



## **BOARD PACKAGE**

**Regular Board Meeting**  
**October 19, 2022**

## **REGULAR MEETING**

A regular meeting of the Housing Finance Authority of Broward County (the "HFA"), Florida, will be held on Wednesday, October 19, 2022, at 5:30 p.m., in the 2<sup>nd</sup> Floor Conference Room, located at 110 N.E. 3rd Street, Fort Lauderdale, Florida. Participants are encouraged to dial-in by phone. Details of the meeting are published in the [Broward County Sunshine Meeting Notices](#) and [Housing Finance Authority of Broward County](#) websites. The call-in information listed below for members of the public.

**Call-in number:** 1-415-655-0002

**Meeting number (access code):** 2432 155 6621

**Meeting Password #:** 66769222

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## **CALLING OF THE ROLL**

### **CONSENT AGENDA (Items 1 through 3)**

1. Approval of September 21, 2022, Regular Meeting Minutes

MOTION TO APPROVE the Housing Finance Authority Regular Meeting Minutes on September 21, 2022.

2. Executive Director's (September Report)

MOTION TO APPROVE the Housing Finance Authority Operational Report for September 30, 2022.



3. Single Family Mortgage Revenue Bonds - 2022 Carry Forward and 2023 Bond Allocations.

MOTION TO ADOPT Resolution of the Housing Finance Authority of Broward County, Florida (“HFA”) authorizing staff to Carry Forward 2022 Private Activity Bond Allocation; authorizing staff to request 2023 Private Activity Bond Allocation; approving a plan of finance involving the issuance by the HFA of its Single Family Mortgage Revenue Bonds (“Single Family Bonds”) in an aggregate face amount of not to exceed \$250,000,000 in one or more series; approval of the Single Family Bonds as required by section 147(f) of the Internal Revenue Code of 1986, as amended; authorizing staff to publish a notice and hold a public hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986; approving the use of State awarded allocation for Mortgage Credit Certificate Programs or Multifamily Carry Forward; authorizing the proper Officers, the Executive Director and the Employees and Agents of the HFA to do all things necessary in connection with the plan of finance, the issuance of Single Family Bonds and Carry-forward of Allocation; ratifying prior actions regarding same; and providing an effective date for this Resolution.

MOTION TO APPROVE the Consent Agenda Items 1 through 3.

**REGULAR AGENDA**

4. Mortgage Credit Certificate 2023 Program

MOTION TO ADOPT Resolution of the Housing Finance Authority of Broward County, Florida (“HFA”) authorizing a Mortgage Credit Certificate Program; authorizing the exchange of a not to exceed amount of \$15,000,000 of Single Family Private Activity Bond Allocation for not to exceed \$3,750,000 of Mortgage Credit Certificate authority; approving the form and authorizing the execution of the Master Program Administration Guidelines; approving the form of and authorizing the execution and delivery of Participation Agreements between the HFA and Lending Institutions desiring to participate in the MCC Program; authorizing certain Officials of the HFA to take all actions necessary in connection with the implementation of the MCC Program; providing certain other findings and details with respect thereto; and providing an effective date.

5. Douglas Gardens Senior Health and Living

MOTION TO ADOPT Resolution of the Housing Finance Authority of Broward County, Florida (the “Housing Finance Authority”) authorizing the issuance of its not to exceed \$77,000,000 Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living) (the “Note”) for the purpose of

financing the acquisition, construction and equipping of Douglas Gardens – Senior Health and Living located in Broward County, Florida (the “Project”); establishing parameters for the award of the sale thereof and establishing criteria for determining the terms thereof, including interest rates, interest payment dates, maturity schedule and other terms of such Note; approving the forms of and authorizing the execution and delivery of (i) a Funding Loan Agreement by and among the Housing Finance Authority, Citibank, N.A., as Funding Lender (the “Funding Lender”), and the Bank of New York Mellon Trust Company, N.A., as Fiscal Agent (the “Fiscal Agent”); (ii) a Borrower Loan Agreement by and between the Housing Finance Authority and Douglas Gardens IV, Ltd. (the “Borrower”); (iii) a Land Use Restriction Agreement by and among the Housing Finance Authority, the Fiscal Agent and the Borrower; (iv) an assignment of mortgage and loan documents by the Housing Finance Authority to the Fiscal Agent; (v) a Placement Agent Agreement by and between the Housing Finance Authority and Raymond James & Associates, Inc. and RBC Capital Markets, LLC, as Placement Agents; and (vi) a Fiscal Agent Fee Agreement by and between the Housing Finance Authority and the Fiscal Agent; approving and authorizing the execution and delivery of certain additional agreements necessary or desirable in connection with the issuance of the note; authorizing the Housing Finance Authority to consent to the Borrower placing subordinate financing on the Project and approving the execution of such agreements as may be necessary in connection with such consent; waiving the Housing Finance Authority’s prohibition against using subordinate financing to pay off its tax-exempt obligations; waiving the fee for services related to the Housing Finance Authority’s annual audit of the project; authorizing the proper Officers of the Housing Finance Authority to do all things necessary or advisable in connection with the issuance of the Note; and providing an effective date for this Resolution.

6. Financial Reports Monthly Overview – Ms. Linda Dufresne

MOTION TO APPROVE the Housing Finance Authority monthly financial reports for the month of September 30, 2022.

7. Election of New Officers for Year 2023

MOTION TO APPROVE the Housing Finance Authority Officers for Calendar Year 2023.

8. Meeting and Conference dates for Calendar Year 2023

MOTION TO APPROVE Housing Finance Authority Board meeting dates and Conference dates set for Calendar Year 2023.

9. The Gallery at FATVillage

MOTION TO ADOPT Resolution of the Housing Finance Authority of Broward County, Florida (the “Authority”) declaring its official intent to issue Multifamily Housing Mortgage Revenue Bonds or notes (the “Bonds”) of the Authority to finance all or a portion of the cost of the construction and equipping of certain

multifamily housing facilities (the Gallery at FATVillage) located within Broward County, Florida, and other related purposes; approving the issuance of the Bonds, subject to certain further findings and conditions; authorizing the Authority to publish notice of and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (TEFRA); and providing an effective date for this Resolution.

10. St Joseph Manor II

MOTION TO ADOPTED Resolution of the Housing Finance Authority of Broward County, Florida (the "Housing Finance Authority") declaring its official intent to issue Multifamily Housing Revenue Bonds and/or Notes (the "Bonds") of the Housing Finance Authority to finance all or a portion of the costs of the acquisition, construction and equipping of certain multifamily housing facilities (St. Joseph Manor II) located within Broward County, Florida, and other related purposes; authorizing the Housing Finance Authority to publish notice of and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (TEFRA); and providing an effective date

11. **MATTERS OF HFA MEMBERS**

12. **MATTERS FROM THE FLOOR**

13. **NEXT BOARD MEETING**

November 16, 2022

14. **ADJOURNMENT**

**Agenda Subject to Change**

**MINUTES**  
**REGULAR BOARD MEETING**  
**Wednesday, September 21, 2022**

A regular Board Meeting of the Housing Finance Authority (“HFA”) of Broward County was held on Wednesday, September 21, 2022, at 5:30 p.m., in the 2<sup>nd</sup> Floor Conference Room, located at 110 Northeast 3<sup>rd</sup> Street, Fort Lauderdale, Florida.

**CALLING OF THE ROLL**

A Roll Call was taken by Sonia Isme. The meeting was conducted with a total of six (6) board members onsite. Other participants listed present participated in the meeting via phone conference.

**Board Member(s) Present**

Daniel D. Reynolds, Chair – John G. Primeau, Vice Chair – Scott Ehrlich, Secretary  
Colleen LaPlant, Assistant Secretary – Ruth T. Cyrus, Member – Donna Jarrett-Mays, Member

**Board Member(s) Absent**

Jose Lopez, Member – Milette Manos, Member

**HFA Staff Present**

Ralph Stone, Executive Director  
Norman Howard, Manager  
Sonia Isme, Administration  
Christine Barzey, Compliance Officer  
Andres “Andy” Centeno, Office Support Specialist

**County Attorney**

Annika Ashton, Deputy County Attorney  
Christina Blythe, Asst. County Attorney

**Teleconference Participants Present**

Linda Dufresne, Dufresne CPA Services, P. A.  
Deborah Zomermaand, Financial Advisory Svc.  
Junious Brown, Nabors, Giblin & Nickerson, P.A.  
Helen Feinberg, RBC Capital Markets  
Tim Wranovix, Raymond James  
Jake Zunamon, Smith & Henzy Advisory Group  
Drew Krinsky, Smith & Henzy Advisory Group



## **CONSENT AGENDA ITEMS (1 through 3)**

1. Approval of August 17, 2022, Regular Meeting Minutes

MOTION TO APPROVE the Housing Finance Authority Regular Meeting Minutes on August 17, 2022.

2. Executive Director's (August Operational Report)

MOTION TO APPROVE the Housing Finance Authority Operational Report for August 31, 2022.

3. 2023 Budget Amendments

MOTION TO APPROVE the Proposed Amended Budget for FY2023 in the amount of \$76,478 to account for salary increase for personnel and training for HFA Manager.

Motion was made by John G. Primeau and seconded by Donna Jarrett-Mays to Approve Consent Agenda Items 1 through 3 of the September 21, 2022, meeting. The motion was carried unanimously.

4. St. Joseph Manor II

Mr. Ralph Stone stated that this Item is to issue bonds in the amount of \$30Million for the development of St. Joseph Manor II, a 150-unit new construction. The development is in the City of Pompano Beach, located on N.W. 6<sup>th</sup> Avenue and the intersection of N.W. 3<sup>rd</sup> Avenue. *No further discussion on this item.*

Motion was made by John G. Primeau and seconded by Colleen LaPlant to adopt the Resolution declaring the Housing Finance Authority for official intent to issue bonds for a maximum principal amount of \$30Million authorizing the Housing Finance Authority to publish notice and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act and providing an effective date for this resolution. The motion was carried unanimously.

5. Financial Reports Monthly Overview – Ms. Linda Dufresne

Ms. Linda Dufresne provided a brief overview of the financial reports. She stated that results continued a similar path with a strong net position, remaining under budget with expenses and exceeding budget in some of the operational areas. *No further discussion on this item.*

Motion was made by Donna Jarrett-Mays and seconded by Ruth Cyrus to adopt the Housing Finance Authority monthly financial report for the month of August 31, 2022. The motion was carried unanimously.

6. **The Gallery at FATVillage – Credit Underwriting Report**

Mr. Ralph Stone stated that as mentioned at the previous meeting, the Credit Underwriting Report is available and nothing unusual to report. He stated that the project received approval from the Board of County Commissioners at the September 20<sup>th</sup> Commission Meeting in the amount of \$42.8Million in Housing Finance Authority bonds and the Board of County Commissioners added an additional \$2.5Million in GAP financing. Also, the City of Fort Lauderdale has requested an additional \$2.5Million in GAP financing which has been added to their agenda. Mr. Stone also added that approximately three (3) deals are projected to close by year end totaling about \$100Million. *No further discussion on this item.*

7. **MATTERS OF HFA MEMBERS**

Chair Daniel Reynolds stated that Mr. Jose Lopez officially resigned from the HFA Board as of September 19, 2022 and that there was an opening for the position.

***A discussion ensued amongst staff and board members concerning the BOCC's replacement for a District 8 Board of Commission member to appoint a new HFA Board member to fill the vacancy of Jose Lopez's seat.***

8. **MATTERS FROM THE FLOOR**

Mr. Ralph Stone stated that it was Sonia Isme's final meeting with the HFA Board and that she has done excellent work with the HFA throughout the years. Other HFA Staff and Board Members commented and thanked her for her service and work throughout the years and wished her the best in her future endeavors. Ms. Isme then introduced Andres "Andy" Centeno to the board.

9. **NEXT BOARD MEETING**

October 19, 2022

10. **ADJOURNMENT**

The Chair, Daniel D. Reynolds, hearing no further questions or discussion adjourned the meeting at 5:39 PM. Motion was made by John G. Primeau and seconded by Donna Jarrett-Mays.



**MEMORANDUM**

**Date:** October 10, 2022  
**To:** Housing Finance Authority Board Members  
**Through:** Ralph Stone, Executive Director  
**From:** Norman Howard, Manager  
**Subject:** September Operational Report

**INVESTMENT COMMITTEE**

The Housing Finance Authority (HFA) Investment Committee (IC) next meeting will be scheduled by the HFA Board Chair or Executive Director if there are action items to be approved or if otherwise desired (HFA approved Resolution 2020-012).

**Investment Performance Portfolio (Report)**

As required per Section 13 of the Housing Finance Authority of Broward County, Florida Investment Policy, attached is the report regarding the status of the Authority's Investment Portfolio for the period ending September 30, 2022, (Attachment 1).  
 Attachments

- Performance Matrix
- Graph of Maturities, and
- Full Custody Statement

**SINGLE-FAMILY**

Information listed below is the foreclosure/bankruptcy report received from CitiMortgage for the months of July 31, 2022, and August 31, 2022. The report for the month of September 2022 has not been received from CitiMortgage to date.

*Bankruptcy – July 2022*

Loan Count	Total	1 <sup>st</sup> Lien	2 <sup>nd</sup> Lien	1 <sup>st</sup> Mort./Total	2 <sup>nd</sup> Mort./Total
0	\$0	0	0	\$0	\$0

*Foreclosure (180+ days) – July 2022*

Loan Count	Total		1 <sup>st</sup> Lien	2 <sup>nd</sup> Lien	1 <sup>st</sup> Mort./Total	2 <sup>nd</sup> Mort./Total
2	\$70,523		0	2	\$0	\$70,523

*Bankruptcy – August 2022*

Loan Count	Total		1 <sup>st</sup> Lien	2 <sup>nd</sup> Lien	1 <sup>st</sup> Mort./Total	2 <sup>nd</sup> Mort./Total
0	\$0		0	0	\$0	\$0

*Foreclosure (180+ days) – August 2022*

Loan Count	Total		1 <sup>st</sup> Lien	2 <sup>nd</sup> Lien	1 <sup>st</sup> Mort./Total	2 <sup>nd</sup> Mort./Total
2	\$70,523		0	2	\$0	\$70,523

*Foreclosure (180+ days) – comparison between August 2021 to August 2022*

Comparison Year	Foreclosures	1st Mortgage balance	2nd Mortgage balance	Total
August - 21	6	\$446,105	\$102,104*	\$548,209
August - 22	2	\$0	\$70,523**	\$70,523
<b>Difference(+/-)</b>	<b>4</b>	<b>\$446,105</b>	<b>\$31,581</b>	<b>\$477,686</b>

Note: \* FY21 contain 6 foreclosures, 3 are second mortgages.

\*\* FY22 contain 2 foreclosures, 2 are second mortgages.

**MULTIFAMILY HOUSING BOND TRANSACTIONS**

2022 Multifamily Housing Transactions update (*Attachment 2*).

**MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM**

*2021/2022 MCC Program (ended date December 31, 2022)*

Currently, the HFA has fifteen (15) lenders participating in the MCC Program. Program totals to date are as follows:

<b><i>MCC's by Lender</i></b>	<b><i>Commitments</i></b>	<b><i>Issued</i></b>	<b><i>Cancelled</i></b>
Academy Mortgage Corporation	0	0	0
Bank of America	4	2	0
Christensen Financial Inc	3	2	0

<b><i>MCC's by Lender</i></b>	<b><i>Commitments</i></b>	<b><i>Issued</i></b>	<b><i>Cancelled</i></b>
CMG Mortgage, Inc	0	0	0
Everett Financial, Inc (Supreme Lending)	0	0	0
Fairway Independent Mortgage	4	3	0
Florida State Mortgage Group, Inc	1	1	0
Hamilton Home Loans, Inc.	0	0	0
Home Financial Group, LLC	0	0	0
Home Mortgage Alliance Corporation	0	0	0
Loan Depot, LLC	4	1	0
My Mortgage Inc	1	0	0
Paramount Residential Mortgage Group	28	15	0
Point Mortgage Corp.	0	0	0
The Mortgage Firm	0	0	0
<b>Totals</b>	<b>45</b>	<b>24</b>	<b>0</b>
<b><i>Income to date (Y2021/22):</i></b> <b>\$4,200</b>			

## **MULTI-FAMILY COMPLIANCE MONITORING**

Multifamily compliance monitoring; reporting for period July 21, 2022, through August 20, 2022.

### **Monthly Compliance**

Review of this month's bond report shows all properties are following their respective Land Use Restriction Agreement (LURAs)

### **Occupancy Report**

The HFA Rental Occupancy Report for period July 21, 2022, through August 20, 2022, is included (*Attachment 3*).

### **Annual Management Review and Inspections**

There were no reviews or inspections completed during the reporting period July 21, 2022, to August 20, 2022.

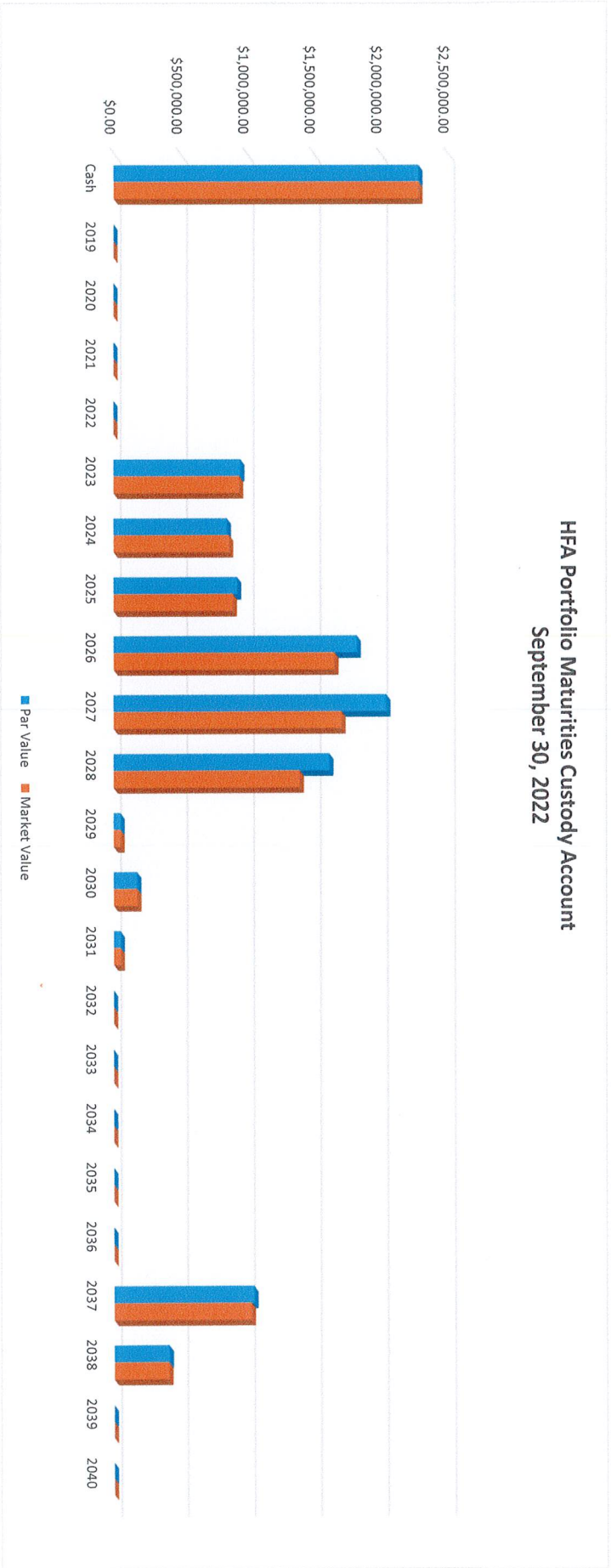
# **ATTACHMENT 1**

**Housing Finance Authority of Broward County  
Investment Third Quarterly Report**

HFA's Investment Reports as of September 30, 2022, consisting of the following attachments:

1. Graph - HFA Portfolio Maturities Custody Account (*Attached*)
2. Investment Performance Matrix – Y2022 Performance (*Attached*)
3. BNY Mellon Custody Statement – September 1, 2022, through September 30, 2022 (*Attached*)

### HFA Portfolio Maturities Custody Account September 30, 2022



**Housing Finance Authority of Broward County Florida  
Investment Performance - 2022**

2022	Florida Local Government		3 Month Treasury Yield	Investment Policy Change Recommended		
	HFA Custody Account	Investment Trust -		Yes	No	Meeting Date
	BoNY	Day to Day Fund*				
January	2.4300%	0.1000%	0.2200%			No Meeting
February	2.4100%	0.1500%	0.3500%			
March	2.4600%	0.1300%	0.5200%			
April	2.5100%	0.2200%	0.8500%			No Meeting
May	2.5400%	0.3700%	1.1600%			
June	2.6000%	0.6300%	1.7200%			
July	2.6200%	0.9700%	2.4100%			No Meeting
August	2.7600%	1.4200%	2.9600%			
September	0.0000%	0.0000%	3.3000%			
October	0.0000%	0.0000%	0.0000%			
November	0.0000%	0.0000%	0.0000%			
December	0.0000%	0.0000%	0.0000%			

30 Day Yield

2021	Florida Local Government		3 Month Treasury Yield	Investment Policy Change Recommended		
	HFA Custody Account	Investment Trust -		Yes	No	Meeting Date
	BoNY	Day to Day Fund*				
January	2.4600%	0.0800%	0.0600%		X	1/20/2021
February	2.4600%	0.0900%	0.0400%			
March	2.4900%	0.0400%	0.0300%			
April	2.4600%	0.0500%	0.0100%			No Meeting
May	2.4900%	0.0400%	0.0100%			
June	2.4700%	0.0400%	0.0500%			
July	2.4100%	0.0300%	0.0600%			No Meeting
August	2.4000%	0.0200%	0.0400%			
September	2.3200%	0.0200%	0.0400%			
October	2.3100%	0.0200%	0.0500%		X	10/20/2021
November	2.4100%	0.0300%	0.0500%			
December	2.4100%	0.0800%	0.0600%			

30 Day Yield

2020	Florida Local Government		3 Month Treasury Yield	Investment Policy Change Recommended		
	HFA Custody Account	Investment Trust -		Yes	No	Meeting Date
	BoNY	Day to Day Fund*				
January	3.0500%	1.6800%	1.5500%		X	1/15/2020
February	3.0100%	1.6900%	1.2700%			
March	2.8000%	1.2700%	0.1100%			
April	2.7100%	0.8000%	0.0900%		X	No Meeting Covid Cancellation
May	2.6500%	0.5600%	0.1400%			
June	2.5200%	0.4500%	0.1600%			
July	2.5100%	0.3400%	0.0900%			No Meeting Covid Cancellation
August	2.4900%	0.2400%	0.1100%			
September	2.4700%	0.1800%	0.1000%			
October	2.4200%	0.1700%	0.0900%			No Meeting Covid Cancellation
November	2.4300%	0.1500%	0.0800%			
December	2.2500%	0.1000%	0.0900%			

\* 30 Day Yield

2019	Florida Local Government		3 Month Treasury Yield	Investment Policy Change Recommended		
	HFA Custody Account	Investment Trust -		Yes	No	Meeting Date
	BoNY	Day to Day Fund*				
January	3.2500%	2.5600%	2.4100%	X		1/16/2019 Member Composition
February	3.2300%	2.6100%	2.4500%			
March	3.1700%	2.5600%	2.4000%			
April	3.1700%	2.5400%	2.4300%		X	4/17/2019
May	3.1500%	2.4900%	2.3500%			
June	3.1100%	2.4500%	2.1200%			
July	3.2400%	2.4200%	2.0800%		X	7/17/2019
August	3.2000%	2.2300%	1.9900%			
September	3.1900%	2.0000%	1.8800%			
October	3.1200%	1.9800%	1.5400%		X	10/16/2019
November	3.0700%	1.8100%	1.5900%			
December	3.0900%	1.7200%	1.5500%			

\* 30 Day Yield

# Note - Report was not available for inclusion within the performance matrix.



**BNY MELLON**  
The Bank of New York Mellon Trust Company, N.A.

### Account Statement

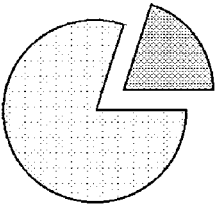
Statement Period 09/01/2022 Through 09/30/2022

Account 762278 Base Currency = USD  
BROWARD HFA CUSTODY ACCT

**CLIENT SERVICE MANAGER: LAUREN DEHNER**  
4655 SALSBUURY RD STE 300  
AIM-324-0000  
JACKSONVILLE, FL 32256  
904-645-1918  
LAUREN.DEHNER@BNYMELLON.COM

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Visit us at [www.bnymellon.com](http://www.bnymellon.com)

### Account Overview



Asset Classification	Market Value
FIXED INCOME	9,213,051.91
CASH AND SHORT TERM	2,287,435.65
<b>TOTAL OF ALL INVESTMENTS</b>	<b>11,500,487.56</b>

### Summary of Assets Held by Asset Classification

Asset Classification	Market Value	Cost	Accrued Income	Estimated Annual Income	Market Yield
FIXED INCOME	9,213,051.91	10,292,138.78	16,322.42	260,095.67	2.82 %
CASH AND SHORT TERM	2,287,435.65	2,287,435.65	0.00	56,894.38	2.49 %
<b>ACCOUNT TOTALS</b>	<b>11,500,487.56</b>	<b>12,579,574.43</b>	<b>16,322.42</b>	<b>316,990.05</b>	<b>2.76 %</b>

### Summary of Cash Transactions by Transaction Category

Transaction Category	Current Period			Year-to-Date	
	Income	Principal	Realized Gains/Losses	Income	Principal
OPENING BALANCE	79,164.40-	79,164.40	0.00	79,164.40-	79,164.40
DIVIDENDS	1,851.36	0.00	0.00	5,035.80	0.00
INTEREST	81,586.71	0.00	0.00	270,477.80	0.00
SALES AND REDEMPTIONS	0.00	994,380.90	10,745.09-	136,191.47	1,398,577.04





**BNY MELLON**  
The Bank of New York Mellon Trust Company, N.A.

Statement Period 09/01/2022 Through 09/30/2022  
Account 762278 Base Currency = USD  
BROWARD HFA CUSTODY ACCT

### Summary of Cash Transactions by Transaction Category - Continued

Transaction Category	Current Period			Year-to-Date	
	Income	Principal	Realized Gains/Losses	Income	Principal
OTHER CASH ADDITIONS	0.00	1,858.18	0.00	0.92	150,702.66
OTHER CASH DISBURSEMENTS	0.00	775.00 -	0.00	136,191.47 -	318,838.59 -
PURCHASES	83,438.07 -	995,464.08 -	0.00	275,514.52 -	1,230,441.11 -
<b>CLOSING BALANCE</b>	<b>79,164.40 -</b>	<b>79,164.40</b>	<b>10,745.09 -</b>	<b>79,164.40 -</b>	<b>79,164.40</b>

The above cash transactions summary is provided for information purposes only and may not reflect actual taxable income or deductible expenses as reportable under the Internal Revenue Code.



