner Loan draws or advances made to Bond Owner through the Built construction draw platform. Borrower hereby authorizes any of the below-named individuals to act on behalf of Borrower for any authorizations, account set-up, or agreement of terms and conditions as may be required by Bond Owner or Built in connection with establishment of the Built Platform for the Bond Loan. Borrower further authorizes Bond Owner to communicate in writing with Borrower's below-designated representatives through the below-designated email addresses.

1. **BORROWER'S NAME, MAILING ADDRESS, FEDERAL TAX ID NUMBER:**

Borrower Name: 5900 Pleasant Valley, LP

Mailing Address: \_\_\_\_\_

Borrower TIN \_\_\_\_\_

Borrower email address for Built Account \_\_\_\_\_

**2. SUBJECT PROJECT ADDRESS:**

Project Address 5901 South Pleasant Valley, Austin, Texas 78744.

**3. DRAWS SHOULD BE REQUESTED ON BEHALF OF BORROWER BY THE FOLLOWING BORROWER REPRESENTATIVE(S) (attach corporate resolution, if applicable):**

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

EMAIL ADDRESS: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

EMAIL ADDRESS: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

EMAIL ADDRESS: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

**4. RATE NOTICES SHOULD BE SIGNED BY (attach corporate resolution, if applicable):**

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

_____ (PRINT NAME OF AUTHORIZED SIGNER)	_____ (SIGNATURE OF AUTHORIZED SIGNER)
---	--

5. **NAME, TELEPHONE NUMBER, AND EMAIL ADDRESS OF BORROWER REPRESENTATIVE(S) WHO PREPARES OR REQUESTS DRAWS THROUGH THE BUILT PLATFORM (BUILT ONBOARDING EMAIL FOR ACCOUNT SETUP WILL BE SENT TO THE BORROWER THROUGH AT THE BELOW EMAIL ADDRESSES):**

_____	_____
(NAME OF PERSON WHO PREPARES DRAWS)	TELEPHONE NUMBER OF SAME
_____	
EMAIL ADDRESS	

6. **NAME, TELEPHONE NUMBER AND EMAIL ADDRESS OF PROJECT MANAGER:**

_____	_____
(NAME OF PROJECT MANAGER)	TELEPHONE NUMBER OF SAME
_____	
EMAIL ADDRESS	

7. **DISBURSEMENTS TO BORROWER SHOULD BE MADE VIA THE FOLLOWING (indicate choice):**

If the owner of the below-described deposit account (“Account Holder”) is different than the Borrower, a separate authorization form executed by the Account Holder must be provided.

If relating to the Funded first from Zions Bancorporation. N.A. dba Amegy Bank  
(Affiliate)

Account Number: \_\_\_\_\_

In the name of 5900 Pleasant Valley, LP subject to the minimum balance requirement of:  
\$ \_\_\_\_\_ established for this account. Funds shall then be disbursed by  
(indicate choice below):

**Deposit to Zions Bancorporation**, N.A. dba \_\_\_\_\_  
(Affiliate)

Account Number: \_\_\_\_\_ Account Holder: \_\_\_\_\_



**Wire Transfer:** \_\_\_\_\_

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

Bank Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Account Type: \_\_\_\_\_

Account Number: \_\_\_\_\_

Transit Routing/ABA Number: \_\_\_\_\_

ACKNOWLEDGED AND AGREED BY  
BORROWER:

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit Corporation, a  
Texas nonprofit corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

FOR INTERNAL (WIRE INSTRUCTION) USE ONLY

Callback performed by: \_\_\_\_\_ Date: \_\_\_\_\_

Confirmed Company: \_\_\_\_\_ Phone: \_\_\_\_\_

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

## E-Sign Authorization

*I authorize Bond Owner to approve Requisitions of Bond Loan proceeds in the amount requested and disburse funds in accordance with the terms of the applicable loan documents, subject to any Bond Owner terms and conditions applicable to such Requisition or disbursement.*

## e-Signature Disclosure and Consent

### Request for Construction Bond Loan Requisition

This e-Signature Disclosure and Consent (“**Consent**”) applies to all draw requests (“**Draw Requests**”) for Construction Bond Loan requisitions through the Built online platform (“**Requisition**”). Specifically, by agreeing to this Consent you are providing your consent: (i) to provide you the ability to make a Draw Request for a disbursement of the Bond Loan from the Project Fund in electronic rather than in paper form; and (ii) for you to provide your electronic signature to the draw request for approval of a Requisition.

If you would like to provide your consent, then please read through this Consent and click the acceptance button next to the words, “I have read and agree to the following e-Signature disclosure and consent.” By consenting, you are agreeing and acknowledging: (i) to the terms and conditions of this Consent; (ii) that electronic execution and/or delivery, electronic communications, and electronic records shall have the same effect and authority as if hand signed by you and delivered on paper; and (iii) that electronic signatures shall have the same effect and authority as those hand-signed by the named signer.

If you do not want to provide your consent, then do not click the acceptance button. However, if you would like to still obtain and execute a Draw Request for a Requisition, but through non-electronic means, then email us as provided under the heading below entitled, “**How to Contact Us.**”

**Definitions.** For purposes of this Consent, the following terms shall have the meanings

“**Bank**,” “we,” “our” and other similar terms refers to Zions Bancorporation, N.A., including any Division.

“**Division**” refers to any one of the following divisions with trade names that the Bank operates through:

(i) Amegy Bank; (ii) California Bank & Trust; (iii) The Commerce Bank of Oregon; (iv) The Commerce Bank of Washington; (v) National Bank of Arizona; (vi) Nevada State Bank; (vii) Vectra Bank Colorado; and (viii) Zions Bank.

**How to Withdraw Your Consent and the Effect of Doing So.** This Consent applies to all Draw Requests that are made subsequent to your consent to this Consent. Therefore, once you provide your consent to this Consent, you cannot revoke your consent for subsequent Draw Requests. However, if you do not want to execute a Draw Request electronically, then do not electronically sign the Draw Request. You can execute a paper Draw Request by contacting us as provided under the heading below entitled, “How to Contact Us.” *The consequences of withdrawing your consent for an electronic Draw Request is that it may take a longer time for the paper draw request to be processed by Bank and for you to receive a disbursement of the Bond Loan from the Project Fund.*

**How to Update Your Records.** It is your responsibility to provide us with an accurate, up to date and complete email address. Specifically, you must immediately contact us to update changes to your email address, mobile device telephone number and postal address related to this Consent. You can do so by emailing us as provided below under the heading entitled, "How to Contact Us."

**Requesting Paper Copies.** You may request a paper copy of Draw Request by emailing us as provided under the heading below entitled, "How to Contact Us." There are no fees for sending you a paper copy.

**How to Contact Us.** You may contact us by email:

Amegy Bank: [abtconstructionloanfunding@zionsbancorp.com](mailto:abtconstructionloanfunding@zionsbancorp.com)

California Bank & Trust: [CA\\_CDA@zionsbancorp.com](mailto:CA_CDA@zionsbancorp.com)

The Commerce Bank of Oregon: [CA\\_CDA@zionsbancorp.com](mailto:CA_CDA@zionsbancorp.com)

The Commerce Bank of Washington: [CA\\_CDA@zionsbancorp.com](mailto:CA_CDA@zionsbancorp.com)

National Bank of Arizona: [AZCDA@zionsbancorp.com](mailto:AZCDA@zionsbancorp.com)

Nevada State Bank: [nv\\_cdg@zionsbancorp.com](mailto:nv_cdg@zionsbancorp.com)

Vectra Bank Colorado: [reservicing@vectrabank.com](mailto:reservicing@vectrabank.com)

Zions Bank: [commercialreops@zionsbank.com](mailto:commercialreops@zionsbank.com)

**Communications in Writing.** All information provided by us in electronic form will be considered a "writing." You should print or download for your records a copy of this Consent.

**Federal Law.** You acknowledge and agree that your consent to receive and execute the Requisition and/or the Request for Loan Disbursement in electronic form is being provided in connection with a transaction affecting interstate commerce that is subject to the federal Electronic Signatures in Global and National Commerce Act ("**Act**"), and that you and we both intend that the Act to apply to the fullest extent possible to validate our ability to conduct business with you by electronic means.

**Termination and Changes.** We reserve the right, in our sole discretion, to discontinue the provision of an electronic Draw Request, or to terminate or change the terms and conditions on which we provide electronic documents. We will provide you with notice of any such termination or change as required by law.

1. **General Terms and Conditions.** All draws requested for disbursement and/or advance through this Built draw request platform (“**Draw Request**”) shall be subject to the applicable loan or credit agreement or analogous agreement for a particular transaction (“**Loan Agreement**”) between the borrower (“**Borrower**”) and the applicable banking division of Zions Bancorporation, N.A. (i.e., Amegy Bank, California Bank & Trust, The Commerce Bank of Washington, National Bank of Arizona, Nevada State Bank, Vectra Bank Colorado, or Zions First National Bank, as the case may be, hereinafter referred to as “**Bond Owner**”) governing the loan(s) (“**Loan**”) from which the draws are made for the construction of improvements on the real property which is collateral for the Loan (the “**Project**”). In the event of any conflict between these terms and conditions and the terms and conditions of the Loan Agreement, the terms and conditions of the Loan Agreement shall control. The Loan Agreement and any and all other agreements, documents and/or instruments entered into in connection with the Loan shall hereinafter be referred to as the “**Loan Documents**”. Any capitalized terms not expressly defined herein shall have the meanings attributed to them in the Loan Agreement.
2. **Draws.** All Draw Requests are subject to inspection and verification and authorization by Bond Owner and available proceeds of the Loan to be disbursed. Each Draw Request shall be accompanied by (i) invoices substantiating the amount of the applicable draw request, (ii) if requested by Bond Owner, a vendor payee listing showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplied with respect to the Project, and (iii) Bond Owner’s Request for Disbursement form (“**Bond Owner Request for Disbursement**”), which form shall be acceptable to Bond Owner in its sole and absolute discretion, executed by the authorized representative of Borrower as set forth in the Signature Authorization Form and Disbursement Instructions (“**Signature Authorization**”) executed and delivered by Borrower to Bond Owner in connection with the Loan. In the event draw amount in the Draw Request is greater than the draw amount in the Bond Owner Request for Disbursement, the Bond Owner Request for Disbursement amount shall control. Bond Owner reserves the right to refuse any draw request if any conditions set forth in the Loan Documents or in (i), (ii) or (iii) above are not satisfied.
3. **Conditions Precedent to Draw Request.** If Borrower submits a Draw Request and Bond Owner agrees to approve the corresponding Requisition without Bond Owner Request for Disbursement, Borrower covenants and agrees herewith that each of the conditions set forth below shall have been satisfied prior to the draw request. In the event of a conflict between the conditions set forth below and the terms and conditions of the Bond Owner Request for Disbursement submitted with a Draw Request, the terms of the Bond Owner Request for Disbursement shall control.
  - (a) Borrower has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the terms of the Loan Agreement;

- (b) No Event of Default as defined in the Loan Agreement has occurred and/or is continuing;
- (c) All change orders or changes to the schedule of values, if applicable, have been submitted to and approved by Bond Owner;
- (d) All funds previously disbursed have been used for the purposes as set forth in the Loan Documents executed between Borrower and Bond Owner for the Project;
- (e) All outstanding claims for labor, materials and/or services furnished prior to the draw period have been paid;
- (f) All construction prior to the date of the Draw Request for a Requisition has been accomplished in accordance with the final plans and specifications for the Project;
- (g) All sums advanced by Bond Owner on account of the draw request will be used solely for the purpose of paying obligations owing as shown on the documentation attached to the draw request and for no other purpose;
- (h) There are no liens outstanding against the Project or any materials (or equipment that would give rise to mechanics and/or materialmen's liens under applicable law) used in connection with the Project except for Bond Owner's liens and security interests as agreed upon in the Loan Documents;
- (i) The amount of undisbursed Loan proceeds is sufficient to pay the cost of completing the Project in accordance with the plans and specifications for the Project originally submitted to the Bond Owner as modified by Bond Owner-approved change orders;

Disbursement of the Loan proceeds requested by Borrower may be subject to the receipt by Bond Owner of a certificate from the issuing title company stating that no claims have been filed of record which adversely affect the title of Borrower to the Project, subsequent to the filing of Bond Owner's mortgage or deed of trust on the Project.