**BNY MELLON**  
The Bank of New York Mellon Trust Company, N.A.

Statement Period 09/01/2022 Through 09/30/2022  
Account 762278 Base Currency = USD  
BROWARD HFA CUSTODY ACCT

### Statement of Assets Held by Asset Classification

Shares/Par Value	Asset Description	Market Price	Market Value	Cost	Average Cost	Accrued Income	Estimated Income	Market Yield
<b>FIXED INCOME</b>								
955,000.000	FEDERAL HOME LOAN BANKS CUSIP: 313383YJ4 MATURITY DATE: 09/08/2023 RATE: 3.375% MOODY'S Aaa	99.10300	946,433.65	988,175.15	103.47384	2,059.22	32,231.25	3.41%
855,000.000	S&P AA+ FEDERAL HOME LOAN BANKS CUSIP: 31338XEW8 MATURITY DATE: 08/15/2024 RATE: 5.375% MOODY'S Aaa	101.88400	871,108.20	976,648.36	114.22788	5,872.19	45,956.25	5.28%
931,000.000	S&P AA+ UNITED STATES TREASURY NOTE/BOND CUSIP: 9128285C0 MATURITY DATE: 09/30/2025 RATE: 3.000%	96.53100	898,703.61	991,369.53	106.48437	76.73	27,930.00	3.11%
1,827,000.000	MOODY'S Aaa UNITED STATES TREASURY NOTE/BOND CUSIP: 912828YG9 MATURITY DATE: 09/30/2026 RATE: 1.625%	90.84000	1,659,646.80	1,944,755.86	106.44531	81.56	29,688.75	1.79%
7,990.970	MOODY'S Aaa FANNIE MAE POOL CUSIP: 31378KZR8 MATURITY DATE: 09/01/2027 MATURITY PAYMENT DATE: 09/25/2027 RATE: 6.150%	99.93200	7,985.54	8,189.32	102.48218	40.95	491.44	6.15%
2,031,000.000	ORIG-FACE: 1,132,632.000 UNITED STATES TREASURY NOTE/BOND CUSIP: 91282CAL5 MATURITY DATE: 09/30/2027 RATE: 0.375% MOODY'S Aaa	83.50400	1,695,966.24	1,996,568.20	98.30469	20.92	7,616.25	0.45%
7,880.600	GINNIE MAE II POOL CUSIP: 36208SK92 MATURITY DATE: 10/01/2027 MATURITY PAYMENT DATE: 10/20/2027 RATE: 6.150% ORIG-FACE: 1,117,636.000	101.22800	7,977.37	7,991.05	101.40154	40.39	484.66	6.08%
19,670.360	GINNIE MAE II POOL CUSIP: 36209PLU9 MATURITY DATE: 06/01/2028 MATURITY PAYMENT DATE: 06/20/2028 RATE: 5.450% ORIG-FACE: 1,497,903.000	99.88400	19,647.54	19,504.24	99.15548	89.34	1,072.03	5.46%
24,778.090	FANNIE MAE POOL CUSIP: 31380M6A9 MATURITY DATE: 08/01/2028 MATURITY PAYMENT DATE: 08/25/2028	99.91300	24,756.53	24,651.28	99.48822	112.53	1,350.41	5.45%



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**Statement of Assets Held by Asset Classification - Continued**

Shares/Par Value	Asset Description	Market Price	Market Value	Cost	Average Cost	Accrued Income	Estimated Income	Market Yield
1,500,000.000	RATE: 5.450% ORIG-FACE: 1,078,439.000 UNITED STATES TREASURY NOTE/BOND CUSIP: 91282CCY5 MATURITY DATE: 09/30/2028	85.17200	1,277,580.00	1,488,222.66	99.21484	51.51	18,750.00	1.47%
18,802.650	RATE: 1.250% MOODY'S Aaa FANNIE MAE POOL CUSIP: 31380M6C5 MATURITY DATE: 10/01/2028 MATURITY PAYMENT DATE: 10/25/2028	99.91300	18,786.29	18,706.40	99.48810	85.40	1,024.74	5.45%
23,653.100	RATE: 5.450% ORIG-FACE: 1,818,827.000 FANNIE MAE POOL CUSIP: 31380M6D3 MATURITY DATE: 11/01/2028 MATURITY PAYMENT DATE: 11/25/2028	99.73200	23,589.71	23,532.17	99.48874	107.42	1,289.09	5.46%
34,490.070	RATE: 5.450% ORIG-FACE: 537,538.000 GINNIE MAE II POOL CUSIP: 36210L6R9 MATURITY DATE: 11/01/2028 MATURITY PAYMENT DATE: 11/20/2028	99.88300	34,449.72	34,198.76	99.15538	156.64	1,879.71	5.46%
23,898.350	RATE: 5.450% ORIG-FACE: 804,519.000 GINNIE MAE II POOL CUSIP: 36210WA90 MATURITY DATE: 03/01/2029 MATURITY PAYMENT DATE: 03/20/2029	99.88400	23,870.63	23,681.78	99.09379	108.54	1,302.46	5.46%
28,752.900	RATE: 5.450% ORIG-FACE: 1,760,577.000 FANNIE MAE POOL CUSIP: 31382TF1 MATURITY DATE: 11/01/2029 MATURITY PAYMENT DATE: 11/25/2029	99.89400	28,722.42	28,586.62	99.42169	130.59	1,567.03	5.46%
49,377.070	RATE: 5.450% ORIG-FACE: 449,073.000 FANNIE MAE POOL CUSIP: 31382TXG9 MATURITY DATE: 01/01/2030 MATURITY PAYMENT DATE: 01/25/2030	99.95900	49,356.83	49,091.33	99.42131	224.25	2,691.05	5.45%
27,766.700	RATE: 5.450% ORIG-FACE: 868,020.000 GINNIE MAE II POOL CUSIP: 36211VRG7 MATURITY DATE: 01/01/2030 MATURITY PAYMENT DATE: 01/20/2030	99.88400	27,734.49	27,483.22	98.97906	126.11	1,513.29	5.46%



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Shares/Par Value	Asset Description	Market Price	Market Value	Cost	Average Cost	Accrued Income	Estimated Income	Market Yield
33,678,010	FANNIE MAE POOL CUSIP: 31386JY39 MATURITY DATE: 08/01/2030 MATURITY PAYMENT DATE: 08/29/2030 RATE: 6.490%	100.24200	33,759,511	34,831,811	103.42597	182.14	2,185.70	6.47%
15,310,730	ORIG-FACE: 554,965,000 GINNIE MAE II POOL CUSIP: 36212HYL8 MATURITY DATE: 08/01/2030 MATURITY PAYMENT DATE: 08/20/2030 RATE: 6.490%	100.29200	15,355,444	17,018,499	111.15401	82.81	993.67	6.47%
51,527,160	ORIG-FACE: 1,807,679,000 GINNIE MAE II POOL CUSIP: 36212JC95 MATURITY DATE: 09/01/2030 MATURITY PAYMENT DATE: 09/20/2030 RATE: 6.490%	100.29900	51,681,233	57,278,101	111.16099	278.68	3,344.11	6.47%
31,495,250	ORIG-FACE: 885,653,000 GINNIE MAE I POOL CUSIP: 36213K6N7 MATURITY DATE: 06/01/2031 MATURITY PAYMENT DATE: 06/15/2031 RATE: 5.350%	100.36700	31,610,844	34,594,688	109.84094	140.42	1,685.00	5.33%
20,956,880	ORIG-FACE: 503,490,000 FANNIE MAE POOL CUSIP: 31389ML47 MATURITY DATE: 09/01/2031 MATURITY PAYMENT DATE: 09/25/2031 RATE: 5.350%	99.88000	20,931,733	21,033,811	100.36709	93.43	1,121.19	5.36%
162,288,420	ORIG-FACE: 328,530,000 FREDDIE MAC GOLD POOL CUSIP: 31286DE72 MATURITY DATE: 04/01/2037 MATURITY PAYMENT DATE: 04/15/2037 RATE: 5.100%	98.19800	159,363,988	163,018,855	100.45008	688.73	8,276.71	5.19%
135,537,940	ORIG-FACE: 1,449,183,000 FREDDIE MAC GOLD POOL CUSIP: 31335YS56 MATURITY DATE: 05/01/2037 MATURITY PAYMENT DATE: 05/15/2037 RATE: 5.100%	98.27500	133,199,911	136,148,033	100.45012	576.04	6,912.43	5.19%
80,359,460	ORIG-FACE: 598,044,000 FANNIE MAE POOL CUSIP: 31412YQZ8 MATURITY DATE: 09/01/2037 MATURITY PAYMENT DATE: 05/25/2037 RATE: 5.100%	99.50700	79,963,293	80,721,188	100.45013	341.53	4,098.33	5.13%
105,523,200	ORIG-FACE: 891,648,000 FREDDIE MAC GOLD POOL CUSIP: 31286DE56	96.71800	102,059,933	105,576,011	100.05005	417.70	5,012.35	4.91%



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Shares/Par Value	Asset Description	Market Price	Market Value	Cost	Average Cost	Accrued Income	Estimated Income	Market Yield
	MATURITY DATE: 08/01/2037 MATURITY PAYMENT DATE: 09/15/2037 RATE: 4.750%							
	ORIG-FACE: 1,737,506.000 FREDDIE MAC GOLD POOL CUSIP: 31286DHR5	97.29400	126,577.39	130,162.94	100.05004	514.97	6,179.65	4.88%
130,097.840	MATURITY DATE: 09/01/2037 MATURITY PAYMENT DATE: 09/15/2037 RATE: 4.750%							
	ORIG-FACE: 1,866,698.000 FREDDIE MAC GOLD POOL CUSIP: 31286DLM1	97.39900	239,623.93	246,146.07	100.05003	973.84	11,686.09	4.88%
246,022.990	MATURITY DATE: 10/01/2037 MATURITY PAYMENT DATE: 10/15/2037 RATE: 4.750%							
	ORIG-FACE: 3,212,396.000 FANNIE MAE POOL CUSIP: 31414GCP2	99.18800	85,207.75	85,948.25	100.05000	340.04	4,080.50	4.79%
85,905.300	MATURITY DATE: 10/01/2037 MATURITY PAYMENT DATE: 10/25/2037 RATE: 4.750%							
	ORIG-FACE: 2,364,928.000 FANNIE MAE POOL CUSIP: 31414LUA4	99.44500	104,934.60	105,995.22	100.45013	448.46	5,381.53	5.13%
105,520.240	MATURITY DATE: 12/01/2037 MATURITY PAYMENT DATE: 12/25/2037 RATE: 5.100%							
	ORIG-FACE: 599,878.000 FREDDIE MAC GOLD POOL CUSIP: 31286DQE4	102.04000	49,720.33	50,602.32	103.85010	247.69	2,972.30	5.98%
48,726.310	MATURITY DATE: 01/01/2038 MATURITY PAYMENT DATE: 01/15/2038 RATE: 6.100%							
	ORIG-FACE: 2,262,370.000 FANNIE MAE POOL CUSIP: 31414QMU8	99.21900	59,458.04	59,956.08	100.05010	237.21	2,846.49	4.79%
59,926.060	MATURITY DATE: 01/01/2038 MATURITY PAYMENT DATE: 01/25/2038 RATE: 4.750%							
	ORIG-FACE: 400,360.000 FREDDIE MAC GOLD POOL CUSIP: 31321XEY6	98.15800	50,072.14	51,241.47	100.45027	216.80	2,601.60	5.20%
51,011.780	MATURITY DATE: 02/01/2038 MATURITY PAYMENT DATE: 02/15/2038 RATE: 5.100%							
	ORIG-FACE: 192,442.000 FREDDIE MAC GOLD POOL CUSIP: 31321XEND	96.72500	40,146.10	41,526.18	100.05007	164.29	1,971.51	4.91%
41,505.400	MATURITY DATE: 05/01/2038 MATURITY PAYMENT DATE: 05/15/2038							



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Shares/Par Value	Asset Description	Market Price	Market Value	Cost	Average Cost	Accrued Income	Estimated Income	Market Yield
29,523.620	RATE: 4.750% ORIG-FACE: 475,980.000 FREDDIE MAC GOLD POOL CUSIP: 31321XJN5 MATURITY DATE: 06/01/2038 MATURITY PAYMENT DATE: 06/15/2038	102.04100	30,126.20	30,660.43	103.85051	150.08	1,800.94	5.98%
43,047.670	RATE: 6.100% ORIG-FACE: 344,519.000 FREDDIE MAC GOLD POOL CUSIP: 31321XOG4 MATURITY DATE: 08/01/2038 MATURITY PAYMENT DATE: 08/15/2038	96.02300	41,335.66	43,069.34	100.05034	170.40	2,044.76	4.95%
99,719.490	RATE: 4.750% ORIG-FACE: 257,504.000 FREDDIE MAC GOLD POOL CUSIP: 31321XR22 MATURITY DATE: 09/01/2038 MATURITY PAYMENT DATE: 09/15/2038	101.87800	101,592.22	103,658.78	103.85009	506.91	6,082.89	5.99%
41,673.910	RATE: 6.100% ORIG-FACE: 415,412.000 FREDDIE MAC GOLD POOL CUSIP: 31321XVE1 MATURITY DATE: 10/01/2038 MATURITY PAYMENT DATE: 10/15/2038	96.02200	40,016.12	41,694.81	100.05015	164.96	1,979.51	4.95%
<b>Total FIXED INCOME</b>			<b>9,213,051.91</b>	<b>10,292,138.78</b>		<b>16,322.42</b>	<b>260,095.67</b>	<b>2.82%</b>
<b>CASH AND SHORT TERM</b>								
1,061,022.030	BLACKROCK TREASURY TRUST INSTL 10 CUSIP: X9USDBL.YT	1.00000	1,061,022.03	1,061,022.03	1.00000	0.00	26,390.33	2.49%
1,226,413.620	BLACKROCK TREASURY TRUST INSTL 62 CUSIP: X9USDBL.YT	1.00000	1,226,413.62	1,226,413.62	1.00000	0.00	30,504.05	2.49%
<b>Total CASH AND SHORT TERM</b>			<b>2,287,435.65</b>	<b>2,287,435.65</b>		<b>0.00</b>	<b>56,894.38</b>	<b>2.49%</b>
<b>ACCOUNT TOTALS</b>			<b>11,500,487.56</b>	<b>12,579,574.43</b>		<b>16,322.42</b>	<b>316,990.05</b>	<b>2.76%</b>
Total Market Value Plus Total Accrued Income			11,516,809.98					

Statement of Transactions by Transaction Date

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/01/22	ACCOUNT OPENING PERIOD BALANCE	79,164.40-	79,164.40	12,505,798.28	
09/02/22	Purchase	1,851.36-	0.00	1,851.36	0.00
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Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/02/22	BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI 1,851,360 SHARES	60.45	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	168.93	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	60.47	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	190.93	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	60.82	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	62.57	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	59.86	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	59.88	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	63.90	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	60.52	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	60.46	0.00	0.00	0.00
09/02/22	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBL YTI	55.27	0.00	0.00	0.00
09/02/22	Dividend				



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Statement of Transactions by Transaction Date - Continued

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	181.19	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	68.08	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	52.57	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	63.67	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	55.15	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	56.77	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	62.54	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	56.28	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	166.32	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	68.22	0.00	0.00	0.00
	Dividend				
09/02/22	BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/02/22 SET/DATE 09/02/22 CUSIP X9USDBLYT	56.51	0.00	0.00	0.00
	Dividend				





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Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/02/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,507,649.64	0.00
09/08/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/09/22 SET/DATE 09/09/22 CUSIP X9USDBL YTI 16,115.630 SHARES	16,115.63-	0.00	16,115.63	0.00
09/08/22	Interest FEDERAL HOME LOAN BANKS RATE: 3.375% MATURITY: 09/08/23 TRADE DATE 09/08/22 SET/DATE 09/08/22 CUSIP 313383YJ4 955,000,000 SHARES	16,115.63	0.00	0.00	0.00
09/08/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,523,765.27	0.00
09/09/22	Purchase BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/09/22 SET/DATE 09/09/22 CUSIP X9USDBL YTI 975,000,000 SHARES	0.00	975,000.00-	975,000.00	0.00
09/09/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/09/22 SET/DATE 09/09/22 CUSIP X9USDBL YTI 15,234,380 SHARES	15,234.38-	0.00	15,234.38	0.00
09/09/22	Redemption FEDERAL HOME LOAN BANKS RATE: 3.125% MATURITY: 09/09/22 TRADE DATE 09/09/22 SET/DATE 09/09/22 CUSIP 313383WD9 975,000,000 SHARES	0.00	975,000.00	985,596.15-	10,596.15-
09/09/22	Interest FEDERAL HOME LOAN BANKS RATE: 3.125% MATURITY: 09/09/22 TRADE DATE 09/09/22 SET/DATE 09/09/22 CUSIP 313383WD9 975,000,000 SHARES	15,234.38	0.00	0.00	0.00
09/09/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,528,403.50	10,596.15-
09/13/22	Cash Credit ORD CUST: 8900280115 DDA DEBIT TO CREDIT IMMS BN-BRC-7E CORP ORD INST: BNYMELLON GLOBAL CORPORATE TRUST WILBERT KRUGLE DETAIL: BROWARD COUNTY CUSTODY 2007C WHOLE S2209132225000	0.00	1,374.61	0.00	0.00



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Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/13/22	DETAIL: /BNF/BROWARD COUNTY CUSTODY 2007C WHOLE LOAN 2ND MOR DETAIL: TGAGE BNY CUST RRN - F1S22091322250002007C WHOLE LOA FTS:F1S2209132225000 Cash Credit ORD CUST: 8900280115 DDA DEBIT TO CREDIT IMMS BN-BRC-7E CORP ORD INST: BNYMELLON GLOBAL CORPORATE TRUST WILBERT KRUGLE DETAIL: BROWARD COUNTY CUSTODY 2006B WHOLE S2209130656200 DETAIL: /BNF/BROWARD COUNTY CUSTODY 2006B WHOLE LOAN 2ND MOR DETAIL: TGAGE BNY CUST RRN - FTS22091306562002006B WHOLE LOA FTS:FTS2209130656200	0.00	483.57	0.00	0.00
09/13/22	<b>ACCOUNT CLOSING DAILY BALANCE</b>	<b>79,164.40-</b>	<b>81,022.58</b>	<b>12,528,403.50</b>	<b>10,596.15-</b>
09/14/22	Purchase BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/14/22 SET/DATE 09/14/22 CUSIP X9USDPLYT 1,858.180 SHARES	0.00	1,858.18-	1,858.18	0.00
09/14/22	<b>ACCOUNT CLOSING DAILY BALANCE</b>	<b>79,164.40-</b>	<b>79,164.40</b>	<b>12,530,261.68</b>	<b>10,596.15-</b>
09/15/22	Purchase BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP X9USDPLYT 4,774.270 SHARES	0.00	4,774.27-	4,774.27	0.00
09/15/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP X9USDPLYT 4,953.990 SHARES Paydown	4,953.99-	0.00	4,953.99	0.00
09/15/22	Purchase FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 08/01/37 MATURITY PAYMENT DATE: 08/15/37 CUSIP 31286DE56 398.030 SHARES Paydown	0.00	398.03	398.23-	0.20-
09/15/22	Purchase FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 04/01/37 MATURITY PAYMENT DATE: 04/15/37 CUSIP 31286DE72	0.00	617.09	619.88-	2.78-



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/15/22	617.100 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 09/01/37 MATURITY PAYMENT DATE: 09/15/37 CUSIP 31286DHR5	0.00	475.09	475.33-	0.24-
09/15/22	475.090 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 10/01/37 MATURITY PAYMENT DATE: 10/15/37 CUSIP 31286DLM1	0.00	1,001.82	1,002.31-	0.50-
09/15/22	1,001.810 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 01/01/38 MATURITY PAYMENT DATE: 01/15/38 CUSIP 31286DQE4	0.00	154.20	160.15-	5.94-
09/15/22	154.210 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 05/01/38 MATURITY PAYMENT DATE: 05/15/38 CUSIP 31321XEN0	0.00	201.04	201.14-	0.10-
09/15/22	201.040 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 02/01/38 MATURITY PAYMENT DATE: 02/15/38 CUSIP 31321XEY6	0.00	191.61	192.47-	0.86-
09/15/22	191.610 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 06/01/38 MATURITY PAYMENT DATE: 06/15/38 CUSIP 31321XJN5	0.00	88.77	92.19-	3.42-
09/15/22	88.770 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 08/01/38 MATURITY PAYMENT DATE: 08/15/38 CUSIP 31321XQ64	0.00	144.02	144.09-	0.07-
09/15/22	144.020 SHARES Paydown FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 09/01/38 MATURITY PAYMENT DATE: 09/15/38 CUSIP 31321XR22	0.00	294.87	306.22-	11.35-
09/15/22	294.870 SHARES				



**BNY MELLON**  
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Account 762278 Base Currency = USD  
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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/15/22	Paydown FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 10/01/38 MATURITY PAYMENT DATE: 10/15/38 CUSIP 31321XVE1	0.00	137.36	137.43-	0.07-
09/15/22	Paydown 137.360 SHARES				
09/15/22	Paydown FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 09/01/37 MATURITY PAYMENT DATE: 09/15/37 CUSIP 31335YS66	0.00	513.19	515.50-	2.31-
09/15/22	Paydown 513.190 SHARES				
09/15/22	Paydown GINNIE MAE I POOL RATE: 5.350% MATURITY: 08/01/31 MATURITY PAYMENT DATE: 08/15/31 CUSIP 36213K6N7	0.00	557.18	612.01-	54.83-
09/15/22	Interest 557.180 SHARES				
09/15/22	Interest FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 08/01/37 MATURITY PAYMENT DATE: 08/15/37 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31286DE56	419.27	0.00	0.00	0.00
09/15/22	Interest 105.921.230 SHARES				
09/15/22	Interest FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 04/01/37 MATURITY PAYMENT DATE: 04/15/37 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31286DE72	692.35	0.00	0.00	0.00
09/15/22	Interest 162.905.520 SHARES				
09/15/22	Interest FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 09/01/37 MATURITY PAYMENT DATE: 09/15/37 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31286DHR5	516.85	0.00	0.00	0.00
09/15/22	Interest 130.572.930 SHARES				
09/15/22	Interest FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 10/01/37 MATURITY PAYMENT DATE: 10/15/37 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31286DLM1	977.81	0.00	0.00	0.00
09/15/22	Interest 247.024.800 SHARES				
09/15/22	Interest FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 01/01/38	248.48	0.00	0.00	0.00



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/15/22	MATURITY PAYMENT DATE: 01/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31286DQE4 48,880.520 SHARES Interest	165.09	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 05/01/38 MATURITY PAYMENT DATE: 05/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XEN0 41,706.440 SHARES Interest	217.61	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 02/01/38 MATURITY PAYMENT DATE: 02/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XEY6 51,203.390 SHARES Interest	150.53	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 06/01/38 MATURITY PAYMENT DATE: 06/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XJN5 29,612.390 SHARES Interest	170.97	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 08/01/38 MATURITY PAYMENT DATE: 08/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XQ64 43,191.690 SHARES Interest	508.41	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 6.100% MATURITY: 09/01/38 MATURITY PAYMENT DATE: 09/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XR22 100,014.360 SHARES Interest	165.50	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 4.750% MATURITY: 10/01/38 MATURITY PAYMENT DATE: 10/15/38 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31321XVE1 41,811.270 SHARES Interest	578.22	0.00	0.00	0.00
09/15/22	FREDDIE MAC GOLD POOL RATE: 5.100% MATURITY: 09/01/37				



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### Statement of Transactions by Transaction Date - Continued

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/15/22	MATURITY PAYMENT DATE: 09/15/37 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 31335YS56 136,051.130 SHARES	142.90	0.00	0.00	0.00
09/15/22	Interest GINNIE MAE I POOL RATE: 5.350% MATURITY: 06/01/31 MATURITY PAYMENT DATE: 06/15/31 TRADE DATE 09/15/22 SET/DATE 09/15/22 CUSIP 36213K6N7 32,052.430 SHARES				
09/15/22	<b>ACCOUNT CLOSING DAILY BALANCE</b>	<b>79,164.40-</b>	<b>79,164.40</b>	<b>12,535,132.99</b>	<b>10,678.82-</b>
09/20/22	Purchase BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP X9USDLYT 2,714.250 SHARES	0.00	2,714.25-	2,714.25	0.00
09/20/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP X9USDLYT 895.850 SHARES	895.85-	0.00	895.85	0.00
09/20/22	Paydown GINNIE MAE II POOL RATE: 6.150% MATURITY: 10/01/27 MATURITY PAYMENT DATE: 10/20/27 CUSIP 36208SK92 454.240 SHARES	0.00	454.24	460.61-	6.37-
09/20/22	Paydown GINNIE MAE II POOL RATE: 5.450% MATURITY: 06/01/28 MATURITY PAYMENT DATE: 06/20/28 CUSIP 36209PLU9 236.610 SHARES	0.00	236.62	234.61-	2.00
09/20/22	Paydown GINNIE MAE II POOL RATE: 5.450% MATURITY: 11/01/28 MATURITY PAYMENT DATE: 11/20/28 CUSIP 36210L6R9 576.100 SHARES	0.00	576.10	571.23-	4.87
09/20/22	Paydown GINNIE MAE II POOL RATE: 5.450% MATURITY: 03/01/29 MATURITY PAYMENT DATE: 03/20/29 CUSIP 36210WA90 281.850 SHARES	0.00	281.84	279.30-	2.55
09/20/22	Paydown GINNIE MAE II POOL RATE: 5.450% MATURITY: 03/01/29 MATURITY PAYMENT DATE: 03/20/29 CUSIP 36210WA90 281.850 SHARES	0.00	303.61	300.50-	3.10