4. **Draw Request Authority.** Borrower acknowledges and agrees that only authorized individuals designated in the Signature Request shall submit a Draw Request ("**Draw Request Submitter**"). However, Bond Owner shall not be obligated to confirm the identity or authority of a Draw Request Submitter and Bond Owner may advance Loan proceeds resulting from the Draw Request without any such confirmation. Borrower shall be bound by the Draw Request notwithstanding any lack of authority of the Draw Request Submitter and, if Bond Owner makes a Loan advance due to a Draw Request, Borrower shall be obligated to repay the Loan advance in accordance with the terms and conditions of the Loan Documents. Bond Owner may, in its sole and absolute discretion, refuse to make a Loan advance based a Draw Request which Bond Owner deems, in its sole and

absolute discretion, insufficient or the Draw Request Submitter lacks the authority to make the Draw Request under the Signature Authorization. Notwithstanding the foregoing or anything to the contrary herein, Borrower hereby releases, indemnifies and holds harmless Bond Owner from and against any and all claims, causes of action, liability, costs or damages which may result from the lack of authority or apparent lack of authority of any Draw Request Submitter and/or Bond Owner's issuance of a Loan advance based upon any Draw Request made by a Draw Request Submitter.

**EXHIBIT E**

**[FORM]**

**FORM OF REQUEST FOR DISBURSEMENT**

**Zions Bancorporation, N.A.  
Db a Amegy Bank (“Bond Owner”)**

4576 Research Forest Drive  
The Woodlands, Texas 77381  
Attn: Real Estate Loan Administration

Draw #: \_\_\_\_\_  
Loan No.: \_\_\_\_\_  
Project: Sycamores at Pleasant Valley

**RE: Request for Bond Loan Disbursement in connection with a \$14,800,000.00 loan (“Bond Loan”) to 5900 Pleasant Valley, LP (“Borrower”)**

1. Pursuant to the Bond Purchase and Funding Agreement (the “**Bond Purchase and Funding Agreement**”) among Borrower, Bond Owner, and The Southeast Texas Finance Corporation, Borrower hereby requests a disbursement of the Funding Sources in the amount of \$\_\_\_\_\_ (“**Request for Disbursement**”) of which \$\_\_\_\_\_ relates to a disbursement of proceeds of the Bond Loan, \$\_\_\_\_\_ relates to the Capital Contribution deposits, and \$\_\_\_\_\_ relates to deposits of AHFC Loan proceeds. Borrower acknowledges that this amount is subject to inspection, verification, and available funds. Borrower further acknowledges that no Loan funds shall be disbursed on any unit which has had a payoff amount quoted to a title company and Bond Owner may require a title search by a title company to confirm the existences of no liens on the Project.
2. The Borrower agrees to provide, if requested by Bond Owner, a vendor payee listing showing the name and the amount currently due each party to whom Borrower is obligated for labor, material and/or services supplied with respect to the Project, which shall be provided in support of the Request for Disbursement.
3. The Borrower also covenants and agrees herewith that each of the conditions set forth below have been satisfied prior to the Request for Disbursement:
  - (a) Borrower has complied with all duties and obligations required to date to be carried out and performed by it pursuant to the terms of the Bond Purchase and Funding Agreement;
  - (b) No Event of Default as defined in the Bond Purchase and Funding Agreement has occurred and/or is continuing;
  - (c) All change orders or changes to the schedule of values, if applicable, have been submitted to and approved by Bond Owner;

- (d) All funds previously disbursed have been used for the purposes as set forth in the Loan Documents for the Project;
- (e) All outstanding claims for labor, materials and/or services furnished prior to the draw period have been paid;
- (f) All construction prior to the date of the Request for Disbursement has been accomplished in accordance with the final plans and specifications for the Project;
- (g) All sums advanced by Bond Owner on account of Request for Disbursement will be used solely for the purpose of facilitating providing the paying of obligations owing as shown on the documentation attached to the Request for Disbursement and for no other purpose (whether with Bond funds or Loan funds as outlined in the Bond Purchase and Funding Agreement);
- (h) There are no liens outstanding against the Project or any materials (or equipment that would give rise to mechanics and/or materialmen's liens under applicable law) used in connection with the Project except for Bond Owner's liens and security interests as agreed upon in the Bond Loan Documents; and
- (i) The amount of undisbursed Bond Loan proceeds (combined with other Funding Sources) is sufficient to pay the cost of completing the Project in accordance with the plans and specifications for the Project originally submitted to the Bond Owner as modified by Bond Owner-approved change orders.

Disbursement of the Bond Loan proceeds hereby requested may be subject to the receipt by Bank of a certificate from the issuing title company stating that no claims have been filed of record which adversely affects the title of Borrower to the Project subsequent to the filing of Bond Owner's Deed of Trust or Mortgage, as applicable.

- 4. Capitalized terms not specifically defined herein have the same meanings attributed to them in the Bond Purchase and Funding Agreement.
- 5. Borrower certifies that the statements made in this Request for Disbursement and any documents submitted herewith and identified herein are true and has duly caused this Request for Disbursement to be signed on its behalf by its undersigned authorized representative.
- 6. Borrower acknowledges that the Loan Advance (as defined in Exhibit D hereof), if funded by Bond Owner, shall be funded through the Built online construction draw request platform:

EXECUTED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit  
Corporation, a Texas nonprofit  
corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

## EXHIBIT F

### INSURANCE REQUIREMENTS

1. **Insurance.** Borrower shall obtain and maintain, in full force and effect at all times, the insurance required by the Ground Lease and the following insurance policies:
2. **Insurance Policy Requirements.**
  - a. **Form of Insurance Policies.** All such policies referred to herein must be written on an occurrence basis so as to provide blanket contractual liability, broad form property damage coverage, and coverage for products and completed operations. All property policies evidencing the required insurance shall name Bond Owner as first mortgagee and additional loss payee, with the proper insurance policy endorsements and ACORD form of Certificates being issued with respect thereto, including the ACORD 28. All liability policies evidencing the insurance required hereunder shall name Bond Owner as additional insured, with the proper insurance policy endorsements and ACORD form of Certificates being issued with respect thereto, including the ACORD 25. All policies required herein must be for a term of at least one (1) year. All policies shall provide for payment to Bond Owner of the net proceeds of insurance resulting from any claim for loss or damage thereunder (except in the case of liability insurance, in which case the net proceeds shall be paid directly to the aggrieved party), shall not be cancelable as to the interests of Bond Owner due to the acts of Borrower, and shall provide for at least thirty (30) days prior written notice of the cancellation, non-renewal or modification thereof (including reduction in coverage) thereof to Bond Owner. The insurance coverages provided for herein may, with the prior written consent of Bond Owner not to be unreasonably withheld or delayed, be provided under a blanket policy which specifically includes and identifies Borrower and/or the Project as a covered party and/or Project, has limits and deductibles attributable to Borrower and/or the Project consistent with the requirements set forth herein and is on terms and conditions otherwise acceptable to Bond Owner in its reasonable discretion.
  - b. **Insurance Company Qualifications.** All required insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by Borrower accepted by Bond Owner, which consent shall not be unreasonably withheld or delayed so long as (i) such insurance companies are authorized to write such insurance in the state in which the subject Property is located and (ii) such insurance companies are rated "A-" or better by A.M. Best Co., in Best's Key Guide, or such other rating as may be accepted by Bond Owner.
  - c. **Evidence of Insurance.** All policies of insurance, endorsements and/or certificates of insurance evidencing that all insurance required hereunder

are in full force and effect, shall be delivered to Bond Owner. At least ten (10) days prior to the expiration, non-renewal or cancellation of any such policy, Borrower shall furnish Bond Owner with evidence that such policy has been renewed or replaced in the form of a certificate reflecting that there is in full force and effect, with a term covering the next succeeding calendar year, insurance of the types and in the amounts required.

- d. **No Separate Insurance.** Without Bond Owner's prior consent thereto, Borrower shall not carry any separate insurance on the Project concurrent in kind or form with any insurance required hereunder, or contributing in the event of loss, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Bond Owner, and shall otherwise meet all other requirements set forth herein.

Borrower acknowledges that Bond Owner's insurance requirements may change from time to time.

Borrower acknowledges that any failure OF BORROWER to comply with THE REQUIREMENTS SET FORTH IN THIS **EXHIBIT "F"** shall permit BOND OWNER to purchase the applicable insurance at Borrower's cost. Such insurance may, but need not, protect Borrower's interests. The coverage that Bond Owner purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Project. If Bond Owner purchases insurance for the Project as permitted hereunder, Borrower will be responsible for the costs of that insurance, including interest at the Default Rate and any other charges Bond Owner may impose in connection with the placement of the insurance until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance shall be added to Borrower's total outstanding balance or obligation and shall constitute additional Indebtedness. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own. Borrower may later cancel any insurance purchased by Bond Owner, but only after providing evidence that Borrower has obtained insurance as required by this Agreement and the other Bond Loan Documents.

**TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO: (I) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT BOND OWNER SPECIFIES; (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 BOND OWNER AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) BORROWER MUST, IF REQUIRED BY BOND OWNER, DELIVER TO BOND OWNER A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN PARAGRAPH (A) OR (B), BOND OWNER MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT THE BORROWER'S EXPENSE.**

**EXHIBIT G-1**

**[FORM OF] REPORTING COMPLIANCE CERTIFICATE FOR BORROWER**

Certificate Date: \_\_\_\_\_, 20\_\_

Reporting Period: \_\_\_\_\_ through \_\_\_\_\_, 20\_\_

Reference is made to that certain Bond Purchase and Funding Agreement dated as of September 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), between 5900 PLEASANT VALLEY, LP (“**Borrower**”), THE SOUTHEAST HOUSING FINANCE CORPORATION, as issuer (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”). Capitalized terms used in this compliance certificate (including schedules and other attachments hereto, this “**Certificate**”) without definition have the meanings specified in the Bond Purchase and Funding Agreement.