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/20/22	GINNIE MAE II POOL RATE: 5.450% MATURITY: 01/01/30 MATURITY PAYMENT DATE: 01/20/30 CUSIP 36211VRG7 303.600 SHARES Paydown	0.00	418.16	464.81-	46.64-
09/20/22	GINNIE MAE II POOL RATE: 6.490% MATURITY: 08/01/30 MATURITY PAYMENT DATE: 08/20/30 CUSIP 36212HYL8 418.170 SHARES Paydown	0.00	443.68	493.20-	49.52-
09/20/22	GINNIE MAE II POOL RATE: 6.150% MATURITY: 10/01/27 MATURITY PAYMENT DATE: 10/20/27 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36208SK92 8.334.840 SHARES Interest	42.72	0.00	0.00	0.00
09/20/22	GINNIE MAE II POOL RATE: 5.450% MATURITY: 06/01/28 MATURITY PAYMENT DATE: 06/20/28 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36209PLU9 19.906.970 SHARES Interest	90.41	0.00	0.00	0.00
09/20/22	GINNIE MAE II POOL RATE: 5.450% MATURITY: 11/01/28 MATURITY PAYMENT DATE: 11/20/28 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36210L6R9 35.066.170 SHARES Interest	159.26	0.00	0.00	0.00
09/20/22	GINNIE MAE II POOL RATE: 5.450% MATURITY: 03/01/29 MATURITY PAYMENT DATE: 03/20/29 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36210WA90 24.180.200 SHARES Interest	109.82	0.00	0.00	0.00
09/20/22	GINNIE MAE II POOL RATE: 5.450% MATURITY: 01/01/30 MATURITY PAYMENT DATE: 01/20/30 Interest	127.49	0.00	0.00	0.00



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/20/22	TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36211VRG7 28,070.300 SHARES	85.07	0.00	0.00	0.00
09/20/22	Interest GINNIE MAE II POOL RATE: 6.490% MATURITY: 08/01/30 MATURITY PAYMENT DATE: 08/20/30 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36212HYL8 15,728.900 SHARES	281.08	0.00	0.00	0.00
09/20/22	Interest GINNIE MAE II POOL RATE: 6.490% MATURITY: 09/01/30 MATURITY PAYMENT DATE: 09/20/30 TRADE DATE 09/20/22 SET/DATE 09/20/22 CUSIP 36212JC95 51,970.840 SHARES	79,164.40-	79,164.40	12,535,938.83	10,768.83-
09/26/22	ACCOUNT CLOSING DAILY BALANCE	0.00	11,117.38-	11,117.38	0.00
09/26/22	Purchase BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/26/22 SET/DATE 09/26/22 CUSIP X9USDLYT 11,117.380 SHARES	2,394.35-	0.00	2,394.35	0.00
09/26/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/26/22 SET/DATE 09/26/22 CUSIP X9USDLYT1 2,394.350 SHARES	0.00	321.47	329.45-	7.98-
09/26/22	Paydown FANNIE MAE POOL RATE: 6.150% MATURITY: 09/01/27 MATURITY PAYMENT DATE: 09/25/27 CUSIP 31378KZR8 321.470 SHARES	0.00	564.70	561.81-	2.89
09/26/22	Paydown FANNIE MAE POOL RATE: 5.450% MATURITY: 08/01/28 MATURITY PAYMENT DATE: 08/25/28 CUSIP 31380M6A9 564.700 SHARES	0.00	296.43	294.91-	1.52
09/26/22	Paydown FANNIE MAE POOL RATE: 5.450% MATURITY: 10/01/28 MATURITY PAYMENT DATE: 10/25/28 CUSIP 31380M6C5 296.430 SHARES	0.00	7,421.24	7,383.30-	37.94
09/26/22	Paydown				





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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 11/01/28 MATURITY PAYMENT DATE: 11/25/28 CUSIP 31380M6D3 7,421,240 SHARES Paydown	0.00	287.17	285.51-	1.66
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 11/01/29 MATURITY PAYMENT DATE: 11/25/29 CUSIP 31382TXF1 287,170 SHARES Paydown	0.00	470.13	467.40-	2.72
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 01/01/30 MATURITY PAYMENT DATE: 01/25/30 CUSIP 31382TXG9 470,120 SHARES Paydown	0.00	325.33	336.48-	11.15-
09/26/22	FANNIE MAE POOL RATE: 6.490% MATURITY: 08/01/30 MATURITY PAYMENT DATE: 08/25/30 CUSIP 31385JV39 325,330 SHARES Paydown	0.00	150.78	151.33-	0.55-
09/26/22	FANNIE MAE POOL RATE: 5.350% MATURITY: 09/01/31 MATURITY PAYMENT DATE: 09/25/31 CUSIP 31389ML47 150,780 SHARES Paydown	0.00	304.61	305.99-	1.37-
09/26/22	FANNIE MAE POOL RATE: 5.100% MATURITY: 05/01/37 MATURITY PAYMENT DATE: 05/25/37 CUSIP 31412YQZ8 304,620 SHARES Paydown	0.00	388.04	388.23-	0.19-
09/26/22	FANNIE MAE POOL RATE: 4.750% MATURITY: 10/01/37 MATURITY PAYMENT DATE: 10/25/37 CUSIP 31414GCP2 388,040 SHARES Paydown	0.00	364.69	366.33-	1.64-
09/26/22	FANNIE MAE POOL RATE: 5.100% MATURITY: 12/01/37 MATURITY PAYMENT DATE: 12/25/37 CUSIP 31414LUA4 364,690 SHARES Paydown	0.00	222.79	222.90-	0.11-
09/26/22	FANNIE MAE POOL				



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/26/22	RATE: 4.750% MATURITY: 01/01/38 MATURITY PAYMENT DATE: 01/25/38 CUSIP 31414QMU8 222.790 SHARES Interest	42.60	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 6.150% MATURITY: 09/01/27 MATURITY PAYMENT DATE: 09/25/27 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31378KZR8 8.312.440 SHARES Interest	115.10	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 08/01/28 MATURITY PAYMENT DATE: 08/25/28 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31380M6A9 25.342.790 SHARES Interest	86.74	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 10/01/28 MATURITY PAYMENT DATE: 10/25/28 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31380M6C5 19.099.080 SHARES Interest	141.13	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 11/01/28 MATURITY PAYMENT DATE: 11/25/28 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31380M6D3 31.074.340 SHARES Interest	131.89	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 11/01/29 MATURITY PAYMENT DATE: 11/25/29 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31382TXF1 29.040.070 SHARES Interest	226.39	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 5.450% MATURITY: 01/01/30 MATURITY PAYMENT DATE: 01/25/30 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31382TXG9 49.847.190 SHARES Interest	183.90	0.00	0.00	0.00
09/26/22	FANNIE MAE POOL RATE: 6.490% MATURITY: 08/01/30				



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/26/22	MATURITY PAYMENT DATE: 08/25/30 TRADE DATE 09/25/22 SET/DATE 09/25/22 CUSIP 31385JV39				
	34,003.340 SHARES	94.10	0.00	0.00	0.00
	Interest				
	FANNIE MAE POOL				
	RATE: 5.350% MATURITY: 09/01/31				
	MATURITY PAYMENT DATE: 09/25/31				
	TRADE DATE 09/25/22 SET/DATE 09/25/22				
	CUSIP 31389ML47				
	21,107.660 SHARES				
	Interest				
	FANNIE MAE POOL				
	RATE: 5.100% MATURITY: 05/01/37				
	MATURITY PAYMENT DATE: 05/25/37				
	TRADE DATE 09/25/22 SET/DATE 09/25/22				
	CUSIP 31412YQZ8				
	80,664.080 SHARES				
	Interest				
	FANNIE MAE POOL				
	RATE: 4.750% MATURITY: 10/01/37				
	MATURITY PAYMENT DATE: 10/25/37				
	TRADE DATE 09/25/22 SET/DATE 09/25/22				
	CUSIP 31414GCP2				
	86,293.340 SHARES				
	Interest				
	FANNIE MAE POOL				
	RATE: 5.100% MATURITY: 12/01/37				
	MATURITY PAYMENT DATE: 12/25/37				
	TRADE DATE 09/25/22 SET/DATE 09/25/22				
	CUSIP 31414LU44				
	105,884.930 SHARES				
	Interest				
	FANNIE MAE POOL				
	RATE: 4.750% MATURITY: 01/01/38				
	MATURITY PAYMENT DATE: 01/25/38				
	TRADE DATE 09/25/22 SET/DATE 09/25/22				
	CUSIP 31414QMU8				
	60,148.850 SHARES				
09/26/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,538,356.92	10,745.09-
09/29/22	Sale BLACKROCK TREASURY TRUST INSTL 10 TRADE DATE 09/29/22 SET/DATE 09/29/22 CUSIP X9USD8L YT	0.00	775.00	775.00-	0.00
09/29/22	775,000 SHARES Cash Debit BNF: BANK OF NEW YORK MELLON NOTPROVIDED	0.00	775.00-	0.00	0.00



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**Statement of Transactions by Transaction Date - Continued**

Transaction Date	Transaction Description	Income	Principal	Cost	Realized Gains/Losses
09/29/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,579,574.43	10,745.09-
09/30/22	DETAIL: /BNF/2522497699 BROWCUST2017 REL REF: BNYM FEE AC WITH: THE BANK OF NEW YORK MELLON 10286,NEW YORK,US				
09/30/22	Purchase BLACKROCK TREASURY TRUST INSTL 62 TRADE DATE 09/30/22 SET/DATE 09/30/22 CUSIP X9USDLYT1 41,992.510 SHARES	41,992.51-	0.00	41,992.51	0.00
09/30/22	Interest UNITED STATES TREASURY NOTE/BOND RATE: 3.000% MATURITY: 09/30/25 TRADE DATE 09/30/22 SET/DATE 09/30/22 CUSIP 9128285C0 931,000,000 SHARES	13,965.00	0.00	0.00	0.00
09/30/22	Interest UNITED STATES TREASURY NOTE/BOND RATE: 1.625% MATURITY: 09/30/26 TRADE DATE 09/30/22 SET/DATE 09/30/22 CUSIP 912828YG9 1,827,000,000 SHARES	14,844.38	0.00	0.00	0.00
09/30/22	Interest UNITED STATES TREASURY NOTE/BOND RATE: 0.375% MATURITY: 09/30/27 TRADE DATE 09/30/22 SET/DATE 09/30/22 CUSIP 91282CAL5 2,031,000,000 SHARES	3,808.13	0.00	0.00	0.00
09/30/22	Interest UNITED STATES TREASURY NOTE/BOND RATE: 1.250% MATURITY: 09/30/28 TRADE DATE 09/30/22 SET/DATE 09/30/22 CUSIP 91282CCY5 1,500,000,000 SHARES	9,375.00	0.00	0.00	0.00
09/30/22	ACCOUNT CLOSING DAILY BALANCE	79,164.40-	79,164.40	12,579,574.43	10,745.09-
09/30/22	ACCOUNT CLOSING PERIOD BALANCE	79,164.40-	79,164.40	12,579,574.43	10,745.09-

Cumulative realized capital gain and loss position from 12/31/2021 for securities held in principal of account:

Short Term: 0.00 \* Long Term: 13,267.41\*

\* The above gain and loss position does not include transactions where tax cost information is incomplete or unavailable.



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BROWARD HFA CUSTODY ACCT

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## **ATTACHMENT 2**

**2022 MULTIFAMILY HOUSING BOND TRANSACTIONS – OCTOBER 2022 UPDATE**

<b><u>HFA RANKING</u></b>	<b>1</b>	<b>2</b>	<b>3</b>
<b><u>PROJECT NAME</u></b>	<b><u>The Gallery at FATVillage</u></b>	<b><u>Griffin Gardens II</u></b>	<b><u>Douglas Gardens Senior Health &amp; Living (Combined Douglas Gardens IV &amp; VI)</u></b>
<b><u>PROJECT LOCATION</u></b>	600 N. Andrews Avenue Fort Lauderdale, FL 33311	4881 Griffin Rd., Davie, FL 33314	E. side of SW 88 <sup>th</sup> Ave., NE of the intersection of SW 88 <sup>th</sup> Ave & SW 89 <sup>th</sup> Ave., Pembroke Pines, FL
<b><u>DEVELOPER</u></b>	Related FATVillage, LLC	Building Better Communities, Inc.	Douglas Gardens IV Developer, LLC
<b><u>PROFESSIONAL TEAM</u></b>	<ul style="list-style-type: none"> <li>• Lead Underwriter</li> <li>• Bond Counsel</li> <li>• Credit Underwriter (“CU”)</li> </ul>	<ul style="list-style-type: none"> <li>• Raymond James</li> <li>• BMO</li> <li>• First Housing</li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• TBD</li> <li>• TBD</li> </ul>
<b><u>BOND AMOUNTS</u></b>	<ul style="list-style-type: none"> <li>• Bond Amount/Original Req.</li> <li>• Revised Request</li> <li>• CU Recommendation</li> </ul>	<ul style="list-style-type: none"> <li>• \$35,900,000</li> <li>• \$42,850,000</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• \$21,000,000</li> <li>•</li> <li>•</li> </ul>
<b><u>TEFRA &amp; Inducement</u></b>	<ul style="list-style-type: none"> <li>• TEFRA/Inducement Amount</li> <li>• Date of HFA Inducement</li> <li>• Date of TEFRA Hearing</li> <li>• Date HFA Approval/Amend.</li> <li>• Date of BOCC App. TEFRA</li> <li>• BOCC Approval/Amendment</li> </ul>	<ul style="list-style-type: none"> <li>• \$35,900,000</li> <li>• March 24, 2021/January19, 2022</li> <li>• March 22, 2022</li> <li>•</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• Nabors</li> <li>• First Housing</li> </ul>
<b><u>ALLOCATION</u></b>	<ul style="list-style-type: none"> <li>• Allocation Approved by HFA</li> </ul>	\$35,900,000/\$42,850,000	County General Funds
<b><u>TRANSACTION STATUS</u></b>	<i>See Note #1</i>	<i>See Note #2</i>	<i>See Note #3</i>

<b><u>HFA RANKING</u></b>	<b>4</b>	<b>5</b>	<b>6</b>
<b><u>PROJECT NAME</u></b>	<b><u>Pinnacle 441 Phase 2</u></b>	<b><u>St. Joseph Manor II</u></b>	<b><u>Captiva Cove III</u></b>
<b><u>PROJECT LOCATION</u></b>	6028 Johnson St. Hollywood, FL 33024	On NW 6 <sup>th</sup> Ave. west of NW 3rd Ave. & NW 12 <sup>th</sup> St, to the South of St. Joseph Manor which is located at 1220 NW6th Ave., Pompano Beach FL 33060	S Dixie Highway, S Dixie Highway & SW 11 <sup>th</sup> St. Pompano Beach, FL
<b><u>DEVELOPER</u></b>	Pinnacle Communities, LLC	SHAG St. Joseph Developer, LLC & CHS St. Joseph Manor II Development, LLC	Cornerstone Group Partners, LLC
<b><u>PROFESSIONAL TEAM</u></b>	<ul style="list-style-type: none"> <li>• Lead Underwriter</li> <li>• Bond Counsel</li> <li>• Credit Underwriter (“CU”)</li> </ul>	<ul style="list-style-type: none"> <li>• RBC</li> <li>• Nabors Giblin</li> <li>• Setzler</li> </ul>	<ul style="list-style-type: none"> <li>• Raymond James</li> <li>• Nabors Giblin</li> <li>• Seltzer</li> </ul>
<b><u>BOND AMOUNTS</u></b>	<ul style="list-style-type: none"> <li>• Bond Amount/Original Req.</li> <li>• Revised Request</li> <li>• CU Recommendation</li> </ul>	<ul style="list-style-type: none"> <li>• RBC</li> <li>• Nabors Giblin</li> <li>• Setzler</li> </ul>	<ul style="list-style-type: none"> <li>• \$22,000,000</li> <li>• \$26,000,000</li> <li>• \$27,000,000/\$30,000,000(Pending)</li> <li>• \$18,500,000</li> <li>• \$19,000,000/\$22,000,000</li> <li>•</li> </ul>
<b><u>TEFRA &amp; Inducement</u></b>	<ul style="list-style-type: none"> <li>• TEFRA/Inducement Amount</li> <li>• Date of HFA Inducement</li> <li>• Date of TEFRA Hearing</li> <li>• Date of HFA Approval</li> <li>• Date of BOCC App. TEFRA</li> <li>• BOCC Approval</li> </ul>	<ul style="list-style-type: none"> <li>• \$22,000,000</li> <li>• August 17, 2022</li> </ul>	<ul style="list-style-type: none"> <li>• \$27,000,000/\$30,000,000</li> <li>• June 15, 2022/September 21, 2022</li> </ul>
<b><u>ALLOCATION</u></b>	<ul style="list-style-type: none"> <li>• Allocation Approved by HFA</li> </ul>	<ul style="list-style-type: none"> <li>• HFA \$22,000,000</li> <li>• County General Funds</li> </ul>	<ul style="list-style-type: none"> <li>• HFA \$30,000,000 (Pending);</li> <li>• &amp;County General Funds</li> </ul>
<b><u>TRANSACTION STATUS</u></b>	<i>See Note #4</i>	<i>See Note #5</i>	<i>See Note #6</i>



<b><u>HFA RANKING</u></b>	<b>7</b>	<b>8</b>	<b>9</b>
<b><u>PROJECT NAME</u></b>	<b><u>Federation Plaza</u></b>	<b><u>Tallman Pines – Phase I</u></b>	<b><u>Casa Lake Village</u></b>
<b><u>PROJECT LOCATION</u></b>	3081 Taft Street Hollywood, FL 33021	601 NE 38 <sup>th</sup> Ct., Deerfield Beach	NW 21 <sup>st</sup> St. & NW 37 <sup>th</sup> Terrace Lauderdale Lakes, Broward 33311
<b><u>DEVELOPER</u></b>	Related Affordable, LLC	Tallman Pines Villas, Ltd.	ACRUVA Community Developers, LLC.
<b><u>PROFESSIONAL TEAM</u></b>			
<ul style="list-style-type: none"> <li>• <i>Lead Underwriter</i></li> <li>• <i>Bond Counsel</i></li> <li>• <i>Credit Underwriter (“CU”)</i></li> </ul>	<ul style="list-style-type: none"> <li>• RBC</li> <li>• BMO</li> <li>• Seltzer</li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• TBD</li> <li>• TBD</li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• TBD</li> <li>• TBD</li> </ul>
<b><u>BOND AMOUNTS</u></b>			
<ul style="list-style-type: none"> <li>• <i>Bond Amount/Original Req.</i></li> <li>• <i>Revised Request</i></li> <li>• <i>CU Recommendation</i></li> </ul>	<ul style="list-style-type: none"> <li>• \$37,000,000</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• \$13,200,000</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• \$15,900,000</li> <li>•</li> <li>•</li> </ul>
<b><u>TEFRA &amp; Inducement</u></b>			
<ul style="list-style-type: none"> <li>• <i>TEFRA/Inducement Amount</i></li> <li>• <i>Date of HFA Inducement</i></li> <li>• <i>Date of TEFRA Hearing</i></li> <li>• <i>Date of HFA Approval</i></li> <li>• <i>Date of BOCC App. TEFRA</i></li> <li>• <i>BOCC Approval</i></li> </ul>	<ul style="list-style-type: none"> <li>• \$37,000,000/\$38,500,000</li> <li>• January 19, 2022/April 20, 2022</li> <li>• May 24, 2022</li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> </ul>
<b><u>ALLOCATION</u></b>			
<ul style="list-style-type: none"> <li>• <i>Allocation Approved by HFA</i></li> </ul>	\$37,000,000/\$38,500,000	County General Funds	
<b><u>TRANSACTION STATUS</u></b>	<i>See Note #7</i>	<i>See Note #8</i>	<i>See Note #9</i>

<b><u>HFA RANKING</u></b>	<b>10</b>	<b>11</b>	<b>12</b>
<b><u>PROJECT NAME</u></b>	<b><u>Golden Acres Senior Apartments</u></b>	<b><u>Sistrunk Apartments</u></b>	
<b><u>PROJECT LOCATION</u></b>	NW 18 <sup>th</sup> Dr., NE of the intersection of NW 18 <sup>th</sup> Dr. & NW 12 <sup>th</sup> Dr., Pompano Beach, FL	1204 NW 6 <sup>th</sup> Street and 1619 NW 6 <sup>th</sup> Street, Ft. Lauderdale	
<b><u>DEVELOPER</u></b>	AMBAR3, LLC& HAPB Supporting Housing Opportunities, Inc.	Sistrunk Apartments Developer, LLC	
<b><u>PROFESSIONAL TEAM</u></b>			
<ul style="list-style-type: none"> <li>• <i>Lead Underwriter</i></li> <li>• <i>Bond Counsel</i></li> <li>• <i>Credit Underwriter (“CU”)</i></li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• TBD</li> <li>• TBD</li> </ul>	<ul style="list-style-type: none"> <li>• TBD</li> <li>• TBD</li> <li>• Ameri National</li> </ul>	
<b><u>BOND AMOUNTS</u></b>			
<ul style="list-style-type: none"> <li>• <i>Bond Amount/Original Req.</i></li> <li>• <i>Revised Request</i></li> <li>• <i>CU Recommendation</i></li> </ul>	<ul style="list-style-type: none"> <li>• \$14,750,000</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• \$18,000,000</li> <li>•</li> <li>•</li> </ul>	
<b><u>TEFRA &amp; Inducement</u></b>			
<ul style="list-style-type: none"> <li>• <i>TEFRA/Inducement Amount</i></li> <li>• <i>Date of HFA Inducement</i></li> <li>• <i>Date of TEFRA Hearing</i></li> <li>• <i>Date of HFA Approval</i></li> <li>• <i>Date of BOCC App. TEFRA</i></li> <li>• <i>BOCC Approval</i></li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>•</li> <li>•</li> <li>•</li> </ul>	
<b><u>ALLOCATION</u></b>			
<ul style="list-style-type: none"> <li>• <i>Allocation Approved by HFA</i></li> </ul>	County General Funds		
<b><u>TRANSACTION STATUS</u></b>	<i>See Note #10</i>	<i>See Note #11</i>	

**Note #1:**

Application to fund The Gallery at FATVillage in the 2021 allocation cycle was submitted to the HFA in response to the HFA's MF Notice of Funding Availability. The financing is expected to fund the new construction of 195 units of housing (affordable, workforce and market) and retail space on the ground floor, in Ft. Lauderdale. The requested bond amount was originally \$35,900,000 with a revision to \$42,580,000 submitted to the HFA on November 18, 2021. The inducement and TEFRA amount was increased to \$42,850,000. The building type is apartments with elevator access. The transaction is expected to close October 2022.

**Note #2:**

Application to fund Griffin Gardens II in the 2021 allocation cycle was submitted to the HFA on May 28, 2021. The financing is expected to fund the new construction of 76 units of affordable senior housing in Davie. The requested bond amount is \$21,000,000. The building type is elevator. The transaction is expected to close in 2023.

**Note #3:**

Application to fund Douglas Gardens IV Senior Health & Living in the 2021 allocation cycle was submitted to the HFA on June 4, 2021. The financing is expected to fund the new construction of 200 units of affordable senior housing in Pembroke Pines. The requested bond amount is between \$35,000,000 - \$40,000,000. The building type is elevator. The transaction is expected to close late 2022 or first quarter 2023.

Application to fund Douglas Gardens VI Senior Health & Living in the December 2021 RFP for \$29 Million New Construction of Affordable Housing was submitted to the County on December 3, 2021. The financing is expected to fund the new construction of 200 units of affordable senior housing in Pembroke Pines. The requested bond amount is \$37,000,000. The building type is elevator. The transaction is expected to close late 2022 or first quarter 2023.

Application to combine Douglas Gardens IV Senior Health & Living and Douglas Gardens VI Senior Health & Living was submitted to the HFA on March 2, 2022. The combined application is consistent with the two initial applications.

**Note #4:**

Application to fund Pinnacle 441 Phase 2 in the 2021 allocation cycle was submitted to the HFA on September 22, 2021. The financing is expected to fund the new construction of 100 units of affordable housing in Hollywood. The requested bond amount is \$22,000,000. The building type is elevator. The transaction is expected to close first quarter of 2023.

**Note #5:**

Application to fund St. Joseph Manor II in the 2021 allocation cycle was submitted to the HFA on September 17, 2021. The financing is expected to fund the new construction of 150 units of affordable housing in Pompano Beach. The requested bond amount was originally \$26,000,000 with an initial revision to \$27,000,000 and a subsequent revision to \$30,000,000 submitted to the HFA on September 7, 2022. The building type is elevator. The transaction is expected to close fourth quarter 2022 or first quarter of 2023.

**Note #6:**

Application to fund Captiva Cove III in the 2021 allocation cycle was submitted to the HFA on October 15, 2021. The financing is expected to fund the new construction of 106 units of affordable housing in Pompano Beach. The requested bond amount was \$18,500,000 with an initial revision to \$19,000,000 and a subsequent revision to \$22,000,000 submitted to the HFA on June 27, 2022. The building type is elevator. The transaction is expected to close first quarter of 2023.

**Note #7:**

Application to fund Federation Plaza in the 2021 allocation cycle was submitted to the HFA on November 18, 2021. The financing is expected to fund the acquisition and rehabilitation of 124 units of affordable housing in Hollywood. The requested a bond amount was \$37,000,000 with a requested revision to \$38,500,000 submitted to the HFA in March 2022. The building type is elevator. The transaction is expected to close third quarter 2022.

**Note #8:**

Application to fund Tallman Pines – Phase I in the 2021 allocation cycle was submitted to the HFA on November 23, 2021. The financing is expected to fund the new construction of 80 units of affordable housing in Deerfield Beach. The requested bond amount is \$13,200,000. The building type is walk-up. The transaction is expected to close first quarter of 2023.

**Note #9:**

Application to fund Casa Lakes Village in the 2021 allocation cycle was submitted to the HFA on November 30, 2021. The financing is expected to fund the new construction of 80 units of affordable housing in Lauderdale Lakes. The requested bond amount is \$15,900,000. The building type is elevator. The transaction is expected to close end of 2022 or first quarter of 2023.

**Note #10:**

Application to fund Golden Acres Senior Apartments in the December 2021 RFP for \$29 Million New Construction of Affordable Housing was submitted to the County on December 3, 2021. The financing is expected to fund the new construction of 100 units of affordable senior housing in Pompano Beach. The requested bond amount is \$14,750,000. The building type is walk-up apartments. The transaction is expected to close late first quarter 2023.

**Note #11:**

Application to fund Sistrunk Apartments in the 2022 allocation cycle was submitted to the HFA on April 6, 2022. The financing is expected to fund the new construction of 72 units of affordable housing in Ft. Lauderdale. The requested bond amount is \$18,000,000. The building type is 5 story elevator apartments. The transaction is expected to close by June 2023.

## **ATTACHMENT 3**

Housing Finance Authority of Broward County  
Rental Occupancy Report

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J
Property	Total Number of Units	From Mgmt Number of Units Occupied	% of Units Occupied	Previous month % of Lower Units Occupied July	From Mgmt Low Income Units Occupied	% Occupied by Low Income	LURA Low Income Requirement	Certificate of Compliance rec'd August	Vacant Units
Banyan Bay	416	400	96.2	44%	175	43.8	20%	9/9/2022	16
Chaves Lakes	238	238	100.0	80%	189	79.4	40%	8/31/2022	0
Emerald Palms	318	318	100.0	88%	277	87.1	40%	9/12/2022	0
Federation Davie Apartments	80	79	98.8	100%	79	100.0	40%	10/6/2022	1
Federation Sunrise Apartments	123	123	100.0	100%	122	99.2	40%	10/6/2022	0
Golden Villas	120	117	97.5	99%	116	99.1	40%	9/7/2022	3
Heron Pointe	200	198	99.0	100%	198	100.0	40%	8/29/2022	2
Landings at Coconut Creek	268	259	96.6	21%	54	20.8	20%	9/9/2022	9
Lauderhill Point (fka Driftwood Terr)	176	167	94.9	100%	167	100.0	100%	9/9/2022	9
Los Prados	444	412	92.8	36%	148	35.9	20%	8/29/2022	32
Mar Lago Village	216	198	91.7	43%	84	42.4	40%	9/9/2022	18
Marquis	100	96	96.0	99%	95	99.0	40%	8/31/2022	4
Northwest Gardens V	200	189	94.5	100%	189	100.0	40%	9/21/2022	11
Palms of Deerfield	56	56	100.0	100%	56	100.0	100%	9/12/2022	0
Pembroke Park	244	244	100.0	81%	197	80.7	40%	8/30/2022	0
Pinnacle Village	148	147	99.3	99%	145	98.6	40%	9/7/2022	1
Praxis of Deerfield Beach	224	208	92.9	100%	208	100.0	100%	9/12/2022	16
Prospect Park	125	124	99.2	100%	124	100.0	40%	9/9/2022	1
Regency Gardens	94	93	98.9	100%	93	100.0	40%	8/26/2022	1
Residences at Crystal Lake	92	91	98.9	100%	91	100.0	40%	9/10/2022	1
Sailboat Bend	37	37	100.0	87%	32	86.5	100%	9/8/2022	0
Sanctuary Cove	292	290	99.3	99%	286	98.6	40%	8/30/2022	2
Stanley Terrace	96	94	97.9	100%	94	100.0	40%	9/12/2022	2
Summerlake	108	108	100.0	99%	105	97.2	40%	8/25/2022	0
Woodsdale Oaks	172	170	98.8	99%	170	100.0	70%	9/9/2022	2
<b>Totals</b>	<b>4,587</b>	<b>4,456</b>			<b>3,494</b>	<b>78.4%</b>			<b>131</b>
<b>Total % rate of occupancy for all properties</b>		<b>97%</b>							

## ***MULTI-FAMILY COMPLIANCE MONITORING***

### **MULTI-FAMILY BOND RENTAL OCCUPANCY REPORT KEY**

The Rental Occupancy Report was prepared by staff from Certifications of Continuing Compliance reports received from Multi Family property management.

Column B represents the total number of units the property has.

Column C represents the number of units occupied during the reporting period.

Column D represents the percentage of units occupied versus the total number.

Column E represents the percentage of total units that were lower income occupied during the month of July, 2022.

Column F represents the number of lower income units occupied.

Column G represents the percentage of lower income units occupied versus the total number of units available.

Column H represents the lower income requirement per the Land Use Restriction Agreement.

Column I represents the date the Certificate of Compliance was received by Housing Finance Authority. Dates may vary from the 22<sup>nd</sup> of the previous month to the 15<sup>th</sup> of the following month since bond reports are submitted according to the time frame set in the LURA.

Column J represents the number of units vacant for each property.

Columns that are blank represent no report was received from property management.

**Housing Finance Authority of Broward County  
October 19, 2022 – Board Meeting**

**Single Family (Bond Allocation) – Action Item**

*MOTION TO ADOPT Resolution 2022-019 authorizing Staff to: 1) take any action necessary to carry forward 2022 Private Activity Bond (“PAB”) allocation as multifamily allocation and/or single-family allocation, 2) publish a TEFRA Notice and hold a TEFRA Hearing, and 3) request 2023 PAB allocation from the State.*

**Background**

1. Annually PAB allocation is available based on a statutory calculation. The Housing Finance Authority (“Authority”) received PAB allocation in 2022 totaling \$102,614,098.20. The 2022 PAB allocation was distributed as follows: multifamily \$0 - and single-family - \$102,614,098.20. It is anticipated that 2023 available PAB allocation will be approximately \$102,000,000.
2. Pursuant to a memorandum dated October 2, 2020, the Authority was provided additional direction from Bryant Miller Olive P.A. regarding allocation procedures for any project in an amount of \$50 million or more. Specifically, the Authority was advised that allocation requests in excess of \$50 million do not expire and there is nothing for the Authority to do until the allocation is carried forward at the end of the year. (Attachment 1) The Authority’s current PAB allocation procedures are consistent with this direction.
3. The Authority annually requests PAB allocation from the State for financing single family or multifamily transactions.
4. Presently the Authority has \$102,608,614.20 in available single-family allocation. The Authority has \$368,802,186.32 in multifamily allocation, of which \$94,826,719.00 will expire on December 31, 2022, if not used for existing transactions. (Attachment 2).
5. The Authority has \$313,700,000.00 in pending PAB allocation requests for eleven (11) multifamily developments.

**Present Situation**

1. The Authority’s single-family allocation may be used to issue tax exempt bonds (“Bonds”) to finance mortgages or issue mortgage credit certificates (“MCC”) to qualifying households.
2. The Authority has eleven pending multifamily applications with three transactions scheduled to close prior to year-end. The remaining applications are expected to close in 2023 or 2024. The Authority has received inquiries regarding additional multifamily transactions. As carry forward allocation is not project specific, multifamily carry forward must be used on a first come first served basis for approved transactions. Assuming the additional 2022 closings occur as scheduled, the remaining multifamily allocation will equal \$211,952,186.32.
3. On January 1 of each year, a designated percentage of the State’s allocation is allocated to a “regional pool” consisting of seventeen (17) geographic regions of which Broward County is one. Certain steps must be taken for the Authority to obtain allocation from the Broward regional pool (“Region 10 PAB”).



4. The current single family TEFRA expires on February 2, 2023. Staff requests authorization to publish any required notices and to hold a TEFRA Hearing prior to the expiration of the current TEFRA. The TEFRA Notice will specify an amount not to exceed \$250,000,000 and will be used in conjunction with the Authority's Plan of Finance for single family transactions (including Bonds and MCCs) over a three (3) year period. (Attachment 3)
5. TEFRA Hearings for multifamily transactions are project specific and are held once the applicant has submitted an application, paid all applicable fees and the transaction has been approved by the Board with notice to the appropriate local government contacts.
6. Authority Staff and financial advisor recommend carrying forward the 2022 PAB allocation as multifamily allocation and/or single-family allocation in such amounts as determined necessary by the Executive Director of the Authority.
7. The cost of the TEFRA Notice, which will be published in the Sun-Sentinel, is not expected to exceed \$500.00.
8. The Authority Resolution will provide Staff authorization to: 1) carry forward 2022 single-family allocation as multifamily and/or single-family allocation, 2) publish required notices and hold a TEFRA Hearing, and 3) request 2023 PAB allocation. (Attachment 3)
9. The procedures to carry forward 2022 PAB allocation and request 2023 PAB allocation from the State are an administrative function of the Authority and therefore BOCC authorization is not required for these actions.

### **Recommendation**

Request adoption of Resolution to provide authorization for Staff to:

- 1) Take any action necessary to carry forward 2022 Private Activity Bond allocation as multifamily allocation and/or single-family,
- 2) Publish a TEFRA Notice,
- 3) Hold a TEFRA Hearing, and
- 4) Request 2023 PAB allocation from the State.

### **Attachments**

1. Bond Counsel Memorandum – October 2, 2020
2. Allocation Matrix
3. Authority Resolution 2022-019

# **ATTACHMENT 1**

## MEMORANDUM

**TO:** Ralph Stone, Executive Director  
Housing Finance Authority of Broward County, Florida

**FROM:** JoLinda Herring  
Bryant Miller Olive P.A.

**DATE:** October 2, 2020

**RE:** Allocation Procedures for Private Activity Bonds

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Staff has asked Bryant Miller Olive P.A. to provide a Memorandum to the Housing Finance Authority of Broward County, Florida (the "Authority") outlining the allocation procedures. We have reviewed the Florida Statutes and the previous memorandum provided to the Authority by Morris G. (Skip) Miller on September 26, 2005. We believe that Mr. Miller's memorandum is still applicable, however a different procedure is applicable to projects of \$50 million or more.

Chapter 159, Part VI, Florida Statutes outlines the procedures for obtaining allocations, requirements and issuance reports. Generally, pursuant to Section 159.805(2), Florida Statutes, after the written confirmation of allocation has been received, bonds must be issued within 155 calendar days after the date the confirmation was issued or December 29th, whichever occurs first. If the Authority determines that the allocation is no longer necessary or no bonds have been issued, the Authority should notify the Division of Bond Finance (the "Division") upon expiration of the confirmation or not later than the 160<sup>th</sup> calendar day after the date that the confirmation was issued. However, such timelines are tolled during the pendency of a validation proceeding pursuant to Chapter 75, Florida Statutes, if written notice of the pendency of the validation is provided to the Division prior to the expiration of the confirmation.

Further, Section 159.95(4), Florida Statutes provides that "the time limits established by this section do not apply to any written confirmation for a priority project or for any project in an amount of \$50 million or more." Although, the Division's practice has been to put the 155 day expiration date on written confirmation as a matter of course, even when the project is over \$50 million. Recently, confirmations of allocations for projects of \$50 million or more have indicated an expiration date of December 30, which means the allocation does not expire and there is nothing for the

Authority to do except request that the allocation be carried forward prior to December 30 of such year. The December 30 date is important, as only allocation that remains valid on December 30 of a year can be made into carry forward allocation. Thus, for awarded allocations of less than \$50 million, they will not be eligible for a carry forward election unless the underlying bonds are the subject of a pending validation proceeding, which tolls the running of the applicable time periods until December 30 of such year.

## **ATTACHMENT 2**

Housing Finance Authority of Broward County, Florida  
Private Activity Bond Allocation - As of September 30, 2022

Sources of Allocation

Carry Forward & Current Year Allocation

Year	Multifamily	Single Family	Total	2021 MCC	Solaris	Pembroke Tower II	Description	Description	Description	Description	Balance
2018	30,229,274.00	50,000,000.00	80,229,274.00	-50,000,000.00	-16,500,000.00	-13,729,274.00	0.00	0.00	0.00	0.00	0.00
2019	97,397,445.00	0.00	97,397,445.00	0.00	0.00	-2,570,726.00	0.00	0.00	0.00	0.00	94,826,719.00
2020	97,647,789.10	0.00	97,647,789.10	0.00	0.00	0.00	0.00	0.00	0.00	0.00	97,647,789.10
2021	176,327,678.22	0.00	176,327,678.22	0.00	0.00	0.00	0.00	0.00	0.00	0.00	176,327,678.22
2022	0.00	102,614,098.20	102,614,098.20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	102,614,098.20
November 16th Allocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

2022 Allocation Uses & Pending Requests

Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Line of Credit

Total	368,802,186.32	102,614,098.20	554,216,284.52	-50,000,000.00	-16,500,000.00	-16,300,000.00	0.00	0.00	0.00		471,416,284.52
Pending Allocation	0	0.00									0.00
Available Allocation	368,802,186.32	102,614,098.20									471,416,284.52

Current Allocation Balances Adjusted for MF Applications -

Confirmed with the Division of Bond Finance 09-Feb-22

	Multifamily	Single Family	Total	
Kristy Mock or Kelsey Manno - (850) 413-1312		Whitney Fason		
2018	0.00	0.00	0.00	
2019	94,826,719.00	0.00	94,826,719.00	Expires 12/31/2022
2020	97,647,789.10	0.00	97,647,789.10	Expires 12/31/2023
2021	176,327,678.22	0.00	176,327,678.22	Expires 12/31/2024
2022	0.00	102,614,098.20	102,614,098.20	
November 16th Allocation	0.00	0.00	0.00	
Description	0.00	0.00	0.00	
	<b>368,802,186.32</b>	<b>102,614,098.20</b>	<b>471,416,284.52</b>	

Carryforward & Allocation Details

Total Carryforward, CY Allocation, Closings & Pending Requestgs	368,802,186.32	102,614,098.20	
Other	-	-	
Other	-	-	

Remaining Allocation/Commitments

Pending Bond Closings & Allocation

			Closing Projection		2022 Closing	Units	2,023	Units	City	Developer
The Gallery at FATVillage	(42,850,000.00)	-	2022	New Construction	-42,850,000	195	0	0	Ft. Lauderdale	Related
Douglas Gardens (Combined)	(77,000,000.00)	-	2022	New Construction	-77,000,000	410	0	0	Pembroke Pines	Douglas Gardens VI Develo
Griffin Gardens II	(21,000,000.00)	-	2022	New Construction	-21,000,000	76	0	0	Davie	Building Better Communities
Sistrunk Avenue Apartments	(18,000,000.00)	-	2023	New Construction	0	0	-18,000,000	72	Ft. Lauderdale	Sistrunk Apatments Develc
Pinnacle 441 Phase 2	(22,000,000.00)	-	2023	New Construction	0	0	-22,000,000	100	Hollywood	Pinnacle Communities
Captiva Cove III	(22,000,000.00)	-	2023	New Construction	0	0	-22,000,000	106	Pompano Beach	Cornerstone
St. Joseph Manor II	(30,000,000.00)	-	2023	New Construction	0	0	-30,000,000	150	Pompano Beach	SHAG
Federation Plaza	(37,000,000.00)	-	2022	Acquisition /Rehab	-37,000,000	124	0	0	Hollywood	Related Affordable, LLC
Tallman Pines - Phase I	(13,200,000.00)	-	2023	New Construction	0	0	-13,200,000	80	Deerfield Beach	Tallman Pines Villas, Ltd/
Casa Lake Village	(15,900,000.00)	-	2023	New Construction	0	0	-15,900,000	80	Lauderdale Lakes	ACRUVACommunity Develc
Golden Acres	(14,750,000.00)	-	2023	New Construction	0	0	-14,750,000	100	Pompano Beach	AMBAR3 LLC & HA Pompai
Other	-	-	0				0			
Allocation Detail										
2019 Multifamily	94,826,719.00	-	Expires 12/31/2022	2019 MF Carryforward	94,826,719		0.00			
2020 Multifamily	97,647,789.10	-	Expires 12/31/2023	2020 MF Carryforward	97,647,789					
2021 Multifamily	176,327,678.22	-	Expires 12/31/2024	2021 MF Carryforward	0		176,327,678.22			
2022 Single Family	-	102,614,098.20			0		0.00			
Other	-	-			0		0			
<b>Total (Avail. Alloc. Less Applications)</b>	<b>55,102,186.32</b>	<b>102,614,098.20</b>			<b>14,624,508</b>	<b>805</b>	<b>40,477,678.22</b>	<b>798</b>		

## **ATTACHMENT 3**

RESOLUTION NO. 2022-019

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 p.m. on October 19, 2022, at 110 Northeast Third Street, Suite 201, Fort Lauderdale, Florida.

Present: \_\_\_\_\_  
\_\_\_\_\_

Absent: \_\_\_\_\_  
\_\_\_\_\_

Thereupon, the following resolution which was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA ("HFA") AUTHORIZING STAFF TO CARRY FORWARD 2022 PRIVATE ACTIVITY BOND ALLOCATION; AUTHORIZING STAFF TO REQUEST 2023 PRIVATE ACTIVITY BOND ALLOCATION; APPROVING A PLAN OF FINANCE INVOLVING THE ISSUANCE BY THE HFA OF ITS SINGLE FAMILY MORTGAGE REVENUE BONDS ("SINGLE FAMILY BONDS") IN AN AGGREGATE FACE AMOUNT OF NOT TO EXCEED \$250,000,000 IN ONE OR MORE SERIES; APPROVAL OF THE SINGLE FAMILY BONDS AS REQUIRED BY SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AUTHORIZING STAFF TO PUBLISH A NOTICE AND HOLD A PUBLIC HEARING IN ACCORDANCE WITH SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986; APPROVING THE USE OF STATE AWARDED ALLOCATION FOR MORTGAGE CREDIT CERTIFICATE PROGRAMS OR MULTIFAMILY CARRY FORWARD; AUTHORIZING THE PROPER OFFICERS, THE EXECUTIVE DIRECTOR AND THE EMPLOYEES AND AGENTS OF THE HFA TO DO ALL THINGS NECESSARY IN CONNECTION WITH THE PLAN OF FINANCE, THE ISSUANCE OF SINGLE FAMILY BONDS AND CARRY-FORWARD OF ALLOCATION; RATIFYING PRIOR ACTIONS REGARDING SAME; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.**

**WHEREAS**, the Housing Finance Authority of Broward County, Florida (the "HFA") intends to issue its single family mortgage revenue bonds (the "Single Family Bonds"), in



one or more series, in an aggregate principal amount of not to exceed \$250,000,000, to refund certain outstanding obligations of the HFA and/or to purchase federally insured or guaranteed mortgage loans originated by participating local lending institutions to finance or refinance the purchase of new or existing owner-occupied single-family residences situated within Broward County, Florida (the "County") and owned by persons or families of low, moderate or middle income, to purchase securities from a master servicer evidencing interests in or backed by a pool of such mortgage loans, including, without limitation, securities issued by the federal government or agencies thereof; and

**WHEREAS**, the Internal Revenue Code of 1986, as amended (the "Code") limits the amount of "private activity bonds" that can be issued in the State of Florida (the "State") in any year; and

**WHEREAS**, the Single Family Bonds constitute "private activity bonds" and therefore are subject to the State's allocation procedure governing the issuance of such "private activity bonds"; and

**WHEREAS**, the HFA desires to apply for additional allocation in an amount up to the amount allocated to Broward County for 2023 by the Division of Bond Finance (the "Division") to assure that the HFA has all resources available to respond to any initiatives addressing the housing needs of the citizens of the County; and

**WHEREAS**, the State's allocation procedure requires that (i) a public hearing be held under the Tax Equity and Fiscal Responsibility Act with respect to the Single Family Bonds, and (ii) the issuance of the Single Family Bonds be approved by the Board of County Commissioners

of Broward County, Florida (the "Board") for purposes of Section 147(f) of the Code prior to requesting allocation for said Single Family Bonds; and

**WHEREAS**, the HFA desires to continue providing mortgage credit certificates for the benefit of the citizens of the County and wishes to exchange allocation awarded by the State for Single Family Bonds for allocation applicable to mortgage credit certificate authority; and

**WHEREAS**, the HFA may elect to carry-forward any unused single family allocation awarded by the State for use with either single family revenue bonds or multifamily revenue bonds; and

**WHEREAS**, the HFA hereby desires to adopt a plan of financing within the meaning of Section 147(f)(2)(C) of the Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**, as follows:

**Section 1. Carry-forward Allocation.** The HFA hereby authorizes staff to take all action required to carry-forward allocation for the Single Family Bonds, which was allocated to the County for 2022 by the Division, as allocation for multifamily mortgage revenue bonds and/or single family mortgage revenues, in such amounts as determined necessary by the Executive Director of the HFA. The HFA hereby approves the execution by the Chair, Vice Chair, any member of the HFA or the Executive Director of the HFA of all documents, certificates and/or forms required to enable the HFA to carry-forward the allocation received in 2022.

**Section 2. Execution of Allocation Request.** The HFA hereby approves the execution by the Chair, Vice Chair, and any member of the HFA or the Executive Director of the HFA of a

request for allocation for the Single Family Bonds in an amount up to the amount allocated to the County for 2023 by the Division. Such request shall be made on the forms promulgated by the Division. If it is determined by Bond Counsel that a public hearing is required, the Executive Director is authorized to publish such notice and hold such hearing.

**Section 3. Approval of Plan of Finance and Issuance of the Bonds.** The HFA hereby authorizes the issuance of the Single Family Bonds in an aggregate face amount of not to exceed \$250,000,000 pursuant thereto for the purposes stated herein. The HFA hereby approves a plan of financing consisting of the issuance of one or more series of Single Family Bonds at one or more times and from time to time (the "Plan of Finance"), to provide funds to (i) refund certain outstanding obligations of the HFA, (ii) purchase federally insured or guaranteed mortgage loans originated by participating local lending institutions to finance or refinance the purchase of new or existing owner-occupied single-family residences situated within the County and owned by persons or families of low, moderate or middle income, and (iii) purchase securities from a master servicer evidencing interests in or backed by a pool of such mortgage loans, including, without limitation, securities issued by the federal government or agencies thereof. Neither (i) the HFA's approval of the Plan of Finance, nor (ii) the issuance of the Single Family Bonds by the HFA, and/or the decision by the HFA not to issue all or any portion of the Single Family Bonds, shall (i) obligate or be construed to obligate the HFA to issue all or any portion of such Single Family Bonds, or (ii) cause the HFA or the County to incur any liability, pecuniary or otherwise, in connection with the issuance of the Single Family Bonds or the Plan of Finance and/or the decision not to issue all or any portion of the Single Family Bonds.

**Section 4. Approval of Use of Single Family Bond Allocation.** The HFA hereby authorizes the allocation for Single Family Bonds for use with mortgage credit certificate authority or multifamily revenue bonds. The Executive Director is hereby authorized to determine (i) if such allocation will be carry-forward and/or (ii) if such allocation will be converted for use with mortgage credit certificates or multifamily revenue bonds.

**Section 5. Approval of HFA to Publish a Notice and hold a Public Hearing.** The Executive Director or his designee is hereby authorized to publish the notice of TEFRA Hearing (as defined below) in *The Sun Sentinel*, or such other medium permitted by the Code, and to conduct the public hearing required by Section 147(f) of the Code, prior to the issuance of the Single Family Bonds (the "TEFRA Hearing"), at such time or times that he determines necessary, in consultation with the HFA's Financial Advisor, with respect to the Plan of Finance and the proposed issuance of the Single Family Bonds in accordance with the Code.

**Section 6. Further Actions and Ratifications of Prior Actions.** The Executive Director, officers, agents and employees of the HFA are hereby authorized and directed to do all acts and things required of them by this Resolution and to execute and deliver any and all instruments, documents, affidavits, certificates, notices, elections, carry-forward forms and allocation request forms necessary or advisable to effectuate the issuance of the Single Family Bonds and/or the implementation of the Plan of Finance. All actions heretofore undertaken by the Executive Director, officers, agents and employees of the HFA with respect to the Single Family Bonds and/or Plan of Finance are hereby authorized and ratified.

**Section 7. Effective Date.** This Resolution shall take effect immediately upon its adoption.

Upon motion of \_\_\_\_\_ , seconded by \_\_\_\_\_

the foregoing Resolution was adopted by the following votes:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

Approved on October \_\_\_\_, 2022 as  
to form and legal sufficiency by:

Bryant Miller Olive P.A., Bond Counsel

STATE OF FLORIDA            )  
  ) ss:  
COUNTY OF BROWARD    )

I, Scott Erlich, Secretary of the Housing Finance Authority of Broward County, Florida, DO HEREBY CERTIFY that the foregoing is an accurate copy of the Resolution of the Housing Finance Authority adopted at a meeting held on October 19, 2022, as set forth in the official minutes of the Housing Finance Authority, related to approval of certain actions to be taken in connection with the carry-forward of 2022 private activity bond allocation, the Plan of Finance, and the Single Family Bonds.

I DO HEREBY FURTHER CERTIFY that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

WITNESS my hand and the corporate seal of said Housing Finance Authority, this \_\_\_\_\_ day of October, 2022.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

(SEAL)

**Housing Finance Authority of Broward County  
October 19, 2022 – Board Meeting**

**Single Family (2023 Mortgage Credit Certificate Program) - Action Item**

*Motion to Authorize: 1) program parameters for 2023 Mortgage Credit Certificate Program (“2023 MCC Program”) including designation of a 2023 MCC Program Administrator and Bond Counsel Assignment, 2) 2023 MCC Program expenditures in an amount not to exceed \$35,000, 3) exchange of up to \$15,000,000 of single-family bond allocation for mortgage credit certificate authority; 4) the form and execution of the Master Program Administration Guidelines; 5) the form and execution of Participation Agreements; and 6) certain officials of the Housing Finance Authority (“Authority”) to take all actions necessary in connection with the implementation of the 2023 MCC Program; providing certain other findings and providing an effective date.*

**Background**

1. The Board at its August 17, 2022, meeting granted authorization to publish a Mortgage Credit Certificate (“MCC”) Public Notice.
2. The Authority’s 2021 MCC Program expires on December 31, 2022.