Borrower hereby certifies, represents and warrants to Bond Owner that (a) the information furnished below and in the attached Financial Statements and/or reports, together with any included calculations, footnotes, schedules and addenda, for the above-referenced reporting period is true, correct and complete in all material respects as of the date hereof and (b) as follows:

**1. Representations and Warranties.** The representations and warranties of Borrower contained in the Bond Loan Documents continue to be true and correct in all material respects as of the date hereof (except to the extent any representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct in all material respects as of such specified date as if made on such date). *[or list any representations and warranties that are not, to Borrower’s knowledge, materially true and accurate]*

**2. Covenants.** During the above-referenced reporting period, Borrower has observed and performed all of the material respective covenants and other agreements under the Bond Purchase and Funding Agreement and the other Bond Loan Documents applicable to Borrower and has satisfied each of the material conditions contained therein to be observed, performed or satisfied by Borrower. *[or list any material covenants and agreements that Borrower has not, to its knowledge, observed and performed]*

**3. No Defaults.** No Event of Default is presently existing and, to reporting party’s knowledge, no Material Adverse Change presently exists. *[or list any existing Event of Default or Material Adverse Change]*

IN WITNESS WHEREOF, this Certificate is hereby executed and delivered to Bond Owner as of the Certificate Date first set forth above.

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit  
Corporation, a Texas nonprofit  
corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

**EXHIBIT G-2**

**[FORM OF] REPORTING COMPLIANCE CERTIFICATE FOR LIMITED  
GUARANTORS**

Certificate Date: \_\_\_\_\_, 20\_\_

Reporting Period 5900 PLEASANT VALLEY, LP through \_\_\_\_\_, 20\_\_

Reference is made to that certain Bond Purchase and Funding Agreement dated as of September 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), among 5900 PLEASANT VALLEY, LP (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”), and to that certain Guaranty of Payment (the “**Guaranty**”) executed by JCM Ventures, LLC, East 43<sup>rd</sup> St., LLC, Jacob Mooney, and Sarah Andre (collectively, the “**Guarantor**”). Capitalized terms used in this compliance certificate (including schedules and other attachments hereto, this “**Certificate**”) not otherwise defined herein shall have the meaning set forth in the Bond Purchase and Funding Agreement and the Guaranty as applicable.

Guarantor hereby certifies, represents and warrants to Bond Owner that (a) the information furnished below and in the attached Financial Statements, together with any included calculations, footnotes, schedules and addenda, for the above-referenced reporting period is true, correct and complete in all material respects as of the date hereof and (b) as follows:

**1. Representations and Warranties.** The representations and warranties with respect to Guarantor set forth in **Article 2**, the Bond Loan Mortgage and the Guaranty, continue to be true and correct in all material respects as of the date hereof (except to the extent any representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct in all material respects as of such specified date as if made on such date). *[or list any representations and warranties that are not, to Guarantor’s knowledge, materially true and accurate]*

**2. No Guarantor Events of Defaults.** No Guarantor Event of Default (as defined in the Guaranty) is presently existing and, to reporting party’s knowledge, no or Material Adverse Change with respect to Guarantor presently exists. *[or list any existing Guarantor Event of Default or such existing Material Adverse Change]*

**3. (Reserved)**

IN WITNESS WHEREOF, this Certificate is hereby executed and delivered to Bond Owner as of the Certificate Date first set forth above.

GUARANTOR:

JCM VENTURES, LLC, a Texas limited liability company

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

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

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

EAST 43<sup>rd</sup> St., LLC, a Texas limited liability company

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

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

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

\_\_\_\_\_  
Jacob Mooney

\_\_\_\_\_  
Sarah Andre

**EXHIBIT H-1**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Bond Purchase and Funding Agreement dated as of September 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), among 5900 PLEASANT VALLEY, LP (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION (“**Issuer**”) and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”). Pursuant to the provisions of the Bond Purchase and Funding Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Bond(s), (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “ten percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Bond Owner and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Borrower and the Bond Owner, and (2) the undersigned shall have at all times furnished the Borrower and the Bond Owner with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Bond Purchase and Funding Agreement and used herein shall have the meanings given to them in the Bond Purchase and Funding Agreement.

[NAME OF BOND OWNER]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT H-2**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is made to that certain Bond Purchase and Funding Agreement dated as of \_\_\_\_\_, 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), among 5900 PLEASANT VALLEY, LP (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”). Pursuant to the provisions of the Bond Purchase and Funding Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a “ten percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Bond Owner with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Bond Owner in writing, and (2) the undersigned shall have at all times furnished Bond Owner with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Bond Purchase and Funding Agreement and used herein shall have the meanings given to them in the Bond Purchase and Funding Agreement.

[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT H-3**  
**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Partnerships For U.S.Federal Income Tax Purposes)

Reference is made to that certain Bond Purchase and Funding Agreement dated as of \_\_\_\_\_, 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), among 5900 PLEASANT VALLEY, LP (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”). Pursuant to the provisions of the Bond Purchase and Funding Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “ten percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Bond Owner with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform Bond Owner and (2) the undersigned shall have at all times furnished Bond Owner with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Bond Purchase and Funding Agreement and used herein shall have the meanings given to them in the Bond Purchase and Funding Agreement.

[NAME OF PARTICIPANT]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

**EXHIBIT H-4**

**[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Bond Owners That Are Partnerships For  
U.S. Federal Income Tax Purposes)

Reference is made to that certain Bond Purchase and Funding Agreement dated as of September, 1, 2025 (as amended, modified, supplemented, restated, or renewed, from time to time, referred to in the singular as the “**Bond Purchase and Funding Agreement**”), among 5900 PLEASANT VALLEY, LP (“**Borrower**”), AUSTIN HOUSING FINANCE CORPORATION (“**Issuer**”), and ZIONS BANCORPORATION, N.A., dba Amegy Bank, as Bond Owner (“**Bond Owner**”). Pursuant to the provisions of the Bond Purchase and Funding Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Bond purchased by the undersigned, (ii) its direct or indirect partners/members are the sole beneficial owners of such Bond, (iii) with respect to the extension of credit pursuant to the Bond Purchase and Funding Agreement or any other Bond Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a “bank” extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a “ten percent shareholder” of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a “controlled foreign corporation” related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Bond Owner and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided in this certificate changes, the undersigned shall promptly so inform the Borrower and the Bond Owner, and (2) the undersigned shall have at all times furnished the Borrower and the Bond Owner with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Bond Purchase and Funding Agreement and used herein shall have the meanings given to them in the Bond Purchase and Funding Agreement.

[NAME OF BOND OWNER]

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

Name:

Title:

Date: \_\_\_\_\_, 20[ ]

*[See Attached]*

**EXHIBIT "I"**

**WAIVER OF LIEN TO DATE**

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

On receipt by the signer of this document of a check from \_\_\_\_\_ (maker of check) in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS            §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project \_\_\_\_\_

Job No. \_\_\_\_\_

The signer of this document has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) on the property of \_\_\_\_\_ (owner) located at \_\_\_\_\_ (location) to the following extent: \_\_\_\_\_ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to \_\_\_\_\_ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date \_\_\_\_\_

\_\_\_\_\_ (Company name)

By \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (name), \_\_\_\_\_ (job title) of \_\_\_\_\_ (company name).

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT "J"**

**AFFIDAVIT OF COMMENCEMENT**

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

BEFORE ME, the undersigned authority, on this day personally appeared James May, Secretary and Treasurer of AHFC Pleasant Valley Non-Profit Corporation, in its capacity as general partner of 5900 PLEASANT VALLEY, LP, a Texas limited partnership ("**Owner**"), and not individually, and HOUSTON ESPERANZA, a Texas 501(c)(3) nonprofit corporation ("**Contractor**"), known to me to be the persons whose names are subscribed below, and who, being by me first duly sworn, did each on his or her oath state as follows:

The Owner is the owner of the real property (the "**Land**") situated in Travis County, Texas, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof for all purposes, on which building and other related improvements (the "**Improvements**") are being constructed or renovated.

i) The address of Owner is:

5900 PLEASANT VALLEY, LP  
11705 Wenongo Circle  
Leawood, KS 66211

ii) The address of Contractor is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

iii) Work on the Improvements (including the first delivery of materials and equipment to the Land in connection with the Improvements) actually commenced on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_.m.

iv) This affidavit has been jointly made by Owner and Contractor by and through an authorized representative of each, the same being the undersigned Affiants. This affidavit may be executed in identical counterparts, each of which shall be deemed an original, and all of which, collectively, shall constitute one affidavit.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit  
Corporation, a Texas nonprofit  
corporation, its general partner

By: \_\_\_\_\_  
James May,  
Secretary and Treasurer

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

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2025,  
by James May, Secretary and Treasurer of AHFC Pleasant Valley Non-Profit Corporation,  
Ron Williams, a Texas nonprofit corporation, on behalf of said corporation, in its capacity  
as general partner of 5900 PLEASANT VALLEY, LP, a Texas limited partnership.

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

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF \_\_\_\_\_ §

(TO BE ADDED)

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

After recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "K"**

**AFFIDAVIT AND CERTIFICATE OF COMPLETION**

THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS   §

BEFORE US, the undersigned authorities, on this day personally appeared James May, Secretary and Treasurer of AHFC Pleasant Valley Non-Profit Corporation, in its capacity as general partner of 5900 PLEASANT VALLEY, LP, a Texas limited partnership ("**Owner**"), \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ ("**Architect**"), \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ ("**Original Contractor**"), and not individually, known by us to be the persons whose names are subscribed below, and who, being first duly sworn, did on their oath state and certify as follows:

1. Owner, whose address is 11705 Wenonga Circle, Leawood, KS 66211, is the owner of the real property situated in Travis County, Texas, more particularly described on **Exhibit "A"** (the "Land"), on which real property certain Improvements (herein so called) were constructed and furnished under the original contract with the Original Contractor, whose address is \_\_\_\_\_. The Land and Improvements shall be referred to collectively as the "**Premises.**"

2. The Improvements under the original contract between the Owner and the Original Contractor (including all on-site and off-site Improvements) have been completed in accordance with the approved Plans and Specifications listed on the attached **Exhibit "B"** in all material respects (in the case of Owner, this statement being made to Owner's current actual knowledge).

3. After reasonable investigation, to the best of their knowledge, (a) the Premises complies with all applicable restrictive covenants, building codes, permit requirements, and all other applicable laws, ordinances, codes, rules and regulations and (b) no hazardous or toxic substances or materials, as defined under any state, local or federal law have been used on-site in constructing the Improvements or incorporated into the Premises, other than in compliance with applicable law.

4. All utility services necessary for the proper operation of the Improvements for its intended purpose are connected to and in sufficient capacity at the Premises, including water supply, storm and sanitary sewer facilities and gas (if the Plans and Specifications require the Improvements to be served by gas), electricity and telephone facilities (in the case of Owner, this statement being made to the best of Owner's current actual knowledge).

5. After reasonable investigation, to the best of our knowledge, the condition of the soil of the Land is adequate to support the Improvements (in the case of Owner, this statement being made to Owner's current actual knowledge).

6. The Improvements are ready for immediate occupancy (in the case of Owner, this statement being made to Owner's current actual knowledge).

7. Architect did and does hereby additionally state and certify as follows:

(a) Design and as built conditions for the Premises are such that no drainage or surface or other water other than normal surface drainage will drain across or rest upon either the Land or land of others; and

(b) None of the Improvements creates or will create an encroachment over, across or upon any of the Land boundary lines, building liens, setbacks, rights-of-way or easements, and no buildings or other Improvements on adjoining land create such an encroachment.

Owner did and does hereby additionally state and certify as follows: All roads and rights-of-way necessary for the utilization of the Land for its intended purposes have been completed or acquired.

**AFFIANT "ARCHITECT":**

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

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a Texas limited liability company, on behalf of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

Notary Public in and for The State of Texas

**AFFIANT "CONTRACTOR":**

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

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF \_\_\_\_\_ §

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a Texas limited liability company, on behalf of said limited liability company.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

AFFIANT: OWNER

5900 PLEASANT VALLEY, LP,  
a Texas limited partnership

By: AHFC Pleasant Valley Non-Profit  
Corporation, a Texas nonprofit  
corporation, its general partner

By: \_\_\_\_\_  
James May  
Secretary and Treasurer

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on \_\_\_\_\_, 2025,  
by James May, Secretary and Treasurer of AHFC Pleasant Valley Non-Profit Corporation,  
a Texas nonprofit corporation, on behalf of said corporation, in its capacity as general  
partner of 5900 PLEASANT VALLEY, LP, a Texas limited partnership.

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

**EXHIBIT “L”**

**[INVESTOR CAPITAL CONTRIBUTION SCHEDULE]**

<b><u>INSTALLMENT</u></b>	<b><u>EVENT<sup>1/</sup></u></b>	<b><u>AMOUNT<sup>2/</sup></u></b>	<b><u>PURPOSE</u></b>
First	Investment Closing	\$ _____	Reimburse the Investor Member for up to \$40,000 for due diligence, then pay \$600,000 in developer fee, then pay items in accordance with Budget.
Second	Completion	\$ _____	Pay costs of construction subject to pending requests for disbursements, then pay \$_____ to apply to the outstanding balance of the Bond Loan Note, then pay developer fee of \$_____, then pay items in accordance with the Budget and Approved Flow of Funds
Third	Conversion to Permanent	\$ _____	Pay Bond Loan Note to a balance of not more than \$5,300,000 (or such lesser amount as needed to achieve Lease Stabilization), then to fund \$389,959 for the Operating Reserve and fund other reserves and costs required by the Partnership

<sup>1</sup> As further provided in the Partnership Agreement

<sup>2</sup> Subject to adjustment pursuant to the terms of the Partnership Agreement

			Agreement, then to pay developer fees of \$_____ as provided in the Partnership Agreement and to pay other items as otherwise provided for in the Partnership Agreement.
Fourth	Form 8609	\$ _____	Pay developer fees and other amounts as provided in the Partnership Agreement.
<b>TOTAL CONTRIBUTION</b>		\$ _____	

## EXHIBIT "M"

### **SURVEY REQUIREMENTS**

The purpose of this document is to provide information to the borrower, surveyor, and title company regarding survey requirements for loans originated by ZIONS BANCORPORATION, N.A., dba Amegy Bank ("**Bond Owner**") that are initially intended to be held in Bond Owner's own loan portfolio. Please note that Bond Owner requires a current survey on all commercial real estate loans. Since Bond Owner requires that the certification on the survey be addressed to the borrower, the title company and the Bond Owner, usually an existing survey is inadequate for loan purposes. Bond Owner will accept revised or updated surveys meeting the Survey Requirements as detailed in this document. Any questions concerning these requirements should be directed to Bond Owner's Closing Department. It is recommended that the borrower reference these requirements when obtaining bids and engaging qualified surveyors.

A satisfactory survey is required prior to closing of all Construction Bond Loans. An acceptable "slab" survey is required prior to application for the first construction disbursement for building foundations. An "as built" survey is typically required by the title company to obtain a completion endorsement and thus may be required at the sole discretion of Bond Owner upon completion of the improvements.

Surveys must be acceptable to the title insurance company insuring the lien of the Bond Loan Mortgage for purposes of insuring title free and clear of any survey exceptions. Surveys must either be prepared in accordance with the latest approved version of the Minimum Standard Detail Requirements for American Land Title Association ("**ALTA**") Land Title Surveys, jointly established and adopted by ALTA, ACSM and NSPS, and must meet the requirements of the Urban Survey thereunder, or if the subject property is located in the State of Texas, the survey may be prepared in accordance with the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey (Land Title, Urban). The legal description of the Bond Loan Mortgage property shown on the face of the survey must conform to the legal description in the title insurance commitment for the title insurance policy for the Bond Loan Mortgage property or the legal description shown in the title insurance commitment must be changed to conform to the survey. If the title insurance commitment refers to a recorded plat, then such plat with appropriate recording references must be indicated on the survey.

1. Field Note Description. Surveys should contain a certified metes and bounds description and should comply with the following requirements:
  - a. Survey should be of a scale of at least one inch equals fifty feet and should identify the scale used (example 1" = 50').
  - b. The beginning point should be established by a monument located at the beginning point, or by reference to a nearby monument and to the point of commencement.

- c. The sides of the property should be described by giving the distances and bearings of each. Instead of bearings, the interior angle method is acceptable if the beginning point is on a dedicated public street line or a fixed line on other property, or if the course of the first side can be otherwise properly fixed.
  - d. The distances, bearings, and angles should be taken from an instrument survey by a registered professional engineer or register public surveyor.
  - e. Curved courses should be described by data including: length of arc, radius of circle for the arc and chord distance and bearing.
  - f. The legal description should be a single perimeter description of the entire property. Division of the property with separate parcels is not acceptable unless it serves a special purpose of the Bond Loan Mortgage and is approved by in advance by Bond Owner. Division is necessary, however, if the plot is located on two sides of a public way. It is acceptable to describe an easement appurtenant to a fee parcel by using a separate parcel description.
  - g. The description should include a reference to all streets, alleys, and other rights-of-way that abut the property surveyed, and the width of all rights-of-way mentioned should be given the first time these rights-of-way are referenced to.
  - h. For each boundary line abutting a street, road, alley or other means of access, the description must, in calling the boundary line, state that the boundary line and the right-of-way line are the same.
  - i. If the property surveyed has been recorded on a map or plat as part of an abstract or subdivision, reference to such recording data should be made.
  - j. The total acreage and square footage of the land must be shown.
  - k. The metes and bounds description must return to the point of commencement.
2. Lot and Block Description. If the property is included within a properly established recorded subdivision or addition, then a lot and block description or reserve description will be an acceptable substitute for a metes and bounds description, provided that the lot and block description or reserve description completely and properly identifies the name or designation of the recorded subdivision or addition and gives the recording information therefor.
  3. Map or Plat. Surveys should also contain a certified map or plat clearly showing the following:
    - a. The property to be covered by the Bond Loan Mortgage.

- b. The point of beginning of said property and its relation to the monument from which it is fixed.
- c. Corners or boundary stakes, stating material (1/2" I.P., 4" x 4" Concrete, initials or markings) and whether found by surveyor or set by surveyor.
- d. All distances, angles and other calls shown in the legal description.
- e. Direction arrow (North).
- f. If the property has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot, block lines (with distances and bearings), and numbers must be shown.
- g. All easements appurtenant to said property showing recording information therefor by volume and page, width thereof, and encroachments thereon. In the event easements affect the parcel, but cannot be shown with specificity, you should contact Bond Owner, as blanket easements are generally not permitted.
- h. The boundary lines of the street or streets abutting the property with the name and width of said streets and whether paved, blacktop, gravel or dirt.
- i. The distance from the nearest intersecting street or road to the property.
- j. All encroachments and protrusions if any, from or upon the land or any improvements thereon or upon any easement, building setback line or other restricted area, with exact measurements.
- k. Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersections(s).
- l. Flood zone designation (with property annotation based on Federal Flood Insurance Rate Maps on the State or local equivalent, by scaled map location and graphic plotting only).
- m. Identify and show, if possible, setback, height and bulk restrictions of record or disclosed by applicable restrictive covenant, recorded plat, zoning or building codes (identifying the source in each case, by volume and page reference, if applicable). If none, so state.
- n. The exterior dimensions of all buildings at ground level with horizontal lengths of all sides and the relation thereof by distances to (i) all boundary lines of the property, (ii) easements, (iii) established building lines and (iv) street lines.
- o. All street addresses of all improvements on the subject property.

- p. Substantial, visible improvements (in addition to buildings) such as signs, parking areas (showing number and striping) or structures, swimming pools, driveways, fences, sidewalks, stoops, landscaping, etc.
- q. Parking areas and, if striped, the striping and the type (e.g., handicapped, motorcycle, regular, etc.) and the number of parking spaces.
- r. Indication of access to a public way such as curb cuts, or driveways marked.
- s. Location of utilities serving or existing on the property including points of ingress to and egress as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information).
- t. A legend of all symbols used in the survey.
- u. The scale of all distances and dimensions on the plat.
- v. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements.
- w. Significant observations not otherwise disclosed, including, but not limited to visible evidence of unusual subsurface matters and general knowledge about the neighborhood (such as condemnation of the area by the US Environmental Protection Agency (EPA) or restricted building heights imposed by the Federal Aviation Administration (FAA).
- x. Areas devoted or restricted in reciprocal easement agreements, showing the limits of any off-site appurtenant easements and the outline of any buildings within the reciprocal easement.
- y. A note stating that the legal description describes the same property as the title commitment.
- z. Observable evidence of earth moving work, building construction or building additions within recent months.
- aa. Any changes in street right of way lines, either completed or proposed and available from the controlling jurisdiction, observable evidence of recent street or sidewalk construction or repairs.
- ab. Observable evidence of site use as a solid waste dump, sump or sanitary landfill.
- ac. The number of stories of all structures and the types of materials comprising the exterior walls and roofs of all buildings.

- ad. The mean highwater base line or other legal boundary of any bodies of water adjoining or located on the Project.
  - ae. Observable evidence of cemeteries.
4. Surveyor's Certification.
- a. For properties located outside the State of Texas, the following "**ALTA Certification**" must appear on the survey:  
  
To (insert name of Borrowing entity), ZIONS BANCORPORATION, N.A., dba Amegy Bank, and [insert name of title insurance company]:  
  
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1-4, 7(a), 7(b), 7(c), 8, 9, 11 and 16 of Table A thereof. The field work was completed on \_\_\_\_\_.
  - b. For properties located in the State of Texas, either the ALTA Certification as shown above or the following Certification must appear on the survey:  
  
"To [\*insert name of Borrowing entity], ZIONS BANCORPORATION, N.A., dba Amegy Bank and [\*insert name of title insurance company] that this survey was made on the ground of the property legally described hereon and correctly shows the boundary lines, dimensions and area of the land indicated hereon; that there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or rights-of-way, except as shown hereon; the subject property has access to and from a dedicated public roadway; the subject property is not located in the 100-Year Flood Plain or in an identified flood hazard area according to Community-Panel No. \_\_\_\_\_ dated \_\_\_\_\_, of the Federal Emergency Management Agency; and that this survey conforms to the current Texas Society of Professional Surveyors Standards and Specifications for a Category 1A, Condition II Survey.
5. Seal and Date. Immediately below the certification must appear the signature, seal and registration number of the registered public surveyor who made the survey, or under whose supervision the survey was made, and the date of the survey must be dated within 90 days of the Bond Closing Date.