**Present Situation**

1. The MCC Public Notice was prepared by Bond Counsel and published on September 21, 2022, and September 28, 2022.
2. The 2023 MCC Program has a target start date of January 1, 2023.
3. Authority staff and professionals recommend the following 2023 MCC Program parameters:
  - a. Over a three-year period, the Authority will plan to exchange not to exceed \$50,000,000 of single-family private activity bond allocation for the Authority to issue mortgage credit certificates with a maximum aggregate total proceeds of \$12,500,000.
  - b. The 2023 MCC Program will utilize \$15,000,000 in Single Family Bond Allocation (“SFBA”), which would result in up to \$3,750,000 in 2023 MCC authority as MCC issuance may not exceed 25% of the non-issued SFBA.
  - c. Additional SFBA will be exchanged once the \$3,750,000 of MCC authority has been substantially committed.
  - d. 2023 MCC Program Administration to be managed by the Housing Finance Division of Broward County.
  - e. Bryant, Miller and Olive to serve as Bond Counsel.
  - f. Initial 2023 MCC Program fees will include a \$0.00 application fee and \$175.00 commitment fee (due upon the issuance of each MCC). The application and commitment fees are unchanged from the Authority’s 2021 MCC Program.
  - g. Housing Finance Division of Broward County should have flexibility to allocate a mortgage credit rate between 10% and 50%.
  - h. For one year after the date on which the Authority begins to accept MCC applications, 20% of the aggregate amount of MCC’s under the 2023 MCC Program shall be set aside and allocated for loans pertaining to residences located in Targeted Areas.
  - i. Mortgage loans financed pursuant to the 2023 MCC Program must be made for the purpose of financing a new mortgage and may not replace a prior mortgage loan on the home (whether or not previously repaid) unless consistent with items v. and/or vi. below.

- i. Loans must be FHA, VA, USDA/RHS, Fannie Mae Conventional, Freddie Mac Conventional, or other HFA-authorized conventional loan programs.
  - ii. Loans must have a 15- or 30-year fixed rate. Adjustable rate and interest-only mortgage loans will not be allowed.
  - iii. MCCs cannot be used with bond financing via a single-family bond program.
  - iv. All loans must be originated in accordance with Authority guidelines and must be at prevailing market rates.
  - v. Exceptions to the new mortgage requirements are allowable for bridge loans and rehabilitation loans that meet the requirements of the Internal Revenue Code.
  - vi. The 2023 MCC Program will allow for the assumption of an existing MCC upon sale of the home to a qualifying household.
  - vii. Subject to Bond Counsel approval, the Board may modify 2023 MCC Program criteria i.- vi. as deemed necessary.
4. Authority staff and professionals will prepare a marketing strategy for the 2023 MCC Program.
5. Proposed 2023 MCC Program expenditures in an amount not to exceed \$35,000 include the \$2,500 in expenditures authorized by the Board at its August 17, 2022, meeting.
6. Full origination of the \$15,000,000 allocation within the 2023 MCC Program presumes the issuance of approximately seventy-five mortgage credit certificates depending on the credit percentage and mortgage amount.
7. Staff recommends that 2023 Program Administration (including the ability to allocate mortgage credit rates between 10% and 50%) be managed by the Housing Finance Authority versus the Housing Finance Division of Broward County.
8. 2023 Program documents are included as Attachments 1 and 2.

### **Recommendation**

#### *Motion to Authorize:*

- 1) *program parameters for 2023 Mortgage Credit Certificate Program ("2023 MCC Program") including designation of a 2023 MCC Program Administrator and Bond Counsel assignment;*
- 2) *2023 MCC Program expenditures in an amount not to exceed \$35,000;*
- 3) *exchange of up to \$15,000,000 of single-family bond allocation for mortgage credit certificate authority;*
- 4) *the form and execution of the Master Program Administration Guidelines;*
- 5) *the form and execution of Participation Agreements; and*
- 6) *certain officials of the Authority to take all action necessary in connection with the implementation of the 2023 MCC Program; and providing certain other findings and providing an effective date.*

### **Attachments**

- 1) 2023 MCC Master Program Administration Guidelines including:



- i. Requirements for Issuing an MCC,
  - ii. Program Manual,
  - iii. Form of Mortgage Credit Certificate,
  - iv. Form of Mortgage Credit Certificate Commitment Letter,
- 2) Participation Agreement,
- 3) Resolution – Authority

# **ATTACHMENT 1**

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MASTER PROGRAM ADMINISTRATION GUIDELINES

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA

PERTAINING TO  
HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM, SERIES 2023  
DATED AS OF  
January 1, 2023

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## MASTER PROGRAM ADMINISTRATION GUIDELINES

These MASTER PROGRAM ADMINISTRATION GUIDELINES (the “Guidelines”), dated as of January 1, 2023, issued by the Housing Finance Authority of Broward County, Florida (the “HFA”), a public body corporate and politic of the State of Florida, constitute the guidelines to be used by the HFA in administering its 2023 Mortgage Credit Certificate Program.

### RECITALS:

The HFA was duly created pursuant to the Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended, and Ordinance No. 79-41 enacted by the Board of County Commissioners of Broward County, Florida on June 20, 1979, as amended (collectively, the “Act”) for the purpose of alleviating a shortage of housing available at prices which many persons and families can afford.

The HFA is authorized by the Act to borrow money through the issuance of bonds for single family housing or, in lieu of issuing qualified mortgage bonds, to issue mortgage credit certificates to qualifying individuals.

The HFA has received private activity bond allocation for the issuance of single family mortgage revenue bonds.

Pursuant to Section 25 of the Internal Revenue Code of 1986, as amended (the “Code”), the HFA may make an election to issue mortgage credit certificates in lieu of the issuance of single family mortgage revenue bonds.

In furtherance of the purposes of the Act, the HFA has determined to implement a mortgage credit certificate program (the “Program”) to assist persons of low and moderate income with the costs of acquiring and owning decent, safe and sanitary housing, and in connection therewith, has made an election under Section 25 of the Code to exchange \$15,000,000 of its private activity bond allocation for the authority to issue mortgage credit certificates to persons of low and moderate income acquiring qualified owner-occupied residences.

The HFA has duly authorized and provided for the issuance of its Mortgage Credit Certificates, Series 2023 (the “MCCs”).

For the MCCs to be qualified for federal income tax purposes under applicable sections of the Code and the regulations promulgated thereunder, the HFA is required to establish reasonable investigative procedures in connection with the issuance of the MCCs to determine whether mortgagors receiving MCCs satisfy the various requirements of the Code.

The HFA will, subject to the terms hereof, administer the Program.

**ARTICLE I**  
**DEFINITIONS**

**SECTION 1.01. Definitions.**

For purposes of these Guidelines, except as otherwise expressly provided or unless the context shall clearly require otherwise, the following terms have the following meanings when used in these Guidelines. Capitalized terms used but not defined herein shall have the meanings ascribed to them under the caption "DEFINITIONS" in the Program Manual attached hereto as Exhibit "B".

"Administrator" means, initially, the HFA, acting by and through the staff of the HFA's Executive Director, and thereafter, any entity designated as the Administrator by the HFA Board.

"Board of County Commissioners" means the Board of County Commissioners of Broward County, Florida.

"Code" means the Internal Revenue Code of 1986, as amended.

"Final Recapture Notice" means that certain Notice of Potential Recapture Tax on Sale of Home attached to the Program Manual as Tab 9.

"Guidelines" means these Program Administration Guidelines, as the same may be amended from time to time.

"HFA" means the Housing Finance Authority of Broward County, Florida, its successor and/or assigns.

"HFA Board" means the members of the Board of the HFA.

"Loan" means the mortgage loan in connection with which an MCC is issued.

"MCC" or "MCCs" means any or all (as the context may require) of the HFA's Mortgage Credit Certificates, Series 2023 issued pursuant to the terms and conditions of a Program, as approved by the HFA Board.

"MCC Program Fee" means, collectively, the MCC Commitment Fee, the MCC Handling Fee and the MCC Issuance Fee.

"MCC Commitment Fee" means the non-refundable fee payable by the Applicant, to the Participant, for payment to the HFA on the Applicant's behalf, upon delivery by the Participant to the HFA of a Request for MCC Commitment Letter (Tab 2 of the Program Manual), initially, \$0, which shall be subject to periodic adjustment by the Administrator, in its sole discretion, without prior notice.

“MCC Handling Fee” means, initially, the non-refundable fee of \$125, which shall be subject to periodic adjustment by the Administrator, in its sole discretion, without prior notice, to be paid by the Applicant, Seller or other party approved by the Administrator at closing, which fee is to be payable to (or retained by) the Participant. To the extent the Administrator is a party other than the HFA, any increase in the MCC Handling Fee will require the prior written authorization from the Executive Director.

“MCC Issuance Fee” means, initially, the non-refundable fee of \$175, which shall be subject to periodic adjustment by the Administrator, in its sole discretion, without prior notice, to be paid by the Applicant, Seller or other party approved by the Administrator at closing for each new, reissued and transferred MCC, which fee is to be payable to the Administrator and included with the MCC compliance file submitted to the Administrator. To the extent the Administrator is a party other than the HFA, any increase in the MCC Issuance Fee will require the prior written authorization from the Executive Director.

“Mortgage Credit Certificate Rate” means, for each MCC, the credit rate set forth in the applicable MCC, which may be not less than 10% and not greater than 50%. The Mortgage Credit Certificate Rate may be changed by the Administrator, in its sole discretion, from time to time prior to the issuance of the MCC. To the extent the Administrator is a party other than the HFA, any increase in the MCC Credit Certificate Rate will require the prior written authorization from the Executive Director.

“Participant” means an institutional lender regulated by state or federal law, or any other entity which in its regular course of business makes or facilitates the making of residential mortgage loans and who has entered into a Participation Agreement with the HFA.

“Participation Agreements” means the Participation Agreements between the HFA and the Participants.

“Proceeds” means, with respect to an MCC, the product of the amount of the Loan and the Mortgage Credit Certificate Rate for such MCC.

“Program” means the HFA's Mortgage Credit Certificate Program, Series 2023 as provided for in these Guidelines.

“Program Manual” means the Program Manual attached hereto as Exhibit “B”.

“Prohibited Mortgage” means a mortgage was funded from the proceeds of a qualified mortgage bond (as defined under IRS Code section 103A(c)(1)) or a veterans' bond (as defined under IRS Code section 103A(c)(3) and Treasury Regulation§1.25-3T(i)).

“Qualified Mortgage Bond” means any bond the proceeds of which are used, in whole or in part, directly or indirectly, to fund mortgage loans on owner-occupied residences and which conforms, or is purported to conform, with the requirements of Section 143 of the Code, or the requirements of Section 103A of the Internal Revenue Code

of 1954, as amended, in such manner as to exclude interest on the bond from inclusion in gross income.

“Qualified Veteran” means a person who served in the active military, naval or air serve, and who was discharged or released therefrom under conditions other than dishonorable, who has not previously obtained a loan financed by single family mortgage revenue bonds or a loan which utilized an MCC program using the veteran’s exception to the three (3)-year requirement set forth in Section 143(d)(2)(D) of the Code.

“Qualified Veterans Bond” means any bond the proceeds of which are used, in whole or in part, directly or indirectly, to fund mortgage loans on owner-occupied residences for veterans and which conforms, or is purported to conform, with the requirements of Section 143 of the Code, or the requirements of Section 103A of the Internal Revenue Code of 1954, as amended, in such manner as to exclude interest on the bond from inclusion in gross income.

“Seller” means the individual(s) or institution(s) selling the property being purchased by the Applicant.

“State” means the State of Florida.

“Term of these Guidelines” means the term determined pursuant to Section 5.04 hereof.

## **ARTICLE II THE ADMINISTRATOR**

### **SECTION 2.01. Requirements of the Administrator.**

The HFA Board, acting as Administrator, shall abide by the following:

(a) With respect to its duties hereunder, the Administrator will comply with the applicable non-discrimination provisions of the Civil Rights Act of 1964, the Fair Housing Act, U.S.C. Section 3601 et. seq., the regulations promulgated thereunder, Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965 and the Fair Housing Amendments Act of 1988.

(b) The Administrator will review information provided by the Participants including all documents and information required for an evaluation of eligibility and application for and receipt of the MCC including documents regarding (i) the first-time homebuyer requirement; (ii) residence requirement; (iii) income limitations; (iv) purchase price limitations; (v) new mortgage requirement; (vi) targeted area requirement; (vii) information reporting requirement and (viii) the recapture tax.

### **SECTION 2.02. Duties of the Administrator.**

The HFA, acting as Administrator, shall have general responsibility for



administering each Program in accordance with these Guidelines. The Administrator will perform the duties set forth herein and shall use reasonable care in the performance thereof.

- (a) In administering each Program, the Administrator will:
  - (1) Post a list of participating lenders on the Authority's website;
  - (2) Solicit the participation of qualified Participants;
  - (3) Provide online program information and forms to Participants;
  - (4) Provide an online flyer for use by the general public, lenders, builders, real estate professionals and non-profits;
  - (5) Design radio, cable, online and/or print media for advertising, as deemed appropriate in the Administrator's sole judgment;
  - (6) Provide news releases and distribute such releases via fax or email to media in the Eligible Loan Area, as deemed appropriate in the Administrator's sole judgment;
  - (7) Promote the use of MCCs for Applicants purchasing in Targeted Areas;
  - (8) Provide workshops, online or other educational and qualifying materials, as deemed appropriate in the Administrator's sole judgment;
  - (9) Monitor reservation activity to assure compliance with submission requirements;
  - (10) After closing and upon submission by the Participants, review compliance files containing executed originals (or certified true copies) of those items set forth in the Program Manual to determine compliance with the terms and conditions of the eligibility requirements of the Program as set forth in these Guidelines;
  - (11) Notify Participants of exceptions via regular mail, email or online posting, as deemed appropriate in the Administrator's sole discretion;
  - (12) Send an MCC via regular mail to the property address of all compliance-approved Applicants;
  - (13) Establish a waiting list in the event MCC authority is fully reserved;

(14) File in a timely manner with the Internal Revenue Service the Issuer's Quarterly Information Returns for Mortgage Credit Certificates (MCCs) (IRS Form 8330) and the information reports required by Treasury Regulation Section 1.25-4T(e); and

(15) File in a timely manner with the Florida Division of Bond Finance (the "Division") the Issuer's annual activity report and the information reports required by Section 159.8075, Florida Statutes, as amended.

(16) Timely update Income Limits and Acquisition Cost Limits based on information received from Bond Counsel. At a minimum Income Limits and Acquisition Cost Limits should be confirmed with Bond Counsel quarterly.

(17) Make any other examinations or investigations deemed necessary or advisable by the Administrator, in its sole discretion;

Notwithstanding the above enumerated responsibilities of the Administrator, the Administrator will not examine the Loan file or documents connected with same, except as necessary to determine compliance with the terms and conditions of eligibility for participation in the Program in connection with the issuance of an MCC. Furthermore, the Administrator shall only be responsible for communicating with the Participants and shall not communicate directly with Applicants. All inquiries and communication made by Applicants shall be made directly to the applicable Participant; provided, however, Applicants may, prior to selecting a Participant, make initial inquiries to the Administrator pertaining to the selection of a Participant and/or the Program in general.

(b) The Executive Director of the HFA may, upon approval of the HFA Board designate one or more individuals or firms to assist in administering the Program as deemed necessary. Any contract to be entered into with any such individual or firm shall be approved by both the HFA Board and the Board of County Commissioners.

#### **SECTION 2.03. Payments Due Administrator.**

The Administrator will be paid the MCC Issuance Fee for each MCC compliance file submitted following closing whether for a new or reissued MCC, such fee being a portion of the MCC Program Fee as indicated in these Guidelines. The Administrator hereby certifies that such fee does not exceed a reasonable amount.

#### **SECTION 2.04 Records.**

The Administrator shall keep proper books, records and accounts in which complete and correct copies of all certificates and documents required to be filed with the Administrator hereunder shall be preserved, including preservation of electronic media for the full Term of these Guidelines.

**SECTION 2.05. Issuance of MCCs**

(a) Within fifteen (15) days of receipt of a Request for MCC Commitment Letter (Tab 2 of the Program Manual), the Administrator shall issue a Mortgage Credit Certificate Commitment Letter substantially in the form attached hereto as Exhibit "D". Upon submission of a completed application, and verification of qualification by the Administrator, the Administrator will issue a completed MCC; provided, however, that an MCC shall only be issued if the requirements for the issuance of an MCC set forth in Exhibits "A" and "B" hereto are satisfied. The MCCs shall be in substantially the form attached hereto as Exhibit "C". The Executive Director, and in his or her absence, the Executive Director's designee, shall be the authorized agents of the HFA for purposes of executing and delivering MCCs under the Program. Upon determining that the issuance of an MCC complies with the requirements of the Program, the Administrator shall execute and deliver an MCC substantially in the form attached hereto as Exhibit "C".

(b) The Administrator shall not issue an MCC if the Proceeds of that MCC, if issued, would cause the total Proceeds of all MCCs issued under a particular Program to exceed the amount authorized for such Program.

(c) For one (1) year after the date on which MCCs are first made available under the Program with respect to Targeted Areas, the Administrator shall reserve \$2,500,000 of MCC issuing authority for, and use such reserve amount only for, the issuance of MCCs with respect to Residences located in Targeted Areas.

**ARTICLE III  
REPORTING**

**SECTION 3.01. Reports.**

Throughout the Term of these Guidelines and as required by the Code, Florida law or by the Act:

(a) the Administrator shall prepare and file the quarterly reports required by the Code;

(b) the Administrator shall prepare and file other reports required by the Code;

(c) the Administrator shall prepare and provide to the Participants the annual report required by the Code;

(d) the Administrator shall prepare and provide to the Division the annual activity report required by Florida law; and

- (e) the Administrator shall prepare any other reports required by the Act.

#### **ARTICLE IV ADDITIONAL REQUIREMENTS**

##### **SECTION 4.01. List of Lenders; Amendments.**

(a) The Administrator will not, directly or indirectly, prohibit an Applicant from obtaining financing from one or more specific lender(s) or require an Applicant to obtain financing from one or more specific lender(s). For purposes of the preceding sentence, a lender is any person or entity, including an issuer of mortgage credit certificates, that provides financing for the acquisition, qualified home improvement, or qualified rehabilitation of a residence. The Administrator will not maintain a list of lenders that have stated that they will make Loans to qualified holders of MCCs unless (i) the HFA first solicits such statements in a public notice similar to the notice described in Treasury Regulations Section 1.25-3T(j)(4), (ii) lenders are provided a reasonable period of time in which to express their interest in being included in such a list, (iii) potential mortgagors for MCCs are not required to obtain financing from lenders on the list and (iv) the HFA updates the list at least annually during the Term of the Guidelines.

(b) The HFA will not amend these Guidelines or the Participation Agreements unless the HFA receives an opinion or opinions of counsel acceptable to the HFA that if such amendment takes effect the Program will remain a “qualified mortgage credit certificate program” as defined in the Code and will remain valid and authorized. This requirement shall not apply, however, to waivers or modifications that do not relate to federal or state law requirements for the issuance of MCCs, such as, for example, modification of the MCC Program Fee or information to be included on the HFA's website.

(c) The Administrator will follow the additional provisions of the Program Manual to the extent applicable in order to carry out its duties and responsibilities hereunder.

#### **ARTICLE V MISCELLANEOUS PROVISIONS**

##### **SECTION 5.01. Rules of Interpretation.**

The following principles govern the interpretation of other words and phrases used in these Guidelines:

- (a) Captions, titles or headings preceding any article, Section or subsection herein, and any table of contents or index attached hereto, are solely for convenience of

reference and are not an integral part of these Guidelines, and shall not affect its meaning, construction, or effect.

(b) Terms such as "herein," "hereunder," "hereby," and "hereof" refer to these Guidelines and not to any particular Section hereof unless so indicated; "heretofore" and "hereafter" mean before and after the date of execution and delivery of these Guidelines.

(c) Words importing the masculine, feminine or neuter genders include the other genders.

(d) Words importing persons include firms, associations, corporations, and other entities.

(e) Words importing the singular number include the plural number, and vice versa.

(f) All references in this instrument to designated "Articles," "Sections," "Exhibits," "Schedules" and other subdivisions, if any, are to the designated Articles, Sections, Exhibits, Schedules and other subdivisions of this instrument as originally executed or to Exhibits or Schedules as modified, amended or replaced pursuant hereto.

(g) Articles, sections, subsections, clauses and exhibits mentioned by number or letter only are those so numbered or lettered which are contained in these Guidelines.

**SECTION 5.02. Conflicts of Interest, Administrator's Access to Privileged Information Concerning Applicant's Accounts.**

Through normal administration activities, the Administrator may obtain privileged information concerning the Applicants and their residences. Such privileged information may not be used by the Administrator or by the officers, employees, agents or affiliates of the HFA, in any way which can be construed to represent a conflict of interest of or an unfair advantage to the user. All such information must be used in a manner consistent with any applicable laws or regulations regarding disclosure of credit or other information.

**SECTION 5.03. Signatories Not Liable.**

This instrument is executed by an officer of the HFA in its capacity as officer. Nothing contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future agent, counsel, director, officer or employee of the HFA in his or her individual capacity, and no officer executing these Guidelines shall be liable personally on these Guidelines or be subject to any personal liability by the issuance thereof.

**SECTION 5.04 Term of Guidelines.** These Guidelines shall become effective upon their execution and delivery, and shall remain in full force and effect until the satisfaction of the HFA's obligations hereunder.

**SECTION 5.05. Retention of Records.**

The Administrator shall preserve and make available, at reasonable times during normal business hours, all records, supporting documents, statistical records, and any other documents pertinent to these Guidelines for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after expiration of the Term of these Guidelines. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the HFA to be applicable to the Administrator's records, Administrator shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Administrator.

**SECTION 5.06. Compliance with Laws.**

The Administrator shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to these Guidelines.

**SECTION 5.07. Incorporation by Reference.**

The attached Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "D" are incorporated into and made a part of these Guidelines.

[SIGNATURE PAGE TO FOLLOW]

THESE GUIDELINES HAVE BEEN APPROVED BY THE HFA BOARD AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY. THESE GUIDELINES SHALL BECOME EFFECTIVE UPON EXECUTION HEREOF BY THE CHAIR OF THE HFA.

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Daniel Reynolds, Chair

[HFA Signature Page to Program Administration Guidelines]

EXHIBIT "A"  
REQUIREMENTS FOR ISSUING AN MCC

The Administrator shall issue an MCC only if, based on the foregoing, the Administrator determines that the Applicant meets each of the following requirements:

(1) Three-year no prior home ownership requirement. Except for situations where an MCC application is being made for a Loan in a Targeted Area, Qualified Veteran or with respect to land possessed under a Mortgage and the construction of a Residence thereon, the Applicant who will become an MCC holder cannot have had an Ownership interest in a Principal Residence at any time during the preceding three (3) years ending on the date the Loan is executed. This requirement qualifies the Applicant as a "first-time home buyer" with respect to the federal regulations.

(2) Principal Residence. A Principal Residence includes a single-family house, condominium unit, mobile home, share of a housing cooperative, or occupancy of a unit in a multi-family building consisting of two (2), three (3) or four (4) units owned by the Applicant. A Principal Residence also includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width of 102 inches and which is customarily used at a fixed location.

(3) To meet the prior homeownership restriction requirement, the Applicant must complete and sign the Applicant Affidavit and provide the last three (3) years of federal income tax returns (or acceptable alternate exhibits—see below). In lieu of actual copies of returns, Applicants who filed Form 1040 income tax returns or any other tax returns that may be permitted by the Internal Revenue Service (the "IRS") may substitute an original letter from the IRS stating the type of return filed by the Applicant for each tax year, the Applicant's filing status, and adjusted gross income. To summarize this procedure as it applies to different cases:

(a) If the Applicant can produce copies of signed Form 1040 or any other tax returns that may be permitted by the IRS for the last three (3) years which show no deductions of interest or taxes for a Principal Residence, these forms must be submitted to the Participant and forwarded to the Administrator along with the other Program documents.

(b) In the event the Applicant has filed Form 1040 or any other tax returns that may be permitted by the IRS for the preceding three years but cannot produce the signed copies of the returns, the Applicant may substitute the original tax account information letter from the IRS verifying the required facts (the "Tax Return Transcript"). The Tax Return Transcript can be requested from the IRS by the Applicant by using IRS Form 4506-T (Request



for Transcript of Tax Return).

(c) In the event the Applicant has filed Form 1040 or any other tax returns that may be permitted by the IRS for the preceding three (3) years and completes and signs the other required Applicant Affidavit, but cannot produce the signed copies of the returns, the Administrator will not issue the MCC until receipt of certified tax returns (including all schedules) from the IRS, which returns show the Applicant took no deduction of interest or taxes for a Principal Residence for the years in question. The certified tax returns can be requested from the IRS by the Applicant by using IRS Form 4506 (Request for Copy of Tax Return).

(d) In the unusual event the Applicant was not required by law to file federal income tax returns for any year during the preceding three (3) years, it will be necessary for the Applicant to so state on the Applicant Affidavit forwarded to the Administrator with the other Program documents.

(e) When the Loan is executed during the period between January 1 and February 15 and the Applicant has not yet filed his or her federal income tax return for the preceding year with the IRS, the Administrator may, with respect to such year, rely on an affidavit from the Applicant stating that the Applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his or her Principal Residence for the preceding calendar year. Such affidavit must be forwarded to the Administrator with the other Program documents.

(4) Principal Residence Requirement. The home must meet the definition of Residence, and must be located in the Eligible Loan Area. The Applicant must use the Residence that involves the MCC as his/her Principal Residence. The Participant must obtain from the Applicant, via the Applicant Affidavit, a statement of the Applicant's intent to use the Residence as his/her Principal Residence within a reasonable time (not to exceed sixty (60) days) after the closing of the Loan. This Applicant Affidavit further states that the Applicant will notify the HFA and the Administrator if the Residence ceases to be his/her Principal Residence.