**For closing review purposes, it is requested that copies of the survey be provided to the Bond Owner's Closing Department, Bond Owner's Counsel and the title company escrow officer as soon as available, but in any event at least three business days prior to the Bond Closing Date. Please contact Bond Owner's Closing Department for contact information regarding Bond Owner's Counsel and the title company. The Bond Owner's Closing Department contact information is as follows:**

---

Zions Bancorporation, N.A. dba Amegy Bank  
4576 Research Forest Drive  
The Woodlands, Texas 77381  
(281) 297-7840 (voice)  
Joyce.eng@amegybank.com (email)

**EXHIBIT "N"**  
**TAX CREDIT ALLOCATION**

**EXHIBIT A**

**DETERMINATION NOTICE**

## EXHIBIT "O"

### **TITLE INSURANCE AND ESCROW CLOSING REQUIREMENTS**

The purpose of this document is to provide information to the borrower and title company regarding title insurance requirements for loans originated by ZIONS BANCORPORATION, N.A., dba Amegy Bank ("**Bond Owner**") which are secured by properties located in the State of Texas and initially intended to be held in Bond Owner's own loan portfolio. If one or more of the properties securing the subject loan are in a state other than Texas, Bond Owner requires a title commitment rather than a preliminary title report and an ALTA Bank Policy (1970 or 1992) with comprehensive mechanic's lien coverage. For properties located outside the State of Texas, Bond Owner provides additional closing and title insurance requirements. For properties located in the State of Texas, this document provides requirements for the commitment to insure title ("**Title Commitment**"), the interim construction title binder ("**Title Binder**"), the Bond Loan Mortgage policy of title insurance ("**Title Policy**") and for the Bond Closing functions and procedures to be performed by the title company ("**Escrow Closing**"). Time constraints provided in these instructions are very important in order to prevent delays in closing and funding. Additional requirements for a particular loan shall be at the sole discretion of Bond Owner.

#### **Title Commitment**

The Title Commitment is required well in advance of closing, must be prepared using the Texas Land Title Association ("**TLTA**") form T-7 and meet the following requirements:

1. Each title insurance policy must be written by an insurer authorized to do business in the State of Texas, licensed by the Texas Insurance Commission and have an acceptable rating from at least one of the independent rating agencies as follows:
  - (a) "**Financial Stability Rating**" of "**S**" (Substantial) or better or a "**Statutory Accounting Rating**" of "**C**" (Average) or better from Demotech, Inc.;
  - (b) a "**BBB**" or better rating from Duff and Phelps Credit Rating Company;
  - (c) a "**C**" or better rating from LACE Financial Corporation;
  - (d) a "**BAA**" or better rating from Moody's Investor Service, or
  - (e) a "**BBB**" or better rating from Standard and Poor's, Inc.

Bond Owner reserves the right to approve the title insurance underwriter. Coinsurance will only be allowed with prior written approval of Bond Owner. Reinsurance may be required in certain cases. Bond Owner must be notified in advance if Coinsurance or Reinsurance is expected or being considered.

2. Name of Insured: The Insured in Schedule A shall be as follows: "ZIONS BANCORPORATION, N.A., dba Amegy Bank as Bond Owner, its successors and assigns".
3. Coverage shall be for the full amount of the Bond Loan;
4. The effective date must be within 90 days of the anticipated date of closing; and
5. The Title Commitment must include, as attachments, legible copies of all recorded instruments which are listed as exceptions (both Schedule B and C) to the coverage of the Title Commitment, including legible copies of recorded plats.

### **Title Binder**

Acceptance of a Title Binder in lieu of a Title Policy on construction and development loans is an exception to Bond Owner's loan policy and must be approved by Bond Owner, which approval may be conditioned on satisfaction of additional loan covenants. In the event that the subject loan involves development or construction and Bond Owner has approved its usage, the Title Binder must be prepared using Form T-13 and meet the following requirements:

1. The "pre-start" exception on Item 1(a) of Schedule C must be deleted, and
2. Meet all of the requirements listed below for a Title Policy.

### **Title Policy**

Bond Owner may require the title company to deliver a pro forma Title Policy in advance of the Bond Loan closing. The Title Policy must be prepared using TLTA form T-2 and meet the following requirements:

1. Name of Insured. The Insured in Schedule A, Paragraph 1, shall be as follows: "Zions Bancorporation, N.A., and each successor in ownership of the indebtedness secured by the insured mortgage, except a successor who is an obligor under the provisions of the Conditions and Stipulations."
2. Description of Mortgage. The description of the Bond Loan Mortgage appearing in Schedule A, Paragraph 3, must include the precise name of the security instrument (e.g. "Multifamily Construction and Permanent Leasehold Deed of Trust, Assignment of Rents and Security Agreement and Fixture Filing"); the names of the parties; the date of the Bond Loan Mortgage; the principal amount of the Bond Loan; and recording data, i.e. the recorder's office, the date of recordation and the book and page numbers and/or instrument number. If a separate Assignment of Leases is to be utilized, it should be included in Schedule A, in the same paragraph as the Bond Loan Mortgage as described above.

3. Legal Description. The legal description on the Title Policy must be identical to the legal description contained on the survey. Rights under access easements and off-site utility easements must also be insured.
4. Title Vesting. The name should include partnership/corporate status and state of organization.
5. Lien Status. The insured lien must be shown as a first and superior lien except as to current ad valorem taxes. Schedule B Exceptions must include the following:
  - (a) Recording information for each instrument to which it refers.
  - (b) A description of the UCC Financing Statements(s) that will be recorded in the appropriate governmental records, as instructed in the “**Escrow Closing Instruction Letter**” to be provided by Bond Owner’s Counsel, with clerk’s file numbers or other applicable identifying information, along with the date and place of recording.
6. Unacceptable Schedule B Exceptions. The following Schedule B exceptions are not permitted:
  - (a) Exception For Taxes Which Are Due And Payable. Any taxes which are due and payable must be paid prior to closing. An exception for future taxes and assessments not yet due and payable is permitted. An exception for taxes due for prior years because of a change in usage (i.e. agricultural exemption or open space exemption) is not permitted. The Tax Deletion Endorsement is required (TLTA form T-30).
  - (b) Survey Exception. A survey has been or will be prepared. A copy of the Title Commitment must be provided to the surveyor as soon as available, together with any documents listed as exceptions to the Title Commitment and describing easements located on or affecting the project. The Bond Owner’s Closing Department has contact information regarding the surveyor. The Survey Deletion Endorsement (i.e. area and boundary deletion) is required (Texas Rule P-2). If the title company takes exception to items shown on the survey, a Comprehensive Endorsement (TLTA form T-19) may be required.
  - (c) Blanket Exception. Blanket exceptions of any kind, including those for subordinate liens, are not permitted, except as required by the Texas Title Insurance Rate Rules.
  - (d) Maintenance fee liens not subordinated. Maintenance association fee liens must be subordinated to Bond Owner’s first lien. Unless waived in writing by Bond Owner, a subordination agreement will be required before closing for review and approval by Bond Owner’s Counsel if those liens are not already subordinated.

- (e) Mechanics' And Materialmen's Lien Exception. Except on construction or development loans, there will be no exception for mechanics' and materialmen's liens. On construction or development loans, it is permitted to have a blanket exception for mechanic's and materialmen's liens recorded after the date of recording of Bond Owner's deed of trust, and upon completion of improvements, a TLTA T-3 Endorsement Form must be issued deleting any mechanic's and materialmen's lien exceptions. If there are any special requirements (e.g., stipulations against liens, owner's affidavits, etc.) which must be met, Bond Owner must be notified immediately.
  - (f) All laundry leases and other commercial leases creating possessory rights must be subordinated to Bond Owner's first lien, and subordination/estoppel certificates must be signed for each. The seller/owner must be contacted regarding this requirement if the title search reveals any such lease(s). Subordination agreements must be approved by Bond Owner in advance.
  - (g) Bond Owner reserves the right to object to any title exception, including the preprinted exceptions contained in TLTA Form T-2.
7. UCC Searches. Except when waived by Bond Owner, UCC searches must be conducted at the expense of borrower, at both the state and county levels, of the appropriate UCC filing records for any filings in the name of the borrower, the owner(s) and the project name. If the borrower/owner is a corporation, the searches shall be in the name of the corporation; if the borrower/owner is a partnership, the searches shall be in the name of the partnership and in the name of each general partner or managing member thereof; and if the project is owned by one or more individuals, then the searches shall be in the names of such individuals and any trade name employed by them. Bond Owner's Closing Department must be contacted to verify names to search. Copies of items which create security interests against the named party must be ordered to determine if they affect the insured. Results of searches must be sent to Bond Owner's Closing Department as soon as they are available.
8. Tax Certificates. Tax certificates for ad valorem property taxes must be ordered from all applicable taxing authorities, including associations when applicable. Tax Certificates must be sent to Bond Owner's Closing Department as soon as they are available.
9. Required Endorsements and Policy Provisions. The following endorsements are typically required with the final Title Policy. The final determination of required endorsements will be provided in the Escrow Closing Instruction Letter prepared by Bond Owner's Counsel.
- (a) Any arbitration provisions of the Title Policy must be deleted.

- (b) The exception for parties in possession must be deleted upon satisfactory inspection by the Title Company.
  - (c) If the insured property is within a planned unit development, a Planned Unit Development Endorsement (TLTA form T-17).
  - (d) When required by Bond Owner at the time of conversion to the permanent financing, a Comprehensive Endorsement (TLTA form T-19)
  - (e) If access to the insured property is by easement, an Access Endorsement (TLTA form T-23) and the Title Policy must include the easement as part of the insured property on Schedule A.
  - (f) If the legal description of the insured property describes two or more adjacent tracts of property, a Contiguity Endorsement (TLTA form T-25).
  - (g) Tax Deletion Endorsement (TLTA form T-30).
  - (h) If the property is for residential usage, an Environmental Protection Lien Endorsement (TLTA form T-36).
  - (i) Bond Owner may require other endorsements or express insurance, including but not limited to the following: First Loss Endorsement (TLTA form T-14), Last Dollar Endorsement (TLTA form T-15), Aggregation Endorsement (TLTA form T-16), Adjustable Rate Endorsement (TLTA form T-33), Revolving Credit Endorsement (TLTA form T-35).
10. Required Delivery. The final Title Policy, with all required endorsements, must be in Bond Owner's office within seventy-two (72) hours of funding.

### **Escrow Closing**

Bond Owner requires the title insurer or its affiliate or agent to act as escrow agent for the Bond Loan proceeds and to conduct the closing.

1. Disbursement and Insured Closing Letter. If the title company is an agent of the title insurer, it will be necessary to have the title insurance company provide Bond Owner with an insured closing protection letter from the title insurer prior to closing. The title company should contact the Bond Owner's Closing Department to determine if an insured closing letter is on file. The original letter should be addressed to Bond Owner. The insured closing protection letter must authorize the title company to close the Bond Loan and disburse the Bond Loan proceeds in accordance with an Escrow Closing Instruction Letter to be provided by Bond Owner or Bond Owner's Counsel prior to closing. A copy of the HUD- 1 Settlement Statement should be faxed to Bond Owner at least 24 hours prior to closing. Bond Owner must approve in advance any fee attorney to be utilized and will not disburse funds through a fee attorney.

2. Pay-off Estimates. Bond Owner does not obtain estimates of the pay-off figures for existing indebtedness secured by the project. It will be the responsibility of the title company to obtain in writing and verify the amount(s) required to retire any and all outstanding loans and, in cooperation with the borrower (or seller, if any), to arrange for satisfactory releases of existing mortgages and termination statements of existing financing statements.
3. Costs and Expenses. Bond Owner's Closing Department shall provide a separate letter prior to closing which details all Bond Owner related settlement charges. The services and costs of the escrow agent and title insurance company are to be performed without cost to the Bond Owner or Bond Owner's Counsel. Arrangements with the borrower should be made for the payment of all such costs. The escrow agent should collect adequate funds from the borrower to send the Financing Statements by overnight mail to a recording service to ensure the documents will be received back from the county and state to meet the delivery requirements listed in this document.
4. Title Policy. The Title Policy must be issued by the title insurance underwriter specified in the title commitment furnished for the Bond Loan closing.
5. Property Insurance. Bond Owner's Closing Department will be responsible for reviewing and approving the required insurance policies. The escrow agent will be required to verify with Bond Owner's Closing Department, prior to funding, that insurance coverages are adequate.
6. Bond Loan Documents and Closing. Bond Owner's Counsel prepares loan documents and an Escrow Closing Instruction Letter. Any changes made on legal documents at closing must be approved in advance by Bond Owner's Counsel. The title company is responsible for the completion, execution, attestation and notarization, where necessary of each of the Bond Loan documents in accordance with the Escrow Closing Instruction Letter. Mail out signings are discouraged and in any event must be conducted as a courtesy closing in the offices of a title company affiliate.
7. Disbursing Funds. Loan funds necessary for closing by Bond Owner are wired to the escrow agent. Funds may be disbursed only at such time as:
  - a. The Bond Loan documents are properly executed,
  - b. The escrow agent is in a position to deliver the Title Policy and required endorsements to the Bond Owner pursuant to the Title Commitment and in compliance with the terms of this document and the Escrow Closing Instruction Letter,
  - c. All water charges, sewer assessments, special assessments and real estate taxes currently due and payable are paid, or the escrow agent has arranged to pay, from loan proceeds or borrower funds, any of these items which are due and not yet paid,

- d. All prior financing statements filed in the name of the borrower, as debtor, with the office of the Secretary of State are satisfied and released or the escrow agent has arranged to pay, from loan proceeds, any item which has not yet been paid and shall obtain a release,
  - e. The required insurance coverages acceptable to Bond Owner are in place and have been paid for, and
  - f. The Bond Owner's Closing Department has provided instructions in person or by facsimile to disburse the Bond Loan funds in accordance with the approved Settlement Statement.
8. Document Recording. It is essential that recordation of the Bond Loan Mortgage and the Financing Statement (UCC-1) (the "**Recorded Documents**") take place on the same day as the Bond Loan funding whenever possible. Therefore, documents should be hand-carried to the county clerk's office. If documents are going out of town, including those to the Secretary of State's office, they should be sent by overnight delivery to a recording service or local agent of the title company in anticipation of the wire transfer being received, so that they will be in the recording office when the funding is to occur. Bond Owner must have one recorder-certified copy of each recorded document no later than seventy-two hours following the closing. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.
9. Post-closing.
- a. **If not received by Bond Owner at closing, Bond Owner's Closing Department must receive the following within twenty four hours after closing:**
    - (1) One (1) original and one (1) certified copy of the Bond Loan Note.
    - (2) One (1) original and one (1) certified copy of each Guaranty (if more than one).
    - (3) One (1) original and one (1) certified copy of each of the Bond Loan documents.
    - (4) One (1) original and one (1) certified copy of the resolutions of the borrower.
    - (5) Two (2) certified copies of the HUD- 1 Settlement Statement.
    - (6) Payment for loan fees, preliminary interest and escrow reserves should be made out in separate checks, payable to Zions Bancorporation, N.A., dba Amegy Bank, as Bond Owner.

- b. Within seventy-two (72) hours after closing, Bond Owner must receive the following:**
- (1) One (1) original and one (1) certified copy of the Bond Owner's loan title insurance policy (or Title Binder) including "jackets", with all required endorsements.
  - (2) One (1) recorder certified copy of each of the Recorded Documents. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.
  - (3) One (1) recorder-certified copy of each of the UCCs. All of the recorder-certified copies must reflect the recording date and be accompanied by the recorder's receipt reflecting the recording date.
- c. Within twenty-one (21) days after closing, Bond Owner must receive the following:**
- (1) The original Recorded Documents.
  - (2) The original UCCs.

**Confirmation and Notification**

Bond Owner must be notified immediately to confirm ability of title company and escrow agent to meet the above requirements and deadlines. For closing review purposes, the Title Commitment and title exception documents will be reviewed by Bond Owner's Counsel and Bond Owner's Closing Department. Please contact Bond Owner's Closing Department for contact information regarding Bond Owner's Counsel. The Bond Owner's Closing Department contact information is as follows:

Zions Bancorporation, N.A.  
dba Amegy Bank  
4576 Research Forest Drive  
The Woodlands, Texas 77381  
(281) 297-7840  
Joyce.eng@amegybank.com

**EXHIBIT "P"**

**CONVERSION CERTIFICATE**

\_\_\_\_\_, 20\_\_

AUSTIN HOUSING FINANCE CORPORATION

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Zions Bancorporation, N.A.

Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Re: Bond Purchase and Funding Agreement (the "**Agreement**") dated as of September, 1, 2025, by and between 5900 Pleasant Valley, LP (the "**Borrower**") and Zions Bancorporation, N.A., dba Amegy Bank, as Bond Owner ("**Bond Owner**") and AUSTIN HOUSING FINANCE CORPORATION ("**Issuer**").

To whom it may concern:

All Conditions to Conversion under and as defined in the Agreement have been satisfied or waived effective as of the date of this Conversion Certificate.

ZIONS BANCORPORATION, N.A., doing  
business as AMEGY BANK

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

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

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

**EXHIBIT "Q"**

**CONTRACTOR**

**FINAL BILLS PAID AFFIDAVIT AND RELEASE**

THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS   §

WHEREAS, \_\_\_\_\_ ("**Contractor**") has entered into a contract (the "**Contract**") calling for the construction of certain improvements (the "**Project**") on a tract of land located at 5901 South Pleasant Valley, Austin, Texas 78744 (the "**Property**"), more particularly described as follows:

[TO BE ADDED]

WHEREAS, the undersigned has submitted a request for payment for labor and/or materials supplied for the Project.

NOW THEREFORE, in consideration of the payment of Ten Dollars and No/100 (\$10.00) and other good and valuable consideration to the Contractor made simultaneous with the execution and delivery hereof, the undersigned Contractor states, represents and warrants to 5900 PLEASANT VALLEY, LP, as owner ("**Owner**") and Zions Bancorporation, N.A., dba Amegy Bank, as lienholder on the Project ("**Bank**") as follows:

1. Contractor has performed labor or supplied materials or both, for improvements upon the Property as part of the Project.

2. Contractor has performed labor or supplied materials or both in a good and workmanlike manner upon the Property to the extent that Contractor is now due \$ \_\_\_\_\_ as of the date hereof as the final payment under the Contract. Contractor acknowledges full payment of this sum.

3. All sums now due from Contractor to any subcontractors or vendors for labor or materials have been paid in full.

4. The undersigned Contractor further certifies that all labor, material, taxes and/or insurance costs incurred by the Contractor in completing its portion of the Project have been paid, and the Contractor hereby indemnifies and agrees to hold the Owner of the Property and the Bank harmless from any claims, causes of action, damages or losses incurred by any of them, including reasonable attorney's fees, in defense thereof, for and on account of any breach hereof by the Contractor;

5. This is a final lien waiver and release. Contractor hereby waives, releases and relinquishes any and all claims, demands, rights and liens heretofore or currently existing that Contractor may have, whether those claims or liens are contractual, statutory or constitutional, and whether they are perfected or unperfected, in whole or in part, upon

the Property or against Contractor. The sum paid as specified under paragraph 2 hereof is in full and final payment of the Contract.

6. Contractor is the sole owner of all claims for the sums now due and no portion has been assigned, pledged or otherwise disposed of or hypothecated, and Contractor has the full power and right to execute this Affidavit and Release.

7. Contractor represents that the person signing this document on behalf of Contractor is duly authorized to do so on behalf of the undersigned Contractor. All of the provisions of this document shall bind the undersigned Contractor and the Contractor's heirs, legal representatives, successors and assigns and shall inure to the benefit of the Owner of the Property and Bank and their respective heirs, legal representatives, successors, assigns and sureties.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_, a Texas nonprofit corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public in and for  
The State of T E X A S

My commission expires:\_\_\_\_\_

**EXHIBIT "R"**

**OWNER'S AFFIDAVIT OF BILLS PAID**

THE STATE OF TEXAS   §  
  §  
COUNTY OF TRAVIS   §

BEFORE ME, the undersigned authority, on this day personally appeared the person whose name is subscribed hereto, being by me first duly sworn upon his or her oath deposes and says (in her capacity as set forth in the signature block, and not individually):

THAT the undersigned ("**Affiant**") is acting on behalf of and as the duly authorized representative of 5900 PLEASANT VALLEY, LP, a Texas limited liability company ("**Owner**"), whether one or more, and not individually. Owner contracted with one or more original contractors (collectively the "**Contractors**", whether one or more) who performed labor, built or provided specially fabricated materials, and/or furnished labor or material in the construction of the Improvements upon certain real property (the "**Property**") described as follows:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR ALL PURPOSES.**

AFFIANT further says that all improvements contracted by Owner with the Contractors to be constructed have been completed and that all bills from contractors, laborers and suppliers and others contracting with Owner for materials and labor used in construction of said improvements have been paid in full.

AFFIANT acknowledges and agrees that **ZIONS BANCORPORATION, N.A., dba Amegy Bank** (the "**Bond Owner**") and Charter Title Company (the "**Title Company**") are each specifically and materially relying upon the facts herein stated by Affiant to be true in connection with a loan disbursement by Bond Owner to or on behalf of Owner and for the purpose of inducing the Title Company to issue a T-3 endorsement to the existing Mortgage Title Policy issued to Bond Owner.

AFFIANT further acknowledges and understands that there are criminal penalties for making any false or misleading statement in this Affidavit, provided however, notwithstanding anything to the contrary set forth in this Affidavit, Affiant shall not have any personal liability, civil, criminal or otherwise, in connection with his/her execution of this Affidavit.

AFFIANTS:  
(TO BE ADDED)

CONTRACTOR:

\_\_\_\_\_

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

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

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

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF \_\_\_\_\_ §

(TO BE ADDED)

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the \_\_\_\_ day of  
\_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public in and for the STATE of  
\_\_\_\_\_

**EXHIBIT "S"**

**OWNER INTEREST CERTIFICATION**



**Certification Regarding Beneficial Owner (s) and  
Controlling Person of Legal Entity Customers**

**1. General Instructions**

**What is this form?**

To help the government fight financial crime, federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who ultimately own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

**Who must complete this form?**

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities. In some cases, a financial institution may request beneficial ownership information from existing customers.

For the purposes of this form, a legal entity includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. Legal entity *does not* include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

**What information do I have to provide?**

This form requires you to provide the name, address, date of birth and social security number (or passport number or other similar information, in the case of Non-U.S. Persons) for the following individuals (i.e., the **beneficial owners**):

- I. Each individual, *if any*, who owns, directly or indirectly, 20 percent or more of the equity interests of the legal entity customer (e.g., each natural person that owns 20 percent or more of the shares of a corporation);
- II. An individual with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President or Treasurer).

Amegy Bank will ask to see a copy of a driver's license or other identifying document for each beneficial owner listed on this form.

### Control Prong

Complete the following information for one individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under the section above may also be listed in this section.)

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

### Ownership Prong

Complete the following information for each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 20 percent or more of the equity interests of the legal entity listed above:

(If no individual meets this definition, please write "Not Applicable.")