(5) Purchase Price Requirement. The Acquisition Cost of the Residence may not exceed the applicable Acquisition Cost Limit.

(6) Income Requirements. The Applicant's Income may not exceed the applicable Income Limit.

(7) Fees. Any points, origination fees, servicing fees, loan application fees, survey fees, credit report fees, insurance fees or similar financing costs, and any other fees paid to the Participant providing the Loan, or any other person, must be reasonable and not in excess of amounts customarily charged in the area or by the person receiving the

fee, with respect to mortgages not provided in connection with mortgage credit certificates and the mortgagor may not pay, directly or indirectly, any other fee. The requirements of this subsection shall be met if the Administrator relies on the relevant provisions of a properly executed Applicant Affidavit and a properly executed Certificate of Participant.

(8) New Loan Requirements. An MCC cannot be issued in conjunction with the acquisition or replacement of an existing loan or mortgage; however, an MCC can be used in conjunction with the replacement of construction period loans or bridge loans of a temporary nature. Construction period or bridge loans must be for no longer than twenty (24) months. The Participant must obtain from the Applicant, by means of the Applicant Affidavit, a statement to the effect that the Loan being made in connection with the MCC will not be used to acquire or replace an existing mortgage or land contract. A Contract for Deed is not treated as an existing mortgage for these purposes.

(9) Prohibited Mortgages. An MCC cannot be issued with respect to any Residence any of the financing of which is provided with the proceeds of a Qualified Mortgage Bond or a Qualified Veterans Bond, unless such financing has been paid off in full. The Participant must obtain from the Applicant, by means of the Applicant Affidavit, a statement that no portion of the financing of the Residence in connection with the MCC is provided from a Qualified Mortgage Bond or Qualified Veterans Bond.

(10) No Interest Paid to Related Persons. No interest on the certified indebtedness amount of the Loan can be paid to a person who is a related person to the Applicant, as the term "related persons" is defined in Section 25(e)(6) of the Code, and regulations issued pursuant thereto. The Participant must obtain from the Applicant, by means of the Applicant Affidavit, a statement that a related person does not have, and is not expected to have, an interest as a creditor in the Loan.

(11) Timing. The MCC may not be issued before January 1, 2023 and the Loan with respect to which an MCC is issued may not be incurred after December 31, 2025.

Any requirement for the issuance of an MCC set forth in this Exhibit "A", in the Guidelines or in the Program Manual may be waived or modified if the Administrator receives an opinion of counsel selected by the HFA to the effect that such waiver or modification will not adversely affect the status of the MCC as a "qualified mortgage credit certificate" entitled to the federal income tax credit specified in Section 25 of the Code. The requirement for receipt of the above-described opinion shall not apply, however, to waivers or modifications that do not relate to federal or state law requirements for the issuance of MCCs, such as, for example, modification of the MCC Program Fee or information to be included on the HFA's website.

**EXHIBIT "B"**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**PROGRAM MANUAL**

EXHIBIT "C"

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM, SERIES 2023  
MORTGAGE CREDIT CERTIFICATE

This Mortgage Credit Certificate No. \_\_\_\_\_ is issued effective \_\_\_\_\_, by the Housing Finance Authority of Broward County, Florida (the "HFA") whose address is 110 Northeast Third Street, Suite 210, Fort Lauderdale, Florida 33301, Tax Identification Number 59-2269454, to:

Name(s): \_\_\_\_\_

Soc. Sec. Nos.: \_\_\_\_\_

Address: \_\_\_\_\_

THE MORTGAGE CREDIT RATE IS \_\_\_\_\_ PERCENT (\_\_\_%).

Pursuant to the closing certificate as of the date below, the CERTIFIED INDEBTEDNESS AMOUNT with respect to which this Certificate is issued is \$\_\_\_\_\_.

The EXPIRATION DATE of this Certificate, which is also the date such indebtedness matures is \_\_\_\_\_.

The AVERAGE AREA PURCHASE PRICE applicable to the Residence is \$\_\_\_\_\_.

The ACQUISITION COST of the Residence with respect to which this Certificate is issued is \$\_\_\_\_\_.

The Residence with respect to which this Certificate is issued is (check one):  located in a Targeted Area,  being purchased by a Qualified Veteran, or  is not located in a Targeted Area.

The Certificate holder meets the requirements of Internal Revenue Code §25(c)(2)(A)(iii)(IV), relating to income, and I, the undersigned, certify under penalties of perjury that I have determined to the best of my ability that this Certificate meets the following requirements, as applicable: Treasury Regulations §1.25-3T(d), relating to residence; §1.25-3T(e), relating to ownership interests within the 3-year prior period; §1.25-3T(f), relating to acquisition costs; §1.25-3T(g), relating to new mortgages; §1.25-3T(i), relating to prohibited mortgages; §1.25-3T(j), relating to particular lenders; §1.25-3T(k), relating to allocations to particular developments; and §1.25-3T(n), relating to interest paid to related persons and whether the Residence in connection with which this Certificate is issued is a Targeted Area Residence.

This Certificate may be transferred only after issuance of a new Certificate by the HFA.

Housing Finance Authority of Broward County, Florida

By: \_\_\_\_\_  
Ralph Stone, Executive Director

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

(FORM OF CERTIFICATE)  
TERMS AND CONDITIONS

FEDERAL TAX CREDIT. This Mortgage Credit Certificate ("MCC") entitles the holder (as named on the face of this MCC) to an annual federal tax credit equal to: a) if the MCC rate is equal to or less than twenty percent (20%), the rate listed within the MCC times the annual interest paid on the mortgage loan or b) if the rate is greater than twenty percent (20%), the lesser of: i) the MCC rate times the annual interest paid on the mortgage loan described on the face of this MCC or ii) \$2,000.00. In addition, this MCC will reduce the holder's mortgage interest deduction by an amount equal to the tax credit for the same tax year. The credit cannot be larger than the holder's annual federal income tax liability, after all other credits and deductions have been taken into account. MCC credits in excess of current year tax liability may, however, be carried forward for use in the subsequent three (3) years. At the time of issuance of this MCC, the filing of IRS Form 8396 is required in order to take advantage of the tax credit each year.

PRINCIPAL RESIDENCE. This MCC is to be used in connection with the financing of the purchase of a Residence. The Residence must be or become the holder's "Principal Residence" within a reasonable time (not to exceed sixty (60) days) following the date of issuance of the MCC. The "Principal Residence" means a Residence that, depending on all the facts and circumstances (including the good faith intent of the occupant), is occupied by the holder of this MCC primarily for residential purposes. "Principal Residence" does not include a home used as an investment property or a recreational home, or a home that is used primarily in a trade or business (as evidenced by the use of more than fifteen percent (15%) of the total floor space in a trade or business). Further, the holder may not claim, with respect to the Residence, any deductions pursuant to Section 280A of the Internal Revenue Code of 1986, as amended, for expense incurred in connection with the business use of a home.

PRIOR OWNERSHIP OF A RESIDENCE. The holder of this MCC cannot have had a present ownership interest in a Principal Residence at any time during the three (3)-year period prior to the date on which the loan is executed. For purposes of making such determination, a Principal Residence includes a single-family house, condominium unit, mobile home, share of a housing cooperative or occupancy of a unit in a multifamily building consisting of two (2), three (3) or four (4) units owned by the holder. The term "present ownership interest" includes a fee simple interest; a joint tenancy, a tenancy in common or a tenancy by the entirety; the interest of a tenant-shareholder in a cooperative; a life estate; a land contract under which possession and the burdens and benefits of ownership are transferred although legal title is not transferred until some later date; and an interest held in trust for one person by another person. A "present ownership interest" does not include a remainder interest, a lease with or without an option to purchase, mere expectancy to inherit an interest in a principal residence, the interest that a person acquires upon the execution of a real estate purchase contract, or any interest in other than a "Principal Residence" during the previous three years. This requirement is waived if the Residence is located in a Targeted Area or if the Residence is acquired by a Qualified Veteran.

PARTICIPATING LENDER AND LOAN ELIGIBILITY. Financing may be sought from any lender participating in the Program (“Participant”). The decision to make a loan is completely within the discretion of the Participant to whom the application for a mortgage loan is submitted. The HFA plays no role in the decision to make a loan or determining the amount of the loan.

MORTGAGE REQUIREMENTS. No MCC will be issued in connection with financing that is to be used to replace an existing mortgage on the Residence to which the holder is a party or upon which the holder is an obligor. No MCC will be issued unless, prior to the date thereof, the holder was not a party to a mortgage on the Residence (whether in the form of a deed of trust, contract for deed, conditional sales contract, pledge, agreement to hold title in escrow, or other form of owner financing), other than a construction loan, bridge loan, or other temporary initial financing having a term not exceeding twenty-four (24) months. In addition, no MCC will be issued if any financing for the Residence is to be obtained from a qualified mortgage bond or qualified veterans’ mortgage bond or if any person who is related to the holder has an interest as a creditor in the financing.

OCCUPANCY OF THE RESIDENCE. If the Residence ceases to be occupied as the holder’s “Principal Residence,” the holder will no longer be eligible for the MCC and must immediately notify (in writing) the HFA and the Participant providing the financing of this fact and the date of this event.

INCOME LIMITS. At the time of execution of the loan in connection with which this MCC is issued, the holder’s current income cannot exceed, (i) for families of three or more persons, 115% (140% in certain Targeted Areas) of the area median income and (ii) for individuals and families of two persons, 100% (120% in certain Targeted Areas) of the area median income. The Income Limits may be subject to adjustment at any time.

ACQUISITION COST LIMITS. The acquisition cost for the Residence being acquired in connection with which this MCC is issued cannot exceed 90% (110%, in the case of certain Targeted Area Residences) of the average area purchase price applicable to the Residence.

TRANSFERABILITY. This MCC is not assumable and is transferable only upon application to the HFA. As a condition precedent to the HFA consideration of the MCC holder’s transfer of the MCC, the proposed transferee must meet all Program requirements then in effect.

COMPLIANCE WITH INTERNAL REVENUE CODE. This MCC is intended to comply with the provisions of Section 25 of the Internal Revenue Code of 1986, as amended, as well as any and all other applicable federal or State laws.

REISSUANCE. The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing (i.e., You may not refinance points, insurance premiums, taxes or other costs as part of your new loan amount), unless otherwise permitted by federal law or regulation.

**MORTGAGE CREDIT CERTIFICATE  
REISSUANCE**

This Mortgage Credit Certificate No. \_\_\_\_\_ is issued effective \_\_\_\_\_, by the Housing Finance Authority of Broward County, Florida (the "HFA") whose address is 110 Northeast Third Street, Suite 210, Fort Lauderdale, Florida 33301, Tax Identification Number 59-2269454, to:

Name(s): \_\_\_\_\_

Soc. Sec. Nos.: \_\_\_\_\_

Address: \_\_\_\_\_

This Mortgage Credit Certificate is being reissued and replaces Mortgage Credit Certificate No. \_\_\_\_\_ issued by the HFA on \_\_\_\_\_ (the "Existing MCC").

THE MORTGAGE CERTIFICATE CREDIT RATE IS \_\_\_\_\_ PERCENT (\_\_\_%), which does not exceed the credit rate of the Existing MCC.

Pursuant to the closing certificate as of the date below, the CERTIFIED INDEBTEDNESS AMOUNT with respect to which this Certificate is issued is \$\_\_\_\_\_, which does not exceed the outstanding balance of the Existing MCC.

The EXPIRATION DATE of this Certificate, which is also the date the original indebtedness matures, is \_\_\_\_\_.

The AVERAGE AREA PURCHASE PRICE applicable to the Residence is \$\_\_\_\_\_.

The ACQUISITION COST of the Residence with respect to which this Certificate is issued is \$\_\_\_\_\_.

The Residence with respect to which this Certificate is issued is (check one):  located in a Targeted Area,  being purchased by a Qualified Veteran, or  is not located in a Targeted Area.

The Certificate holder meets the requirements of Internal Revenue Code §25(c)(2)(A)(iii)(IV), relating to income, and I, the undersigned, certify under penalties of perjury that I have determined to the best of my ability that this Certificate meets the following requirements, as applicable: Treasury Regulations §1.25-3T(d), relating to residence; §1.25-3T(e), relating to ownership interests within the 3-year prior period; §1.25-3T(f), relating to acquisition costs; §1.25-3T(g), relating to new mortgages; §1.25-3T(i), relating to prohibited mortgages; §1.25-3T(j), relating to particular lenders; §1.25-3T(k), relating to allocations to particular developments; and §1.25-3T(n), relating to interest paid to related persons and whether the Residence in connection with which this Certificate is issued is a Targeted Area Residence.

This Certificate may be transferred only after issuance of a new Certificate by the HFA.

**Housing Finance Authority of Broward County, Florida**

By: \_\_\_\_\_  
Ralph Stone, Executive Director

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

(FORM OF CERTIFICATE)  
TERMS AND CONDITIONS

EXISTING MORTGAGE CREDIT CERTIFICATE. This Mortgage Credit Certificate is being issued to the holder of an existing certificate and it relates to the same property as the existing certificate. This Mortgage Credit Certificate entirely replaces the existing certificate.

MORTGAGE CREDIT CERTIFICATE RATE. This Mortgage Credit Certificate Rate does not result in an increase in the rate specified in the existing certificate.

REISSUANCE. The refinanced loan amount cannot exceed the outstanding balance of the original mortgage loan as of the date of the refinancing (i.e., You may not refinance points, insurance premiums, taxes or other costs as part of your new loan amount), unless otherwise permitted by federal law or regulation.

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**EXHIBIT "D"**  
**MORTGAGE CREDIT CERTIFICATE COMMITMENT LETTER**

MCC Commitment No.: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_  
Applicant: \_\_\_\_\_  
Participant: \_\_\_\_\_  
Loan Amount: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**  
**MORTGAGE CREDIT CERTIFICATE PROGRAM, SERIES 2023**

TO THE ABOVE APPLICANT AND LENDER:

An Application in the form of an Affidavit of Applicant and related documentation for the Housing Finance Authority of Broward County, Florida (the "HFA") Mortgage Credit Certificate Program, Series 2023 (the "Program"), has been received by the HFA and reviewed for its compliance with the terms and conditions of the Program. The HFA has determined that the Applicant has complied with the initial requirements of the Program.

Subject to completion of the remaining terms and conditions to the issuance of a Mortgage Credit Certificate pursuant to the Program Manual, the HFA will execute and deliver a Mortgage Credit Certificate to the Applicant for a loan amount not to exceed the above-indicated sum. Such Mortgage Credit Certificate will be dated as of the date of closing the loan. A copy of such Mortgage Credit Certificate shall be furnished to the Participant for its records, and a second copy shall be retained by the HFA.

The terms of this Mortgage Credit Certificate Commitment Letter are governed by the Program Manual, which is incorporated herein by reference as if fully set forth at length. THIS COMMITMENT WILL EXPIRE ON THE EXPIRATION DATE INDICATED ABOVE, WHICH IS TWO (2) MONTHS FROM THE DATE HEREOF, IF THE LOAN IS BEING MADE FOR THE PURCHASE OF EXISTING HOUSING OR FOUR MONTHS FROM THE DATE HEREOF IF THE LOAN IS BEING MADE FOR THE PURCHASE OF NEW HOUSING. If you require an extension, an Extension Request Form must be filed prior to the Expiration Date, or you may lose this Commitment. If, after the date hereof, it is determined that the Applicant is not eligible for a Mortgage Credit Certificate or for any reason the application is cancelled, this Mortgage Credit Certificate Commitment will automatically expire.

PLEASE BE SURE to submit all required Mortgage Credit Certificate Submission Documents to the HFA within thirty (30) days prior to the Expiration Date, unless an extension has been approved.

DATED: \_\_\_\_\_

HOUSING FINANCE AUTHORITY OF BROWARD  
COUNTY, FLORIDA

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

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

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

NOTICE: Your Mortgage Credit Certificate is subject to certain requirements imposed by federal law concerning the recapture of a portion of the mortgage tax credit benefits granted to you upon the sale of your Residence within nine (9) years from the date of purchase. See the Tax Credit Disclosure Notice to Applicant provided by your Participant for more details.

## **ATTACHMENT 1a**

**PROGRAM MANUAL  
HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
2023 MORTGAGE CREDIT CERTIFICATE PROGRAM**

Program Administered by:  
Housing Finance Authority of Broward  
County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, FL 33301  
(954) 357-4900

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
2023 MORTGAGE CREDIT CERTIFICATE PROGRAM

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**PROGRAM MANUAL**  
**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**  
**2023 MORTGAGE CREDIT CERTIFICATE PROGRAM**

**INTRODUCTION**

The Housing Finance Authority of Broward County, Florida (the "HFA") was duly created pursuant to the Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended, and Ordinance No. 79-41 enacted by the Board of County Commissioners of Broward County on June 20, 1979, as amended (collectively, the "Act") for the purpose of alleviating a shortage of housing available at prices which many persons and families can afford.

The HFA is authorized by the Act to borrow money through the issuance of bonds for single family housing or, in lieu of issuing qualified mortgage bonds, to issue mortgage credit certificates to qualifying individuals.

The HFA has received private activity bond allocation for the issuance of single-family mortgage revenue bonds. Pursuant to Section 25 of the Internal Revenue Code of 1986, as amended (the "Code"), the HFA may make an election to issue mortgage credit certificates in lieu of the issuance of single-family mortgage revenue bonds.

In furtherance of the purposes of the Act, the HFA has determined to implement a mortgage credit certificate program (the "Program") to assist persons of low and moderate income with the costs of acquiring and owning decent, safe and sanitary housing, and in connection therewith, has made an election under Section 25 of the Code to exchange \$50,000,000 of its private activity bond allocation for the HFA to issue mortgage credit certificates to persons of low and moderate income acquiring qualified owner-occupied residences.

Capitalized terms used in this PROGRAM MANUAL are defined under the caption "DEFINITIONS."

*General Overview*

A mortgage credit certificate (each an "MCC" and collectively or more than one (1), as the context requires, "MCCs") is an instrument designed to assist persons of low to moderate income to better afford individual ownership of housing. The procedures for issuing MCCs were established by the United States Congress as an alternative to the issuance of single-family mortgage revenue bonds. As distinguished from a bond program, in an MCC program no bonds are issued, no mortgage money is actually raised, many of the costs associated with a bond program are not incurred, and lenders are required to pay only nominal up-front fees.

MCCs are issued directly to qualifying Applicants who are then able each year to take a tax credit equal to a specified percentage of the interest paid on their mortgages not

to exceed \$2,000.00 if the MCC rate exceeds twenty percent (20%). The MCC Rate may not be less than 10% and not greater than 50% and is subject to change from time to time. Thus, an Applicant with a \$300,000.00 mortgage and a thirty percent (30%) (assumed for purposes of this illustration) Mortgage Credit Certificate Rate would be eligible to receive a tax credit as follows:

Mortgage Amount:	\$300,000.00
Interest Rate:	4.5%*
Total Interest Paid:	\$13,500.00
First Year (Mortgage Credit Certificate Rate):	X 30%
Tax Credit:	\$2,000.00**
	*Assumed solely for illustration purposes
	**Maximum tax credit

(Based upon a 30-year mortgage with equal monthly installments of principal and interest.)

During the first year of the Program, this Applicant would be entitled to a tax credit of \$2,000.00. Based upon such an entitlement, he or she would be able to file in advance a revised W-4 withholding form taking into consideration this tax credit and have approximately \$166.66 per month in additional disposable income. Additionally, taxpayers who file itemized returns may take a deduction for their mortgage interest paid each year, less an amount equal to the tax credit taken. (In the above example, the additional interest deduction would be approximately \$13,500.00 less \$2,000.00, or \$11,500.00)

The amount paid for an MCC is not refundable. The benefit to the homeowner cannot exceed the amount of federal taxes paid each year after other credits and deductions have been taken into account. Any unused MCC tax credit can be carried forward up to three (3) years to be applied against future income tax liability. In addition, all or a portion of the MCC tax credit may be subject to recapture if the residence is sold within nine (9) years of purchase. This tax credit recapture is further explained in the Notice of Potential Recapture Tax on Sale of Home found at Tab 9 of this PROGRAM MANUAL.

Since the HFA will not make or hold these mortgages, the HFA will not underwrite the loans. Rather, all loan approval, underwriting and execution of required state and federal certifications or Affidavits will be performed by the Participants participating in the Program. The HFA will receive executed certificates and Affidavits on each application from a Participant in order to determine eligibility for the Program. Participants will process mortgage loans of all types, using normal procedures, with additions to procedures at relevant points in order to satisfy Program requirements.

The volume of MCCs available in the Eligible Loan Area is determined by a procedure set forth in the Code. Under the Program, the HFA, as an issuer of mortgage revenue bonds, can trade \$1.00 of bond authority for \$0.25 of MCC authority. When the HFA initially elected to trade in \$50,000,000 of bond authority, it received \$12,500,000 of MCC authority. Each MCC uses up an amount of MCC authority equal to the amount of the mortgage loan multiplied by the MCC Credit Rate the HFA will allow (presently established at not less than ten percent (10%) and not greater than fifty percent (50%)). An average \$300,000.00 mortgage amount uses up \$90,000.00 of MCC authority based on a thirty percent (30%) percent Mortgage Credit Certificate Rate. Based on this average MCC utilization rate, \$12,500,000 of MCC authority will serve approximately 139 Eligible Loan Area homeowners.

The HFA encourages all who believe they qualify to apply for an MCC at the offices of a Participant who can explain the Program, its requirements and its restrictions. Use of the MCC Information Guide included at Tab 1, respectively, in this PROGRAM MANUAL can assist Participants and Applicants in determining whether or not an Applicant can qualify for the Program. The Participant should be well-versed in the state, federal and local restrictions outlined in this Program Manual so that Applicants are aware of these restrictions before the application is taken. The Participant must reject applicants who do not qualify under the restrictions of the Program.

\$2,500,000 of the MCC authority has been set aside for the first (1<sup>st</sup>) year of the Program to be used only in connection with the issuance of MCCs to owners of homes located within federally designated targeted areas (“Targeted Areas”).

The purpose of this PROGRAM MANUAL is to describe the Program, set forth the relevant state and federal restrictions, identify the respective roles of the HFA, the Participant, the Applicant and the Seller, and to detail the processing procedures. The Program definitions, MCC processing documents and applicable federal regulations are included in this PROGRAM MANUAL for your reference.

The HFA may revise this PROGRAM MANUAL from time to time by issuing amendments hereto. The HFA will use its best effort to (i) maintain a list of parties who have received the PROGRAM MANUAL from the HFA, and (ii) keep an electronic mailing list so that any such amendments may be electronically mailed to them automatically. Note as the PROGRAM MANUAL will be readily available via the HFA's website and other means of distribution for which the HFA does not have information regarding the recipient, interested parties are encouraged to contact the HFA to assure inclusion within its electronic mailing list. Notwithstanding anything to the contrary in this PROGRAM MANUAL, the HFA shall in no way be liable for, and all parties on any such list described in this paragraph shall be considered to have waived any and all claims against the HFA for, the failure of the HFA to notify or send to such parties (i) any amendments to the PROGRAM MANUAL, and/or (ii) any information or developments pertaining to the PROGRAM MANUAL.



## DEFINITIONS

As used in this PROGRAM MANUAL, the following words and terms have the meaning set forth below:

Acquisition Cost. The term "Acquisition Cost" has the meaning given to that term under Internal Revenue Code Section 143 and the regulations thereunder, which currently is the cost to an Applicant of acquiring a Residence from the Seller as a completed residential unit, including: (i) all amounts paid, either in cash or in kind, by the Applicant (or a related party or for the benefit of the Applicant) to the Seller (or a related party or for the benefit of the Seller) as consideration for the Residence; (ii) if the Residence is incomplete, the reasonable cost of completing the Residence; and (iii) if the Residence is purchased subject to a ground rent, the capitalized value of the ground rent calculated using a discount rate authorized by the Internal Revenue Service. The cost of property such as furniture or appliances that are not fixtures under the laws of the State is not considered part of the Acquisition Cost unless the cost of acquiring such items is in excess of fair market value, in which case the amount of the excess must be included in the Acquisition Cost of the Residence. For example, if the Mortgagor agrees to purchase the refrigerator, washer and dryer from the Seller for \$1,000 more than the fair market value of such items, the additional \$1,000 must be included in the Acquisition Cost. In addition, if in connection with the purchase of a Residence the Mortgagor agrees to pay or assume liability for a debt of the Seller, the amount of such debt must be included as part of the Acquisition Cost. "Acquisition Cost" does not include: (i) usual and reasonable settlement and financing costs (including title and transfer fees, title insurance, survey fees, credit reference fees, legal fees, appraisal expenses, points paid by the Applicant (but not points paid by the Seller) and other similar costs), but only to the extent that such amounts do not exceed the usual and reasonable costs which would be paid by the Applicant in a case in which financing is not assisted by the issuance of an MCC or provided through the issuance of tax-exempt bonds (for example, if the Applicant agrees to pay more than a pro rata share of property taxes, such excess shall be treated as part of the Acquisition Cost); and (ii) the value of services performed by the Applicant or members of the Applicant's family (including brothers and sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants only) in completing the Residence. For example, where the Applicant builds a Residence alone or with the help of Family members, the Acquisition Cost includes the cost of materials provided and work performed by subcontractors, whether or not related to the Mortgagor, but does not include the imputed cost of any labor actually performed by the Applicant or a member of the Applicant's Family in constructing the Residence. Similarly, where the Applicant purchases an incomplete Residence, the Acquisition Cost includes the cost of material and labor paid by the Applicant to complete the Residence, but does not include the imputed value of the Applicant's labor or the labor of the Applicant's Family in completing the Residence; (iii) the cost of land (other than land possessed under a Contract for Deed) which has been owned by the Applicant for at least two (2) years prior to the date

on which construction of the Residence begins and (iv) the amount of financing provided under a “qualified program” under Section 143(k)(10) of the Code, but only if the residence is located in a high housing cost area, as defined in Section 143(f)(5) of the Code.