Owner #1

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_  
 ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

<sup>1</sup> In lieu of a passport number, Non-U.S. Persons may also provide an Individual Taxpayer Identification Number (ITIN), an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Owner #2

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #3

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #4

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

Owner #5

Name	Date of Birth	Address (Residential or Business Street Address)	For U.S. Persons: Social Security Number <sup>1</sup>	Ownership Percentage

ID Type \_\_\_\_\_ State/Country of Issuance \_\_\_\_\_

ID Number \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Expiration Date \_\_\_\_\_

<sup>1</sup> In lieu of a passport number, Non-U.S. Persons may also provide an Individual Taxpayer Identification Number (ITIN), an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

I, \_\_\_\_\_ (name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct. In addition, the above-listed legal entity hereby agrees to promptly notify the bank upon any change in the information provided above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT "T"**

**CONDITIONS RELATING TO RESERVE ACCOUNTS**

(a) **Establishment of Reserve Accounts.** On or before the Conversion Date, the Borrower shall establish with Bond Owner (i) a replacement reserve (the "**Replacement Reserve Account**"); (ii) a real estate taxes and insurance reserve account (the "**Real Estate Taxes and Insurance Reserve Account**"); and (iii) the Operating Reserve (the "**Operating Reserve Account**") (each, a "**Reserve Account**," and collectively, the "**Reserve Accounts**"). Each of the Reserve Accounts shall be under the sole dominion and control of the Bond Owner for collateral purposes (but, notwithstanding anything herein to the contrary, the administration of the Reserve Accounts, including withdrawals therefrom, in each case, shall be subject to the terms and provisions of the Partnership Agreement, and in connection therewith, Bond Owner will make withdrawals from Reserve Accounts as provided for in this Agreement and as provided for in the Partnership Agreement). The foregoing shall be the same reserves as required by the Partnership Agreement.

(b) **Timing of Reserve Deposits.**

(A) **[intentionally omitted].**

(B) **Initial Reserve Deposits.** On or before the Conversion Date, the Borrower shall pay to the Bond Owner for deposit, as provided for in the Indenture, into each of the below Reserve Accounts maintained by Bond Owner (each an "Initial Reserve Deposit"), the following:

(i) **Real Estate Taxes and Insurance Reserve Account.** The Borrower shall pay to the Bond Owner for deposit into the Real Estate Taxes and Insurance Reserve Account the Initial Reserve Deposit equal to a prorated amount for property taxes, if any, owed with respect to the Project, as determined by the Bond Owner in its reasonable discretion, whether or not such property taxes are due and payable, for the period from the first day of the applicable tax period through and including the Conversion Date.

(ii) **Operating Reserve Account.** There shall be a deposit of an amount of at least \$389,959.00 into the Operating Reserve Account (the "**O.R. Initial Deposit**") (which will be funded from the third installment of the Capital Contribution listed in **Exhibit "L"** payable in accordance with the terms of the Partnership Agreement (and in any event on or before the Conversion Date).

(c) **Reserve Deposits.** On each date that a deposit into a Reserve Account (each, a "**Reserve Deposit**") is due, the Borrower shall pay or transfer existing Borrower Sources (to the extent available for that purpose) or Project Net Operating Income to fund such Reserve Deposit to the Bond Owner for deposit into the applicable Reserve Account. The Bond Owner may, upon written request from the Borrower, waive any requirement for the payment of a Reserve Deposit by written notice to the Borrower and the Trustee;

provided, however, that any such waiver by the Bond Owner of a requirement that the Borrower pay such Reserve Deposit may be revoked by the Bond Owner, in the Bond Owner's sole and absolute discretion, at any time upon notice in writing to the Borrower and the Bond Owner. The Borrower shall make the following Reserve Deposits:

(i) **Real Estate Taxes and Insurance Reserve Account.** On and after the Conversion Date (and prior to the Conversion Date if and to the extent required by the Bond Owner prior to the Conversion Date, which shall only be required during the continuance of an Event of Default), the Borrower shall make monthly deposits on each Payment Date (each, a "**Monthly T&I Deposit**") into the Real Estate Taxes and Insurance Reserve Account each in an amount equal to (a) the sum of (i) the aggregate anticipated annual premiums, for all insurance policies required to be maintained pursuant to the Bond Loan Documents, due in the next succeeding twelve (12) months; and (ii) the sum of the anticipated annual real property taxes, personal property taxes, intangibles taxes, and assessments for the Project due in the next succeeding twelve (12) months (if any), divided by (b) twelve (12).

(ii) **Replacement Reserve Account.** The Borrower shall make monthly deposits of \$1,562.00 each, into the Replacement Reserve Account (each, a "**Monthly Replacement Reserve Deposit**") within fifteen (15) days after the end of each month in an amount equal to one-twelfth of the amounts set forth in **Exhibit T-1** attached hereto, as such amounts may be adjusted from time to time in accordance with the terms of this Agreement.

(iii) **Auto-Debit.** Without limiting any other term of this Agreement, Borrower authorizes Bond Owner to auto-debit each Reserve Account for the purposes set forth in this Agreement on the 10<sup>th</sup> day of each calendar month.

(d) **Replacement Reserve Account.** On a monthly basis, on each Payment Date, beginning with the first Payment Date occurring after the Conversion Date (or such earlier date as may be required by the Partnership Agreement), the Borrower shall transfer to the Bond Owner for deposit into the Monthly Replacement Reserve Account the Monthly Replacement Reserve Deposit (as such amounts may be adjusted from time to time in accordance with the terms of this Agreement). The Bond Owner may, in the Bond Owner's reasonable discretion, by written notice to the Borrower, adjust the amount of the Monthly Replacement Reserve Deposit, from time to time, to an amount sufficient, in the Bond Owner's reasonable judgment, to maintain adequate balances to pay for all Eligible Replacement Items (as such term is defined below) necessary to keep the Project in good order and repair. Notwithstanding the foregoing, in the event the Bond Owner shall at any time increase the Monthly Replacement Reserve Deposit to an amount exceeding the then existing Monthly Replacement Reserve Deposit amount, the Borrower may, at its election, request that the Bond Owner obtain, at the Borrower's sole cost and expense, an Engineering Report from an engineer to be selected by the Bond Owner in

its reasonable discretion, in which case the deposit to the Replacement Reserve Account shall be adjusted by the Bond Owner based on such Engineering Report; provided, however, that in no event shall the Reserve Deposit to the Replacement Reserve Account be decreased below the amount set forth above in (B)(ii). For purposes hereof, “**Engineering Report**” means an engineering report of the Property from an engineer approved by the Bond Owner and dated as of a date acceptable to the Bond Owner, which report shall, among other things, (i) conform to all requirements of the Bond Owner and (ii) certify that the Property is in compliance with all applicable requirements of the Americans with Disabilities Act of 1990, as amended from time to time.

(e) **Permitted Investments, Earnings, Charges, and Annual Accounting.**

(i) **Investment in Permitted Investments.** Moneys held by the Bond Owner in a Reserve Account based on its normal and customary procedure and with the agreement of the Investor Limited Partner shall be invested by the Trustee in accordance with the Partnership Agreement. The Borrower agrees that it shall include all interest, earnings, or profits on Permitted Investments of funds on deposit in any Reserve Account as its income (and, if the Borrower is a partnership or other pass-through entity, the partners, members, or beneficiaries of the Borrower, as the case may be), and shall be the owner of such accounts for federal and applicable state and local tax purposes, except to the extent that the Bond Owner retains such interest, earnings, or profits for its own account in accordance with the provisions of this Agreement. The Borrower shall have no right whatsoever to direct the investment of the proceeds in any Reserve Account, except as provided for in the Indenture.

(ii) **Earnings.** All interest, earnings, or profits on the Permitted Investments of funds in any of the Reserve Accounts shall be deposited into the applicable Reserve Account, provided that Bond Owner may retain for the account of any of the Owners, pursuant to the Indenture, any such interest, earnings, or profits on any or all of the Reserve Accounts during the occurrence and continuance of an Event of Default.

(f) **Assignment to Issuer of Reserve Accounts and Rights and Claims.**

(i) **Assignment of Reserve Accounts.** The Borrower hereby assigns to the Issuer and grants to the Issuer a security interest in the Reserve Accounts as additional security for all of the Borrower’s obligations under this Agreement and the other Bond Loan Documents.

(ii) **Assignment of Rights and Claims.** The Borrower assigns to the Issuer all rights and claims the Borrower may have against (1) all persons or entities claiming amounts due for taxes, utilities, rent or insurance, or (2) all persons or entities supplying labor or materials in connection with any Repair; provided, however, that the Bond Owner may

not pursue any such right or claim unless an Event of Default exists under any of the Bond Loan Documents.

(g) **Application of Reserve Accounts Upon an Event of Default.** If any Event of Default occurs (subject to applicable notice and cure periods), then the Borrower shall immediately lose all of its rights to receive disbursements from the Reserve Accounts unless and until the date on which such Event of Default is cured or all amounts secured by the Bond Loan Mortgage and the other Bond Loan Documents have been paid in full and the lien of the Bond Loan Mortgage and the other Bond Loan Documents, as appropriate, have been released. Upon the occurrence of any Event of Default (subject to applicable notice and cure periods), the Bond Owner may use the Reserve Accounts (or any portion thereof) for any purpose, including but not limited to (i) repayment of any indebtedness secured by the Bond Loan Mortgage and the other Bond Loan Documents, including but not limited to principal prepayments and the prepayment premium applicable to such full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Event of Default, (ii) reimbursement of the Bond Owner for all reasonable losses, fees, costs, and expenses (including, without limitation, reasonable legal fees) suffered or incurred by the Bond Owner as a result of such Event of Default, (iii) payment of any reasonable amount expended in exercising all rights and remedies available to the Bond Owner at law or in equity or under this Agreement or under any of the other Bond Loan Documents, or (iv) to the payment of any item for which payment is required or permitted from any of the Reserve Accounts pursuant to the terms of this Agreement. Nothing in this Agreement shall obligate the Bond Owner to apply all or any portion of the Reserve Accounts on account of any Event of Default by the Borrower or to pay the indebtedness secured by the Bond Loan Mortgage or any of the other Bond Loan Documents or in any specific order of priority.

(h) **[Reserved].**

(i) **Additional Amounts.** The Bond Owner may require the Borrower to pay to the Bond Owner in advance, additional amounts for taxes, if any, charges, premiums, assessments, if any, and Impositions in connection with the Borrower or the Project which the Bond Owner shall reasonably deem necessary. Unless otherwise provided by applicable law, the Bond Owner may require payments for such other amounts to be paid by the Borrower in a lump sum or periodic installments, at the Bond Owner's option.

(j) **[RESERVED].**

(k) **[RESERVED].**

(l) **Disbursements from the Replacement Reserve Account.**

(i) **Disbursements for Replacements.** Upon written request from the Borrower and satisfaction of the requirements set forth in this Agreement, including all Replacement Reserve Disbursement Conditions (as such term is defined below), the Bond Owner shall disburse amounts

from the Replacement Reserve Account, subject to the Bond Owner's approval as set forth below, to pay for the actual costs of replacing Eligible Replacement Items in connection with the Improvements. For purposes hereof, "**Eligible Replacement Items**" means Capital Improvement Items and other substantial items approved by the Bond Owner in its reasonable judgment, but does not include maintenance and repairs made during the normal course of business, including broken windows, roof repairs and maintenance, landscaping, office equipment, interior painting, fire-damaged equipment, building additions, and any repair or maintenance item. For purposes hereof, "**Capital Improvement Items**" means items recognized as capital improvements in accordance with generally accepted accounting practices that require an outlay of funds for acquisition or improvement of a fixed asset which can be depreciated over its useful life and extends the life or increases the productivity of the Improvements (including without limitation, the items listed in **Exhibit T-2**).