This term is more fully described on Worksheet Two to the Mortgagor Affidavit contained at Tab 3 of this PROGRAM MANUAL. The Acquisition Cost Limits are set forth in Appendix A to the MCC Worksheet included as Tab 1 of this PROGRAM MANUAL.

Affidavits. An affidavit filed in connection with the Program made under oath and subject to the penalties of perjury and the civil penalties provided herein.

Applicant or Mortgagor. Any person or persons: (i) whose Income does not exceed the Income Limits; (ii) who intends to occupy the Residence to be financed with a loan as his or her Principal Residence within a reasonable period (not to exceed sixty (60) days) following the making of such loan; (iii) who has not had a present Ownership interest in a Principal Residence at any time during the three (3)-year period ending on the date of execution of the loan; provided, however, that the three (3)-year requirement does not apply to an Applicant who purchases a Residence located in a Targeted Area or to Qualified Veterans; (iv) who has not had an existing mortgage (including a deed of trust, conditional sales contract, pledge, agreement to hold title in escrow or any other form of owner-financing), whether or not paid off, on the Residence to be financed with such loan at any time prior to the execution of the loan, other than an existing mortgage securing a construction period loan, bridge loan or similar temporary financing initially incurred for the sole purpose of acquiring the Residence, initially incurred within twenty-four (24) months of execution of the loan and having an original term not exceeding twenty-four (24) months; and (v) who is a United States citizen, a lawful permanent resident alien or a non-permanent resident alien who is eligible to work in the United States, in each case with a valid social security number and who meets the criteria set forth in this PROGRAM MANUAL.

Eligible Loan Area. Broward County, Florida

Existing Housing. A Residence that has been previously occupied prior to loan commitment.

Family. Any person or persons living together not contrary to law, e.g. traditional families, two unmarried persons sharing the same Residence or a single person.

FICO Credit Score. A method of assessing credit risk based on the statistical probability of repayment of debt developed by Fair, Issac & Co. FICO Credit Scores assign relative risk rankings to applicants based on a statistical analysis of their credit histories. FICO Credit Scores range from 300 to 850.

HFA. Housing Finance Authority of Broward County, Florida and its successors and assigns.

Income. All income derived from whatever source of the Applicant and all members of the Family and anyone else who will occupy the Residence, calculated in accordance with Worksheet One to the Mortgagor Affidavit (Tab 3 of this PROGRAM MANUAL). The Income Limits are set forth in the MCC Information Guide.

MCC. A mortgage credit certificate issued pursuant to the terms and conditions of the Program, the annual federal income tax credit for which shall not exceed \$2,000 unless the Mortgage Credit Certificate is equal to or less than twenty percent (20%).

Mortgage Credit Certificate Rate. For purposes of the Program, the Mortgage Credit Certificate Rate shall be not less than ten percent (10%) and not greater than fifty percent (50%). The HFA may, in its sole discretion and without advanced notice, change the Mortgage Credit Certificate Rate from time to time based on borrower demand and financial market conditions.

New Housing. A Residence that is proposed to be constructed, currently under construction, or existing but not previously occupied.

Ownership. Ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest, including a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership interest in trust, a life estate interest, a purchase by a land contract or contract for deed. The term does not include (i) a remainder interest; (ii) a lease with or without an option to purchase; (iii) a mere expectancy to inherit an interest; (iv) the interest that a purchaser of a Residence acquires on the execution of a purchase contract; and (v) an interest in other than a Principal Residence. An Ownership interest in a mobile home or other factory-made housing which was permanently affixed to real property owned by the Applicant constitutes Ownership in a Principal Residence.

Participant or Lender. An institutional lender regulated by state or federal law, or any other entity which in its regular course of business makes or facilitates the making of loans which would qualify for MCC assistance, is authorized to do business in the Eligible Loan Area, and who has entered into a MCC Program Participation Agreement with the HFA.

Permissible Exceptions. A permissible exception is a targeted area residence, any qualified home improvement loan, any qualified rehabilitation loan or a Qualified Veteran.

Principal Residence. A Residence that the Applicant reasonably expects to become the principal Residence of the Applicant within a reasonable time after execution of the loan to provide financing for the Residence and that will, depending on all facts and circumstances (including the good faith of the Applicant) be occupied by the Applicant for residential purposes.

Program. Housing Finance Authority of Broward County, Florida Mortgage Credit Certificate Program.

PROGRAM MANUAL. This Housing Finance Authority of Broward County, Florida Mortgage Credit Certificate Program, PROGRAM MANUAL, as revised and amended by the HFA from time to time.

Prohibited Mortgage. A mortgage was funded from the proceeds of a qualified mortgage bond (as defined under IRS Code section 103A(c)(1)) or a veterans' bond (as defined under IRS Code section 103A(c)(3) and Treasury Regulation §1.25-3T(i)).

Qualified Veteran. A person who is a “veteran” (as defined in 38 U.S.C. Section 101) who has not previously obtained a loan financed by single family mortgage revenue bonds or a loan which utilized an MCC program using the veteran’s exception to the three (3)-year requirement set forth in Section 143(d)(2)(D) of the Code.

Reissuance. A Mortgage Credit Certificate which replaces an existing mortgage credit certificate issued to the same holder for the same property in conjunction with a refinancing of such property.

Residence. The term “Residence” is more fully described in the Mortgagor Affidavit contained at Tab 3 of this PROGRAM MANUAL. A Residence includes a single-family house, condominium unit, multi-family dwellings of two (2), three (3) or four (4) units of which one is occupied by the Applicant or mobile home permanently affixed to real property. The term also includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width of 102 inches and which is of a kind customarily used at a fixed location and permanently affixed thereto. The term Residence does not include recreational vehicles, campers, mobile homes not permanently affixed to real property and other similar vehicles. It does not include property such as appliances or a piece of furniture, which, under applicable local law, is not a fixture.

State. The State of Florida.

Targeted Area. The Qualified Census Tracts identified in Appendix B to the MCC Information Guide (Tab 1 of this PROGRAM MANUAL) as it may be amended from time to time within the Eligible Loan Area that are “qualified census tracts”, which include certain census tracts identified by the United States Department of the Treasury (the “Treasury”) from time to time as having a substantial number of lower-income persons.

## **LOAN PROCESSING PROCEDURES AND PROGRAM ADMINISTRATION**

Applicants that may be eligible for participation in the Program should apply for MCCs in conjunction with their normal mortgage loan applications. Applicants must make applications for Fannie Mae Conventional, Freddie Mac Conventional, FHA, VA, or USDA-RHS mortgage financing, or with the HFA’s prior written consent, other home mortgage financing

allowed per the Program requirements at the mortgage lending institution of their choice participating in the Program before applying for an MCC. The initial Program requirements require a fixed-rate mortgage with a minimum term of fifteen (15) years.

The MCC processing procedures are designed to coincide with the regular, on-going mortgage loan processing and underwriting procedures that are in place at most mortgage lending institutions. The HFA recognizes that there are procedural variations among the Participants; consequently, the procedures outlined herein are meant to be suggestive with respect to the sequence of events. However, all the elements of the processing sequence noted below must at some point be completed by the responsible party.

The fees of the Program are set forth at each step in the processing procedures which follow, and the fees charged by the Participant may in no event exceed the fees specified in this PROGRAM MANUAL. A Schedule of Program Fees and Expenses is attached hereto as Exhibit "A".

The following is the loan processing and Program administration flow chart for the MCC Program:

**A. Loan Origination and MCC Application**

1. The Applicant applies for a loan from a Participant. The Participant may not accept an application from any of its employees nor any spouse or person related within the third degree of affinity (marriage) or consanguinity (blood) to any employee of the Participant.

2. The Participant gives the Applicant an MCC Information Guide that explains the Program and contains consumer information. (See Tab 1 of this PROGRAM MANUAL for the MCC Information Guide.) The MCC Information Guide is intended to (i) present certain facts to the Applicant concerning the restrictions, regulations, and prohibitions of the Program because of certain federal, state and HFA regulations, and (ii) explain the penalties for misuse of the Program. It is imperative that the Applicant understands the terms and conditions of the Program. During the initial interview, it is the sole responsibility of the Participant to explain the terms and conditions of the Program to the Applicant, and to make sure that the Applicant receives a copy of the MCC Information Guide.

3. The Participant generally determines if the Applicant is a possible candidate for an MCC, based on preliminary indications of Income, Acquisition Cost, prior Ownership, tax liability, and other factors such as FICO Credit Scores. (Use of the MCC Worksheet found at Tab 2 of this PROGRAM MANUAL might be helpful in making this determination.)

4. No applications for an MCC under the Program can be taken from Applicants by Participants prior to January 1, 2023. All persons interested in making application for an MCC at a Participant must be considered on a first-come, first-served basis, and must have an application for a mortgage loan on file with the Participant. Participants must keep a log of all

MCC applications received and the disposition of such applications.

5. As part of the loan application process, the Participant should have the Applicant sign the Mortgagor Affidavit. (See Tab 3 of this PROGRAM MANUAL.) This document serves as the application and contains certifications and Affidavits required of the Applicant by the federal MCC regulations and state requirements as follows:

(a) Certification that the Applicant's annualized gross monthly Income does not exceed the applicable Income Limits.

(b) Certification that the home will be used as a Principal Residence, and that the MCC holder will notify the HFA when the home ceases to be the Principal Residence of the holder.

(c) Certification that Applicant has not had an ownership interest in a Principal Residence during the preceding three-year period (unless a Permissible Exception applies).

(d) Certification that the Residence is located within the Eligible Loan Area.

(e) Certification that the loan is a new mortgage loan.

(f) Certification that the loan applied for does not constitute a Prohibited Mortgage.

(g) Certification that the Acquisition Cost does not exceed the Acquisition Cost Limits.

(h) Certification that the Applicant was not forced to apply through a particular Participant.

(i) Certification that no interest is being paid to a related person.

(j) Acknowledgment by the Applicant that the MCC cannot be transferred without the prior written approval of the HFA in accordance with Program requirements.

(k) Certification that there are no allocations to particular developments as described in Treasury Regulation §1.25-3T(k).

(l) To the extent applicable, certificate of the Applicant's status as a Qualified Veteran.

(m) Acknowledgment by the Applicant that any material misstatement or fraud is made under penalty of perjury and the civil penalties provided herein.

As part of the loan application process, the Participant shall also confirm that the Acquisition Cost of the Residence certified to by the Applicant (see (g) above in this Section 5) in the Mortgagor Affidavit (Tab 3 of this PROGRAM MANUAL) is consistent with the Acquisition Cost of the Residence provided by the Seller/Builder and/or GSE/Institutional Seller pursuant to Tab 6 attached to this PROGRAM MANUAL.

6. The Participant submits Request for MCC Commitment Letter (Tab 2 of this PROGRAM MANUAL), Mortgagor Affidavit with the four worksheets attached thereto (Tab 3 of this PROGRAM MANUAL) and the most recent three (3) years tax returns or IRS tax transcripts (if applicable) of Applicant to the HFA, along with the MCC Commitment Fee. The MCC Commitment Fee is non-refundable, and shall be paid by the Applicant, to the Participant, for payment to the HFA, on the Applicant's behalf. The MCC Commitment Fee may be adjusted from time to time by the HFA, in its sole discretion, without prior notice.

7. The Participant may provide the Applicant with a copy of IRS Form W-4 Employee's Withholding Allowance Certificate. The Applicant may complete the W-4, if necessary, to change his or her Federal withholding tax, adjusting it in an amount comparable to the expected MCC tax credit. (See Tab 9 of this PROGRAM MANUAL)

8. The Participant shall also provide the Applicant with the Notice of Potential Recapture Tax on Sale of Home (See Tab 9 of this PROGRAM MANUAL), which must be signed by the Applicant at or prior to closing.

9. A Participant may not remove a co-occupying spouse from an application for the purpose of qualifying the Applicant.

#### **B. Review and Issuance of MCC Commitment Letter**

1. The HFA reviews the Mortgagor Affidavit to determine whether or not it has been completed in accordance with this PROGRAM MANUAL and properly executed. The HFA will also approve Mortgagor Affidavits in the order of priority set forth herein.

2. If the HFA determines that the Mortgagor Affidavit is completed and has been properly executed, the HFA issues and sends to the Participant, by electronic mail, an MCC Commitment Letter within fifteen (15) business days of receipt of the Mortgagor Affidavit and Request for MCC Commitment Letter stating that the Applicant has been approved and that an MCC will be executed and delivered to the Applicant upon closing of the loan subject to completion of all of the remaining requirements of the Program.

3. The HFA will keep a running, cumulative-to-date total of MCC Commitments and MCCs issued, less the amount of any MCC Commitments which have expired or terminated. The MCC Commitment Letter will contain an expiration date of four months on a loan for New Housing and two months on a loan for Existing Housing.

4. When MCC Commitments have been issued under the Program which have effectively committed an aggregate total of seventy-five percent (75%) of the MCC authority for the Program, the HFA will prepare and use its best efforts to distribute a notice to all Participants and all other persons who subscribe to the PROGRAM MANUAL stating that seventy-five percent (75%) of the MCC authority has been utilized.

5. When MCC Commitments or MCCs have been issued under the Program which have effectively committed all of the MCC authority for the Program, the HFA shall hold each application received after such date on a waiting list in order of receipt without depositing the MCC Commitment Fee. Any such applications may be withdrawn at any time while they are on the waiting list prior to issuance of an MCC Commitment Letter. Once all of the MCC authority has been used, any remaining applications on the waiting list will be returned to the respective Participants for return to the respective Applicants.

6. MCC Commitments may not be transferred from one Participant to another. In the event an Applicant elects to change Participants, the MCC Commitment which has been issued shall be revoked and a new application process must be commenced by the Applicant with the new Participant.

Notwithstanding anything to the contrary in this PROGRAM MANUAL, the issuance of an MCC Commitment only serves to reserve funding under the Program for a specific Applicant and does not entitle the Applicant to an MCC until such time as all terms and requirements of the Program are satisfied, in the sole judgement of the HFA.

### **C. Participant Loan Approval and Verification**

1. The Participant requests the Applicant to supply the federal tax returns or IRS tax transcripts for the previous three (3) years to be included in the initial Request for MCC Commitment Letter (Tab 2 of this PROGRAM MANUAL) to the HFA along with the Mortgage Affidavit. Such tax returns are not required for loans made in Targeted Areas or for an Applicant who is a Qualified Veteran.

2. The Participant performs normal loan approval or underwriting procedures.

3. The Participant may consider the MCC when determining the amount of disposable income available for the monthly house payment in order to determine the Applicant's qualification for the loan. The Participant determines general acceptability in accordance with its own loan approval standards and applicable FNMA, FHLMC, FHA, VA, USDA-RHS and private mortgage insurance standards and underwriting guidelines.

4. In conjunction with the Participant's regular verification process, the Participant performs reasonable investigation as to whether the Program requirements have been met as required by regulations noted in the certificate of the Participant. Participants may verify these facts at different times and in various ways, depending upon the



Participant's particular procedures for processing loans.

5. The Participant verifies that the Income Limits, Acquisition Cost Limits, and other non-credit Program requirements are met.

**D. Loan Closing and Submission of Final MCC Program Documents**

1. The Participant confirms that the MCC Commitment has not expired and closes the loan in the normal fashion with the Applicant.

2. Either the Participant or the closing agent submits to the HFA a completed and executed MCC Submission Package. (See Tab 4 of this PROGRAM MANUAL for the MCC Submission Cover Sheet and the list of MCC Submission Package exhibits.)

3. The MCC Submission Package includes all of the executed certifications and Affidavits noted herein. Each document must be complete and signed where appropriate. All documents must be dated within six (6) months of the submission date to the HFA. Original documents should be sent to the HFA, except as otherwise indicated. The eligibility of an Applicant shall be determined by the Participant. The Participant must review the MCC Submission Package and related documents to determine their completeness in accordance with the terms of this PROGRAM MANUAL. Reasonable efforts should be undertaken to verify the information given, either independently or concurrently with underwriting procedures.

4. The MCC Submission Package will specifically include the following documents:

(a) A Program Income Affidavit, with the required attachments, duly executed by the Applicant (See Tab 5 of this Program Manual for this document);

(b) The Seller/Builder Affidavit or GSE/Institutional Seller Affidavit, certifying the Acquisition Cost of the Residence and certain other matters contained therein (See Tab 6 of this Program Manual for these documents);

(c) A Certificate of Participant, certifying that the Participant has performed a reasonable investigation to make the required Program determinations and certifying compliance with the HFA's lending policy (See Tab 7 of this Program Manual for this document). Further, by its submission, the Participant certifies that all Program eligibility requirements have been met, and that the loan fees are reasonable relative to other loans not associated with MCCs;

(d) The Closing Affidavit, executed by the escrow or closing agent or the Participant, attesting to the fact that the loan was closed and stating the final mortgage loan amount (See Tab 8 of this PROGRAM MANUAL for this document);

(e) The Notice of Potential Recapture Tax on Sale of Home, executed by the Applicant (See Tab 9 of this Program Manual for this document);

(f) The MCC Issuance Fee (subject to periodic revisions by the HFA, in its sole discretion, without prior notice), in the form of a check or money order made payable to the HFA or a wire transfer is submitted with the Submission Package. The MCC Issuance Fee shall be paid by the Applicant, to the Participant, for payment to the HFA, on the Applicant's behalf. In addition to the MCC Issuance Fee and the other fees provided herein, the Participant may collect and retain at loan closing the MCC Handling Fee. Such Fee may be paid by the Applicant, the Seller or any other person on the Applicant's behalf; and

(g) The Applicant's certificate of completion of an approved pre-purchase homebuyer education course. This requirement will be waived for Applicants who have owned a home within the past five (5) years.

5. ALL DOCUMENTS MUST BE SUBMITTED TO THE HFA BY THE EARLIER OF (A) THIRTY (30) DAYS AFTER THE CLOSING DATE OR (B) WITHIN THIRTY (30) DAYS OF THE MCC COMMITMENT LETTER EXPIRATION DATE.

#### **E. Issuance of MCC**

The HFA confirms the completion of the Applicant's file, that the MCC Commitment Letter was issued, and that the loan was closed as evidenced by the MCC Submission Package, and that the Applicant has met the requirements for issuance of an MCC.

The HFA then forwards to the Applicant, with a copy to the Participant, an executed MCC dated as of the closing date of the loan. A copy of the MCC is retained by the HFA. No MCCs may be issued prior to January 1, 2023. No MCCs may be issued for loans having a closing date after December 31, 2025.

#### **F. Suspended File; Resubmission of MCC Documents**

If an MCC application or MCC Submission Package is incomplete or incorrect, the file will be suspended and the Participant will be given up to thirty (30) days from the date of initial contact by the HFA to submit missing and/or revised documentation (the "Initial Contact Date"). A Late Fee (described in Exhibit A to PROGRAM MANUAL) may be assessed to the Participant for MCC applications and/or MCC Submission Packages that remain incomplete or incorrect (as determined in the HFA's sole discretion) for more than thirty (30) days from the Initial Contact Date. Any resubmission of an MCC Application or MCC Submission Package that has been returned or denied by the HFA must include all information which the HFA has determined necessary for reconsideration. An MCC application or MCC Submission Package that is being submitted a second time will be reviewed in depth.

## **G. Extensions of MCC Commitments**

1. In regard to any MCC Commitment Letter that is outstanding and a loan which will not close prior to the expiration date, an extension may be requested by the issuing Participant prior to the expiration date.

2. A two (2)-month extension will be given upon the Participant's written submission of a request to extend the commitment. Additional extensions may be granted if and when the HFA determines that extenuating circumstances exist. Expiration dates may be subject to additional federal requirements.

## **H. MCC Commitment Cancellations**

The Participant should notify the HFA of any MCC Commitments to be canceled by submitting written notification to the HFA of same.

## **I. MCC Commitment Amendments**

In the event of any change in the Residence address, increase in loan amount, or change in marital status of the Applicant which would necessitate the filing of an amended Mortgagor Affidavit and the revision of an MCC Commitment Letter, the Participant should submit a new Mortgagor Affidavit with the correct information and a cover letter referring to the MCC Commitment Number requesting a revision to the MCC Commitment.

## **J. Reissuance of MCC**

The HFA shall, upon payment by the MCC holder of a Reissuance Fee, issue a reissued MCC for certain refinancings under Treas. Regs. §1.25-3(p) if the HFA receives to its satisfaction evidence that:

(i) The reissued MCC is issued to the holder of an existing MCC with respect to the same property to which the existing MCC relates.

(ii) The reissued MCC entirely replaces the existing MCC (that is, the holder cannot retain the existing MCC with respect to any portion of the outstanding balance of the certified mortgage indebtedness specified on the existing MCC).

(iii) The certified mortgage indebtedness specified on the reissued MCC does not exceed the remaining outstanding principal balance of the certified mortgage indebtedness specified on the existing MCC.

(iv) The reissued MCC does not increase the MCC credit rate specified in the existing MCC.

(v) The expiration date on the reissued MCC is not later than the expiration

date on the existing MCC.

(vi) The reissued MCC does not result in an increase in the tax credit that would otherwise have been allowable to the holder under the existing MCC for any taxable year. The holder of a reissued MCC determines the amount of tax credit that would otherwise have been allowable by multiplying the interest that was scheduled to have been paid on the refinanced loan by the MCC rate of the existing MCC. In the case of a series of refinancings, the tax credit that would otherwise have been allowable is determined from the amount of interest that was scheduled to have been paid on the original loan and the MCC rate of the original MCC.

(vii) Any additional requirements of the Code or Treasury regulations.

#### **K. Changes in Applicant's Circumstances Prior to Closing**

MCC Commitments are issued subject to the condition that all the requirements necessary for issuance of an MCC shall have been met prior to issuance of the MCC. The Participant must notify the HFA of any changes that affect the conditions under which the MCC Commitment was issued.

##### 1. Changes in the Applicant's Financial Condition After Issuance of MCC Commitment and Prior to Closing

The eligibility of an Applicant for an MCC is based upon the Applicant's Annual Income and Family size, and the HFA will issue an MCC Commitment Letter based on such factors at that point in time. Changes in the Applicant's financial status or Family size occurring after the MCC Commitment Letter is issued will affect the validity of the MCC Commitment. Upward changes in annual Income, whether or not foreseen or predictable at the time of the issuance of the MCC Commitment and changes in the working status of a spouse from unemployed to employed will also affect the validity of an MCC Commitment. If the Applicant marries after issuance of the MCC Commitment Letter and prior to closing, the new spouse must satisfy the prior home Ownership requirements contained in the Mortgagor Affidavit, and the Participant must notify the HFA and submit a new Mortgagor Affidavit completed by both spouses with the MCC Submission Package. Any Income added to the Family Income previously declared because of a new spouse will affect the validity of the MCC Commitment.

##### 2. Changes in Home Ownership Status, Acquisition Cost and Amount of Loan After Issuance of MCC Commitment Letter and Prior to Closing

If the Applicant acquires a present ownership interest in a Principal Residence prior to loan closing, the MCC Commitment will be revoked. If the total Acquisition Cost of the Residence purchased in connection with the MCC increases so as to exceed the Acquisition Cost Limitations set forth herein, the MCC Commitment will be revoked. If the amount of the loan

increases, thereby causing an increase in the MCC credit amount, the Commitment will be revoked if the increase in MCC credit amount serves to increase the aggregate MCC credit amount of all MCCs issued by the HFA above the aggregate MCC credit limit imposed by law.

3. Other Changes in Circumstances After Issuance of MCC Commitment Letter and Prior to Closing; Post-Closing Changes in Circumstances

The MCC Commitment Letter is issued in reliance upon the Mortgagor Affidavit. The Participant must immediately notify the HFA in writing of any change in the circumstances upon which the MCC Commitment Letter was issued. If any other change of the circumstances upon which the MCC Commitment Letter was issued occur so that the MCC to be issued will not meet the requirements of a qualified MCC, the MCC Commitment Letter will be revoked.

Following the loan closing, a spouse who previously satisfies the prior home Ownership requirements contained in the Mortgagor Affidavit and ceases to occupy the Residence, shall complete an Affidavit of Non-Occupying Spouse. See the Affidavit of Non-Occupying Spouse at Tab 12 of this PROGRAM MANUAL.

**L. Record Keeping and Federal Report Filing**

1. For each calendar quarter (or such other period or frequency as may be required by Treasury regulations or any rules or laws to which the HFA is subject) during which the HFA issues MCCs beginning with the quarter in which the election to issue that MCCs is made, it must make reports on IRS Form 8330. The report must include:

(a) Name, address and TIN (social security number or tax identification number) of the HFA.

(b) Date of election.

(c) The sum of the products of the certified indebtedness amount (loan amount), and the MCC rate, for each MCC issued.

(d) Name, address and TIN of each MCC holder where an MCC was revoked.

2. Annually (or such other period or frequency as may be required by Treasury regulations or any rules or laws to which the HFA is subject), the HFA must report to the Internal Revenue Service:

(a) The number of MCCs by Income and Acquisition Cost as required by IRS reporting regulations.

(b) The volume of MCCs by Income and Acquisition Cost as required by IRS reporting regulations.

3. For each calendar year (or such other period or frequency as may be required by Treasury regulations or any rules or laws to which the HFA is subject) during which it originates loans to Applicants obtaining MCCs, the Participant must file an annual report using IRS Form 8329. Prior to the filing deadline for such report, the HFA will assist in furnishing to the Participant the information in its records necessary for the Participant to complete IRS Form 8329.

4. For six (6) years, the Participant must retain:

- (a) Name, address and TIN of each MCC holder.
- (b) Name, address and TIN of the HFA.
- (c) Date of loan, certified indebtedness amount, and MCC credit rate.

5. In January following each year during which MCCs are issued, the HFA will attempt to mail an IRS Form 8396 to each MCC holder of record as a reminder to properly declare the MCC tax credit for federal income tax purposes.

#### **M. Revocation of MCCs**

1. Automatic revocation occurs when the Residence related to the MCC ceases to be the MCC certificate holder's Principal Residence.

2. An MCC holder will have its MCC revoked if the holder does not meet the requirements for a qualified MCC.

3. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent, by any person related to the issuance of the MCC.

#### **N. Curing Defects**

In the event any defects are discovered in the application or any certificate or Affidavit after an MCC has been issued, the Participant and the MCC holder shall be notified of such defect and given sixty (60) days to cure same prior to revocation of the MCC.