(ii) **The Bond Owner's Approval:** Replacement Reserve Disbursement Conditions. Any disbursement from the Replacement Reserve Account for costs incurred by the Borrower for Eligible Replacement Items is subject to the Bond Owner's prior written approval (except as otherwise expressly provided in **Section 5.4** of the Agreement), provided that the Bond Owner shall have no obligation to approve the Bond Owner's disbursement of any such amounts to the Borrower unless all of the following conditions (the "**Replacement Reserve Disbursement Conditions**") have been satisfied as determined by the Bond Owner in its reasonable discretion (or have been waived in writing by the Bond Owner):

(1) The Bond Owner shall have received a written request signed by the Borrower together with such documentation and information as the Bond Owner may require. Each such request shall be in form and substance acceptable to the Bond Owner, and shall include such items of information and documentation, including invoices, canceled checks, lien waivers and other evidence as the Bond Owner may require to show (a) that the requested funds are for Eligible Replacement Items; (b) the cost of all Eligible Replacement Items requested, and (c) that the Borrower is in compliance with the Bond Loan Documents.

(2) The Improvements shall not have been materially damaged.

(3) The Land and Improvements or any interest therein shall not have been materially affected by eminent domain or condemnation proceedings.

(4) The Borrower shall have provided such title insurance policy endorsements as the Bond Owner may reasonably require to

insure first lien priority of the Bond Loan, as well as such other matters relating to the Eligible Replacement Items as the Bond Owner may specify.

(5) No Default or Event of Default shall exist.

(iii) **No Acknowledgment.** The Bond Owner's approval of disbursements from the Replacement Reserve Account or other acknowledgment of completion of any repair or replacement in any manner satisfactory to the Bond Owner shall not be deemed an acknowledgment that the repair or replacement has been completed in accordance with applicable building, zoning, or other codes, ordinances, statutes, laws, regulations, or requirements of any governmental or quasi-governmental agency.

(iv) **No Disbursements for Routine Maintenance.** The Bond Owner shall not be obligated to make, and the Bond Owner shall not be obligated to approve disbursements from the Replacement Reserve Account to reimburse the Borrower for the costs of routine maintenance to the Project or leasing commissions.

(v) **Use Upon Event of Default.** Upon any Event of Default which continues beyond any applicable cure period, the Bond Owner may in its sole and absolute discretion, use funds in the Replacement Reserve Account for any purpose, including but not limited to (i) repayment of any indebtedness secured by the Bond Loan Mortgage, including but not limited to principal prepayments and the prepayment premium applicable (if any) to such full or partial prepayment (as applicable); provided, however, that such application of funds shall not cure or be deemed to cure any Default or Event of Default; (ii) reimbursement of the Bond Owner for all losses (excluding consequential damages) and reasonable expenses (including, without limitation, reasonable legal fees) suffered or incurred by the Bond Owner as a result of such Default or Event of Default; (iii) repair or replacement of Capital Improvements; or (iv) payment of any amount expended in exercising (and exercise) all rights and remedies available to Bond Owner at law or in equity or under this Agreement or under any of the other Bond Loan Documents.

(vi) **Remaining Deposits.** Upon payment in full of all amounts owed by the Borrower under or otherwise secured by any of the Bond Loan Documents, all amounts remaining on deposit, if any, in the Replacement Reserve Account shall be distributed to the Borrower.

(m) **Disbursements from Operating Reserve.** Amounts on deposit in the Operating Reserve shall be disbursed subject to and in accordance with the terms of the Partnership Agreement and only with the prior written authorization of the Investor Member and the consent and authorization of the Bond Owner shall not be required if no

Event of Default is then continuing (provided that if the Investor Member's interest in the Borrower is repurchased after the end of the tax credit compliance period, in that event if any amounts are in the Operating Reserve, those amounts will be disbursed with the consent and authorization of the Bond Owner on terms satisfactory to Borrower and the Bond Owner).

(i) **Balance in the Operating Reserve.** The insufficiency of any balance in the Operating Reserve Account shall not abrogate the Borrower's agreement to fulfill all preservation, maintenance, and operational covenants in the Bond Loan Documents.

(ii) **Definitions.** In addition to the terms defined elsewhere herein, with respect to the Operating Reserve Account, the following terms shall have the definitions assigned to them:

**"Cash Flow Deficiency"** shall mean an amount equal to the negative number (if any) obtained by subtracting Operating Expenses from Operating Income.

**"Debt Service"** shall mean any amounts payable with respect to the Loan (including without limitation, payments due at maturity of the Bond Loan or upon acceleration of the Bond Loan in accordance with the terms of the Bond Loan Documents).

**"Operating Expenses"** shall mean, with respect to any period of time, the total of all expenses actually paid or payable, computed in accordance with GAAP, of whatever kind relating to the operation, maintenance and management of the Project, including without limitation, Debt Service, utilities, ordinary repairs and maintenance, insurance premiums, license fees, taxes and other charges, advertising expenses, payroll and related taxes, computer processing charges, the management fees actually paid under a management agreement, operational equipment or other lease payments as approved by Bond Owner, and deposits into the Replacement Reserve Account due in connection with the Bond Loan *but specifically excluding* deposits into the Operating Reserve Account, depreciation and amortization, income taxes, any incentive fees due under the management agreement, any item of expense that in accordance with GAAP should be capitalized but only to the extent the same would qualify for funding from the reserve accounts, any item of expense that would otherwise be covered by the provisions hereof but which is paid by any tenant under such tenant's lease or other agreement.

**"Operating Income"** shall mean, with respect to any period of time, all income, computed in accordance with GAAP, derived from the ownership and operation of the Property from whatever source, *including*, but not limited to, rents, utility charges, escalations, forfeited security deposits, interest on credit accounts, service fees or charges, license fees, parking

fees, rent concessions or credits, and other required pass-throughs but *excluding* sales, use and occupancy or other taxes on receipts required to be accounted for by Borrower to any governmental authority, refunds and uncollectible accounts, sales of furniture, fixtures and equipment, interest income from any source other than the escrow accounts, reserve accounts or other accounts required pursuant to the Bond Loan Documents, insurance proceeds (other than business interruption or other loss of income insurance), awards, unforfeited security deposits, utility and other similar deposits, income from tenants not paying rent, income from tenants in bankruptcy, non-recurring or extraordinary income, including, without limitation lease termination payments, and any disbursements to Borrower from any reserve fund required pursuant to the Bond Loan Documents.

“**Operating Reserve**” shall include for purposes hereof amounts on deposit in the Operating Reserve Account and interest earned thereon.

(iii) **Disbursements from Operating Reserve.**

(A) Upon the occurrence of a Cash Flow Deficiency, Borrower may request in writing that Bond Owner disburse amounts from the Operating Reserve which such request shall be accompanied by (i) an officer’s certificate from an officer of Borrower certifying that a Cash Flow Deficiency exists, (ii) a detailed calculation of the Cash Flow Deficiency, and (iii) such other information as Bond Owner may require in its sole and reasonable discretion. Upon any such request, Bond Owner, at the written direction of the Special Member, shall disburse amounts from the Operating Reserve.

(B) Borrower shall not make a request for, nor shall Bond Owner have any obligation to make any disbursement from, the Operating Reserve Account more frequently than monthly.

(C) Borrower may be required, in writing by Bond Owner, to make a deposit to the Operating Reserve Account sufficient to bring the total on deposit in the Operating Reserve back to the amount of the O.R. Initial Deposit (an “**O.R. Replenishment Deposit**”). Borrower will have ten (10) business days after receipt of written notice from Bond Owner requesting a O.R. Replenishment Deposit to make such O.R. Replenishment Deposit.

(n) **Indemnification.** THE BORROWER HEREBY INDEMNIFIES, DEFENDS, AND HOLDS THE BOND OWNER, AND ITS RESPECTIVE AFFILIATES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS OF EACH OF THEM, HARMLESS FOR, FROM AND AGAINST ANY AND ALL ACTUAL OR THREATENED LIABILITIES, CLAIMS, ACTIONS, CAUSES OF ACTION, JUDGMENTS, ORDERS, DAMAGES (EXCLUDING CONSEQUENTIAL DAMAGES), COSTS, EXPENSES,

FINES, PENALTIES AND REASONABLE LOSSES (INCLUDING SUMS PAID IN SETTLEMENT OF CLAIMS AND ALL REASONABLE CONSULTANT, EXPERT AND LEGAL FEES AND EXPENSES OF THE BOND OWNER'S COUNSEL), AND ANY RESULTING DAMAGES, HARM OR INJURIES TO THE PERSON OR PROPERTY OF ANY THIRD PARTIES (COLLECTIVELY, "**CLAIMS**"), DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR IN ANY WAY CONNECTED WITH (A) ANY REPAIRS OR REPLACEMENTS MADE BY THE BORROWER OR THE PERFORMANCE OF ELIGIBLE REPLACEMENT ITEMS, (B) UNPAID TAXES, UTILITY BILLS, RENT, OR INSURANCE PREMIUMS OWED BY THE BORROWER, AND/OR (C) THE HOLDING OR INVESTMENT OF THE RESERVE ACCOUNTS, EXCEPTING THOSE FINALLY ADJUDICATED BY A COURT OF COMPETENT JURISDICTION AS DIRECTLY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE BOND OWNER, AS APPLICABLE.

**THE INDEMNIFICATION OF THE BOND OWNER AS PROVIDED IN THIS SECTION (N) SHALL REMAIN IN FULL FORCE AND EFFECT IF ANY SUCH CLAIMS DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF, OR RELATE TO, OR IS ASSERTED TO HAVE RESULTED FROM ARISEN OUT OF OR RELATED TO, THE SOLE OR CONTRIBUTORY NEGLIGENCE OF ANY OF THE TRUSTEE AND/OR THE BOND OWNER.**

(o) No Impairment. Nothing in this Schedule "T" shall, in any manner whatsoever, alter, impair, or affect the obligations of the Borrower or relieve the Borrower of any of its obligations to make payments and perform all of its obligations required under the Bond Loan Documents.

(p) No Withdrawals. Notwithstanding anything herein or on the Partnership Agreement to the contrary, except to fund a cash flow deficiency in accordance with the Partnership Agreement (or as otherwise expressly permitted by the Partnership Agreement), no withdrawals will be made from the Operating Reserve unless and until the Bond Loan is fully and finally paid.

(q) Reserve Accounts. To the extent the Indenture shall require any of the Reserve Accounts, the Reserve Accounts shall be the Reserve Accounts under and for purposes of the Indenture and other Bond Documents (as well as the Partnership Agreement, as the case may be).

**EXHIBIT T-1**

**RESERVE DEPOSIT REQUIREMENTS**

\$46,000 annually (\$250.00 per unit per year), payable in monthly deposits of \$1,562.00 each

(adjusting by increasing 3% per year)

**EXHIBIT T-2**

**REPLACEMENTS**

Carpeting/floor coverings

HVAC units

Roofs

Hot water heaters

Furnaces

Parking lot paving (excluding patching)

Appliances (except to the extent appliance replacement is the obligation of the residents per the terms of the resident lease)

Window Coverings

Exterior Painting/Ceiling and Tuck Pointing

Doors

Windows

Plumbing fixtures

Tubs

Sinks

Fencing

Cabinets

Light Fixtures

Furniture

Exterior Railing

Floor Sealant

**SUCH OTHER ITEMS AS REASONABLY REQUIRED BY BORROWER.**