#### **O. Transfer of MCCs on Mortgage Assumptions**

A loan assumption associated with an MCC will be treated as a new MCC application, and the procedure required by this Program Manual will be repeated. Since an MCC will already be outstanding, an MCC Commitment Letter will not be issued, and all of the required Program documents will be submitted at one time with the MCC Submission Package. A single MCC Assumption Fee will be charged by the HFA in connection with such transfers, which fee may be adjusted from time to time by the HFA, in its sole discretion, without prior notice.

#### **P. Post-Audit**

The HFA may perform a random case post-audit of the Participant records.

**Q. Notice of MCC Eligibility Denial**

In the event a Participant determines that an Applicant is ineligible for an MCC Commitment or the issuance of an MCC, the Participant shall provide a written notice of denial of eligibility for MCC to the HFA such notice of denial of eligibility for MCC shall state the reason the Participant denied the Applicant's eligibility in the Program, and the HFA shall maintain a list of prospective Applicants that were denied eligibility in the Program.

**R. Recapture of MCC Tax Credit**

In the event an MCC holder sells his or her Principal Residence within nine (9) years of issuance of an MCC, a portion of the tax credit utilized by the holder may be subject to a recapture tax. See the Notice of Potential Recapture Tax on Sale of Home at Tab 9 of this PROGRAM MANUAL for further information regarding tax credit recapture.

**S. Targeted Area Reservation**

For at least one (1) year after the commencement of the Program, the HFA will reserve twenty percent (20%) of the HFA's MCC authority for home mortgage loans in Targeted Areas. The Targeted Area reservation for the HFA's MCC Program equals \$750,000.

**T. Qualified Veterans**

A Qualified Veteran is exempt from the three (3)-year no prior home ownership requirement. The Qualified Veteran must (a) certify that he or she (i) has not previously obtained a mortgage loan financed by single family mortgage revenue bonds utilizing the exception set forth in Section 142(d)(2)(D) of the Internal Revenue Code of 1986, as amended, and (ii) is utilizing the veteran exception set forth in Section 143(d)2(D) of the Internal Revenue Code of 1986, as amended, (b) complete Worksheet Four to the Mortgagor Affidavit (Tab 3) evidencing qualification as a veteran and (c) provide copies of discharge papers, if applicable.

**APPLICANT AND LOAN APPROVAL REQUIREMENTS**

**A. Overview**

For loans involving MCCs, the conventional loan approval and underwriting standards may be modified to reflect a recognition of the MCC derived federal income tax credit for mortgage interest in determining income, housing expense, and indebtedness ratios. The secondary mortgage market and the mortgage insurance industry have established underwriting policies for loans involving MCCs. These are available separately as policy

statements from the mortgage lending industry. The loan underwriting process is solely the responsibility of the Participant and the HFA does not direct or recommend any underwriting standards or practices. This statement is included solely for informational purposes.

The Applicant, Acquisition Cost and mortgage underwriting requirements covered in this section are incorporated in the Program documents contained in this Program Manual. It will be necessary for all Applicants, Participants and other parties to the transaction to complete and sign the appropriate Program documents and attest to their validity. The Participant will be required to submit certifications in which it will certify that, to the best of its knowledge, no material misstatements, appear in the Submission Documents. If the Participant becomes aware of misstatements, whether negligently or intentionally made, it must notify the HFA of such misstatements in writing immediately. The HFA reserves the right to take all appropriate actions including, if necessary, denial or revocation of the MCC. The Participant should also be aware, and inform the Applicant, that both federal and State law provide for fines and criminal penalties for misrepresentations made in connection with participation in the Program. In an attempt to assure that Program requirements are met, a Mortgagor Affidavit is required of each Applicant, and must be submitted to the HFA.

#### **B. Applicant Eligibility Requirements**

Similar to any normal mortgage loan, the Applicant must meet the credit and underwriting criteria established by the Participant providing the loan. Based on relevant federal and state regulations, Applicants must also meet the following requirements specific to MCCs:

1. First-time Homebuyer Requirement. The Applicant who will become an MCC holder cannot have had an Ownership interest in a Principal Residence at any time during the preceding three (3) years ending on the date on which the loan is executed. This requirement qualifies the Applicant as a “first-time homebuyer” with respect to the federal regulations. The Participant must obtain from the Applicant an Affidavit to the effect that the Applicant had no Ownership interest in a Principal Residence at any time during the three (3)-year period prior to the date on which the loan is executed. This fact must be verified by the Participant through request for, and examination of, the Applicant's federal income tax returns for the preceding three (3) years to determine whether the Applicant has claimed a deduction for interest or taxes on property that was the Applicant's Principal Residence. The first-time homebuyer requirement does not apply to a loan made to finance a Residence in a Targeted Area or Qualified Veterans.

For purposes of the first-time homebuyer requirement, a Principal Residence includes a single-family house, condominium unit, mobile home, share of a housing cooperative, or occupancy of a unit in a two (2), three (3) or four (4) unit multi-family building owned by the Applicant. Ownership interest means ownership by any means, whether outright or partial, including property subject to a mortgage or other security interest. Ownership interest also means a fee simple ownership interest, a joint ownership interest by joint tenancy, tenancy in common, or tenancy by the entirety, an ownership



interest in trust, a life estate interest, and purchase by a land contract or contract for deed. To meet the first-time homebuyer requirement, the Applicant must complete and sign the Mortgagor Affidavit and provide the last three (3) years of federal income tax returns (or acceptable alternate exhibits — see below) attached to the Mortgagor Affidavit. In lieu of actual copies of returns, Applicants who filed Form 1040 income tax returns or any other tax return permitted by the Internal Revenue Service (“IRS”) may substitute an original letter from the Internal Revenue Service stating the type of return filed by the Applicant for each tax year, the Applicant's filing status and adjusted gross income. To summarize this procedure as it applies to different cases:

(a) If the Applicant can produce copies of signed Form 1040 returns or any other tax returns that may be permitted by the IRS for the last three (3) years which show no deductions of interest or taxes for a Principal Residence, these forms must be submitted to the Participant and forwarded to the HFA with the Mortgagor Affidavit.

(b) In the event the Applicant has filed Form 1040 or any other tax returns that may be permitted by the IRS the preceding three years but cannot produce the signed copies of the returns, the Applicant may substitute an original tax account information letter from the Internal Revenue Service verifying the required facts (the “Tax Return Transcript”). The Tax Return Transcript can be requested from the IRS by the Applicant by using IRS Form 4506-T (Request for Transcript of Tax Return).

(c) In the event the Applicant has filed the Form 1040 or any other tax returns that may be permitted by the IRS for the preceding three years, completes and signs the other required Affidavits, but cannot produce the signed copies of the returns, the HFA will not issue the MCC until receipt of certified tax returns (including all schedules) from the IRS, which returns show the Applicant took no deduction of interest or taxes for a Principal Residence for the years in question. The certified tax returns can be requested from the IRS by the Applicant by using IRS Form 4506 (Request for Copy of Tax Return).

(d) In the unusual event the Applicant was not required by law to file federal income tax returns for any year during the preceding three (3) years, it will be necessary for the Applicant to so state on the Mortgagor Affidavit forwarded to the HFA by the Participant with the other Program documents.

(e) When the loan is executed during the period between January 1 and February 15 and the Applicant has not yet filed his or her federal income tax return for the preceding year with the IRS, the HFA may, with respect to such year, rely on a Mortgagor Affidavit stating that the Applicant is not entitled to claim deductions for taxes or interest on indebtedness with respect to property constituting his or her Principal Residence for the preceding calendar year. The Mortgagor Affidavit must be forwarded to the HFA with the Closing Affidavit and the other Program documents.

(f) If the loan is made in a Targeted Area or to a Qualified Veteran, the Applicant is

not required to provide tax returns.

2. Principal Residence Requirement. The Applicant must use the Residence that involves the MCC as his or her Principal Residence. The Participant must obtain from the Applicant, via the Program documents, a statement of the Applicant's intent to use the Residence as his or her Principal Residence within a reasonable time (sixty (60) days) after the MCC is issued. This Affidavit further states that the MCC holder will notify the Participant and the HFA if the Residence ceases to be his or her Principal Residence.

3. Revocation. An Applicant will have his or her MCC revoked if the Applicant does not meet the requirements for a qualified MCC. Revocation will occur upon the discovery of any material misstatement, whether negligent or fraudulent. Revocation will occur if, among other circumstances, the Residence to which the MCC relates ceases to be Applicant's Principal Residence.

4. Fraud. If the Applicant or MCC holder provides a certificate, Affidavit, or any other information to the Participant or the HFA containing a material misstatement and such misstatement is due to fraud, then any MCC issued shall be automatically null and void without the need for any further action by the HFA.

5. Penalties for Misstatement. If the Applicant makes a material misstatement in any Affidavit or certification made in connection with an application for the issuance of an MCC and such misstatement is due to negligence of the Applicant, the Applicant shall pay a civil penalty fee of \$1,000.00 for each MCC with respect to which a misstatement was made. If any Applicant makes a material misstatement in any Affidavit or certification made in connection with application for or issuance of an MCC and such misstatement is due to fraud, the Applicant shall pay a penalty fee of \$10,000.00 for each MCC with respect to which the fraudulent misstatement was made. The above-described civil penalties shall be imposed in addition to any criminal penalty provided by law.

6. Income Limits. The annual gross Income of an Applicant is limited to the applicable amount shown in Appendix A of Tab 1. These limits may be modified periodically.

7. Acquisition Cost Limits. Initially, the Acquisition Cost limits shall be as set forth in Appendix A of Tab 1, but these amounts are subject to revision by any applicable FHA limits, or such revised amounts as may be effective from time to time, as required by the federal regulations. The determination whether the residence meets the applicable Acquisition Cost limits shall be made as of the date of issuance of the MCC. Any revisions of the Acquisition Cost limits by the HFA may rely on average area purchase price limitations published by the Treasury, the HFA, any successor thereof, or as may be provided in Section 143 of the Internal Revenue Code, for the statistical area in which the residence is located.

8. Homebuyer Education. The Applicant must complete a pre-purchase Homebuyer education course under the Program. The education requirement may be met by attending one-

on-one counseling as provided by HUD-approved certified Homebuyer Education Providers, Online counseling offered via HUD-approved counseling agencies, and/or HUD-approved, Fannie Mae-approved or Freddie Mac-approved lender programs. The certificate of completion must be included in the Submission Package in order to satisfy this requirement. This requirement will be waived for Applicants who have owned a home within the past five (5) years.

### **C. Loan Requirements**

1. New Loan Requirements. An MCC cannot be issued in conjunction with the acquisition or replacement of an existing loan or mortgage; however, an MCC can be used in conjunction with the replacement of construction period loans or bridge loans of a temporary nature. Construction period or bridge loans must be for no longer than twenty-four (24) months. The Participant must obtain from the Applicant, via the Program documents, a statement to the effect that the loan being made in connection with the MCC will not be used to acquire or replace an existing mortgage or land contract, subject to the exceptions outlined above.

2. Prohibited Mortgages. An MCC cannot be used in conjunction with a qualified mortgage bond or a qualified veterans' mortgage bond. The Participant must obtain from the Applicant, via the Program documents, a statement that no portion of the financing of the Residence in connection with the MCC is provided from a qualified mortgage or veterans' bond.

3. No Interest Paid to Related Persons. No interest on the certified indebtedness amount of the loan can be paid to a person who is a related person to the certificate holder, as the term "related person" is defined in Section 144(a)(3)(A) of the Internal Revenue Code and regulations promulgated by the Internal Revenue Service pursuant thereto. The Participant must obtain from the Applicant, via the Program documents, a statement that a related person does not have, and is not expected to have, an interest as a creditor in the loan.

4. Transferability. If the loan is assumed by a new purchaser, the MCC may be transferable under certain circumstances:

(a) The transferee must demonstrate he or she has assumed the liability for the remaining balance of the loan.

(b) The new MCC must meet all the conditions of the original MCC, and any changes in federal, state or HFA policy that amends the requirements of the original MCC.

(c) Payment of the MCC Assumption Fee.

5. Term of Mortgage Loans. Each mortgage loan associated with an MCC shall have a fixed rate term equal to or greater than fifteen (15) years.

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**EXHIBIT A TO PROGRAM MANUAL**  
**SCHEDULE OF PROGRAM FEES AND EXPENSES**

As of January 1, 2023; Subject to change by the  
HFA, in its sole discretion, without prior notice

**MCC Commitment Fee (non-refundable) \$0.00**

This non-refundable fee is submitted to the HFA with the Applicant's application through a Participant. Upon receipt of the fee and a qualifying application, the HFA will issue an MCC Commitment Letter.

**MCC Issuance Fee \$175.00**

This non-refundable fee is submitted to the HFA upon loan closing with all of the completed Program documents required for the issuance of an MCC. Upon receipt of the fee and the required documentation, the HFA will issue an MCC to the borrower with a copy to the Participant.

**MCC Handling Fee \$125.00**

This non-refundable fee may be charged and retained by the Participant to compensate it for handling the additional documentation required of it by the Program. The Participant additionally is authorized to charge its reasonable and customary fees and charges for origination of the loan.

**Program Participation Fee \$0.00**

This one time, non-refundable fee is to be paid by the Participant and submitted with the MCC Program Participation Agreement to the HFA. The Participant's participation will be noted in all advertising and press releases concerning the Program, and PROGRAM MANUAL updates will be mailed to the Participant at no additional cost. The Program Participation Fee will be waived for Participants that have participated in one of the HFA's previous MCC Programs.

**Late Fee \$75.00**

This non-refundable fee may be charged to the Participant for (i) an MCC Submission Package that is sent to the HFA more than thirty (30) days after the date of closing, and/or (ii) the failure of the Participant to complete or correct (as determined in the sole discretion of the HFA) an incomplete or incorrect (as the case may be) MCC application and/or MCC Submission Package within thirty (30) days after initial contact by the HFA to submit missing and/or revised documentation.

**MCC Reissuance Fee \$50.00**

This non-refundable fee may be charged and retained by the HFA to compensate it for handling and processing the issuance of a reissued MCC pursuant to a mortgage refinancing.

**MCC Assumption Fee**

**\$125.00**

This non-refundable fee may be charged and retained by the HFA to compensate it for handling and processing the issuance of a new MCC pursuant to a loan assumption.

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**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**MCC INFORMATION GUIDE**

The Housing Finance Authority of Broward County, Florida (“HFA”) created its Mortgage Credit Certificate Program (the “Program”) for the residents of Broward County, Florida, to help make ownership of new or existing homes located in Broward County more affordable for individuals and families of low and moderate income. A Mortgage Credit Certificate (an “MCC”) increases a family's disposable income by reducing its federal income tax obligations. In order to participate in the Program, homebuyers must meet certain eligibility requirements, purchase a home and obtain a mortgage loan through a participating lender, a Program “Participant”. (Refer to Appendix A to see if you meet the general requirements for participation in the Program.)

**BACKGROUND - MORTGAGE CREDIT CERTIFICATES**

*What is a Mortgage Credit Certificate?*

The mortgage credit certificate program was authorized by Congress in the 1984 Tax Reform Act as a means of providing housing assistance to families of low and moderate income. It is an alternative to the mortgage revenue bond (“MRB”) program.

The Mortgage Credit Certificate reduces the amount of federal income tax paid, giving more available income to qualify for a mortgage loan and assist with house payments.

Just as with mortgage revenue bonds, the MCC is (i) available to homebuyers who are first-time homebuyers (except as otherwise provided below), are buying their principal residence, and meet household income and home purchase price limits, and (ii) subject to recapture.

*What does the MCC do?*

The federal government allows each homeowner to claim an itemized income tax deduction for the amount of interest paid each year on a mortgage loan. A “deduction” reduces the amount of income that is taxed. The MCC program takes the mortgage interest paid and turns a portion of the interest paid into a “tax credit”. A “tax credit” is subtracted from the actual amount of federal tax for which the taxpayer is liable. A “tax credit” provides a dollar-for-dollar reduction in federal taxes owed. Since the credits apply for the life of the mortgage, MCC's can save homebuyers thousands of dollars as long as the certificate holder lives in the property as their principal residence. MCC's can be used with all loan types EXCEPT an MRB loan and a qualified veterans mortgage bond loan.

*What is the MCC Rate?*

The initial amount determined by the HFA of the MCC in this program is a rate of not less than ten percent (10%) and not greater than fifty percent (50%). The HFA reserves the right to amend the MCC rate. Such amendments would apply to those loans reserved after the amendment. After any such amendment, if funds are added to available proceeds as the result of loans not meeting the processing timelines, such funds will be available at the rate prescribed by the amendment.

*What is the dollar amount of an MCC to the homeowner?*

The amount of mortgage credit depends on the amount of interest paid on the mortgage loan. However, the amount of mortgage credit cannot exceed the amount of annual federal income tax liability. All or a portion of the unused mortgage credit may be carried forward for up to three years to offset future income tax liability.

*What is the lender involvement?*

Participants/lenders basically are making mortgage loans - just like they do every day. So a Mortgagor can use any of the lender products available, provided they meet the Program requirements (with the exception of MRB and qualified veterans mortgage bonds) in the marketplace. Participants retain the servicing on the loan. The Participant is responsible for, among other things, (i) filing an annual form for each year in which they originate loans with MCC benefits, and (ii) keeping certain records regarding the MCC. The annual form will be forwarded via email by the HFA for execution by the Participant.

*How will a Mortgage Credit Certificate assist with the home purchase?*

Based on a mortgage loan of \$300,000.00 originated on January 1, at an interest rate of four and one-half percent (4.5%) for thirty (30) years, in the first (1<sup>st</sup>) year the mortgage interest is approximately \$13,500.00. A Mortgagor receives a federal income tax credit of \$2,000.00 (maximum tax credit for MCCs in excess of twenty percent (20%) of mortgage interest paid). If annual federal income tax is \$2,000.00 or more after all other credits and deductions have been subtracted, Mortgagor receives the total benefit of the MCC. The balance of the interest paid, or approximately \$11,500.00 may qualify as a deduction in addition to the real estate taxes paid, to the extent the Mortgagor files an itemized tax return. Mortgagors should consult with their tax advisors for a understanding of the MCC benefits..

To receive immediate benefit from the MCC, Mortgagors file a revised W-4 withholding form, and their federal tax withholding would be reduced by \$166.66 per month (\$2,000.00 divided by 12). Mortgagors should consult their tax advisor prior to filing a revised W-4 withholding form.

If federal tax liability is less than \$2,000.00 (assume it is only \$1,500.00 for this example), then the federal income tax is reduced for that year by \$1,500.00. The other \$500.00 of unused credit may be claimed on tax returns within the next three (3) years.



For the loan in this example, the monthly payment of principal and interest is \$1,520.00. Reducing federal taxes with an MCC credit provides \$166.66 more in income each month to put toward the mortgage payment. From other sources the Mortgagor now needs \$1,353.34 (\$1,520.00 minus \$166.66 income from tax reduction) toward the \$1,520.00 monthly payment.

The benefit of the MCC is recognized by FHA, VA, mortgage insurers, etc. They all may have different formulas that allow the consideration of the MCC for underwriting purposes, but they all recognize the benefit.

#### *Homebuyer Benefit*

The MCC will reduce the amount of income taxes due to the federal government; however, the tax benefit cannot exceed the amount of federal taxes owed for the year after other credit and deductions have been taken. Instead, the tax credits can be carried forward three (3) years until used.

Mortgagors will have to adjust federal income tax withholding in order to receive the MCC benefit on a monthly basis. This adjustment is accomplished by the Mortgagor speaking to their payroll department at their place of employment. By reducing monthly withholding, they will have more disposable (after tax) income with which to make mortgage payments.

The benefit of the MCC program continues as long as the buyers continue to own and occupy the property.

#### *What does the Homeowner have to do to claim the benefit with the IRS?*

Each year the homeowner files Form 8396 with their federal income tax return. The form is available on the IRS website.

#### *Special Rules*

There are special rules regarding refinancing. The Mortgagor should contact the Participant (or their then-current lender if different from the Participant) prior to refinancing its existing mortgage loan.

**These instructions are for your information only. The Housing Finance Authority of Broward County, Florida and its officers and agents do not intend to render any income tax advice in connection with this MCC program. All MCC holders or Applicants should consult with the Internal Revenue Service or their personal income tax advisers concerning the appropriate level of withholding allowance given their personal tax situations.**

**PROGRAM SUMMARY**

**HFA:** Housing Finance Authority of Broward County, Florida

**Program Administrator:** Housing Finance Authority of Broward County, Florida

**The Program:** A Mortgage Credit Certificate (MCC) entitles the Mortgagor to a federal income tax credit. A tax credit represents a reduction of actual federal income taxes due. The Mortgagor may use the credit each year they continue to live in the home purchased in the Program as long as they have the mortgage loan.

**Eligible Area:** Broward County, Florida

**Mortgagors:** Each Mortgagor must be a first-time homebuyer. This requirement does not apply to Mortgagors (i) purchasing in a Targeted Area or (ii) receiving a qualified Home Improvement Loan or a qualified Rehabilitation Loan or (iii) who are Qualified Veterans.

**Income Limits:** Household income may not exceed 100% of median for 1-2 person households or 115% for 3 or more person households in non-Targeted Areas and 120% of median for 1-2 person households or 140% of median for 3 or more person households in Targeted Areas.

**Qualified Property:** The home purchased in the Program must be a one-to-four family residence. If a 2-4 unit dwelling, the buyer must occupy one of the units as its principal residence and the home must be at least five (5) years old. A home may be detached, one unit of a duplex, a townhouse or condominium unit. Manufactured housing qualifies if the unit has at least 400 square feet of living space, is more than 102 inches wide and is of a kind customarily used at a fixed location. It must be attached to real property. Land may not exceed that necessary to maintain basic livability.

**Acquisition Limits:** The acquisition limit (total sales price) cannot exceed 90% of the safe harbors for non-Targeted Areas and 110% for Targeted Areas.

**Qualified Loans:** Loans must be for the acquisition of property. Participating lenders may originate loans from their menu of loan options to Mortgagors and may be FHA, VA, USDA/RD or conventional loans which meet the Program requirements.

**Targeted Areas:** Census tracts 0103.04, 0204.12, 0303.01, 0304.02, 0308.01, 0414.00, 0415.00, 0416.00, 0417.00, 0503.09, 0507.02, 0603.02, 0603.03, 0603.04, 0604.03, 1002.01, 1005.01, 1005.02 and 9800.00.\*

\*Subject to periodic adjustment by the United States Department of Housing and Urban Development and/or the United States Department of the Treasury.

**Home Improvement Loans:** Home Improvement Loans of up to \$15,000 must substantially improve or protect the livability or energy efficiency of the home, such as new or renovated plumbing or wiring, renovation of the kitchen, or a new or improved heating or cooling system. Swimming pools, tennis courts, hot tubs or other recreational or entertainment facilities do not qualify.

**Qualified Rehabilitation:** Qualified Rehabilitation Loans are acquisition and rehabilitation or rehabilitation of a home for which the buyer is the first (1<sup>st</sup>) resident following rehabilitation. In order for a rehabilitation loan to qualify, (a) there must be a period of at least twenty (20) years between the date on which the structure was first used and the date on which the physical work of rehabilitation began; (b) fifty percent (50%) or more of the existing external walls of the structure are retained in place as external walls in the rehabilitation process; (c) seventy-five percent (75%) or more of the existing external walls of the structure are retained in place as internal or external walls; (d) seventy-five percent (75%) or more of the existing internal structure framework of the structure is retained in place; and (e) the total expenditures for the rehabilitation equals twenty-five percent (25%) or more of the Mortgagor's "adjusted basis" in the residence.

**Qualified Veteran:** A Qualified Veteran means a person who is a "veteran" (as defined in 38 U.S.C. Section 101) who has not previously obtained a loan financed by single family mortgage revenue bonds or a loan which utilized an MCC program using the veteran's exception to the three (3)-year requirement set forth in Section 143(d)(2)(D) of the Code. The Qualified Veteran must provide true and correct copies of their discharge or release papers, which demonstrate that such discharge or release was other than dishonorable.

**Program End Date:** December 31, 2025

**Occupancy:** Mortgagors are required to occupy the property purchased in the

Program within sixty (60) days of closing.

**Recapture:**

Mortgage loans originated under the Program are subject to the recapture provision in accordance with Section 143(m) of the Internal Revenue Code. The recapture tax is similar to a prepayment penalty but is imposed by the IRS to recapture some of the cost savings realized by the homebuyer through the Program. Recapture tax may be imposed if the property is sold within nine (9) years of purchase, and the amount depends upon profit realized from the sale, but in no event will exceed fifty (50%) of the homeowner's gain on the sale or 6.25% of the origination loan amount. The amount of the tax also depends upon the level of increase in the homebuyer's income.

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**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**MCC WORKSHEET**

You may be eligible to receive from the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA and your Participant, a TAX CREDIT that reduces your federal income taxes dollar for dollar and you may be able to receive a tax deduction for the remaining portion of the interest paid on your home mortgage loan.

Generally, you qualify if you have not owned a home during the last three (3) years (unless the home you purchase is located in a Targeted Area or you are a Qualified Veteran) and can answer "Yes" to the following:

	Yes	No
1. Is your current annual gross income less than the applicable amount shown on Appendix A hereto?	_____	_____
2. Do you plan to occupy the home purchased within sixty (60) days of the loan closing?	_____	_____
3. Is the Acquisition Cost of your home less than the applicable amount shown on Appendix A hereto?	_____	_____
4. Can you produce copies of signed tax returns or tax transcripts for the last three (3) years or show that you filed either Form 1040A or any other tax return permitted by the IRS or that you meet one of the exceptions referenced above to the first-time homebuyer requirement?	_____	_____
5. Have you completed a loan application with a Participant?		
6. Did you attend a First Time Home Buyer's Course and received a First Home Buyer's Certificate? If Yes, please provide a copy.	_____	_____

If you answered YES to all of these questions, you probably qualify for a Mortgage Credit Certificate.

PLEASE NOTE: Mortgage Credit Certificates cannot be used in connection with a loan refinancing the existing balance of a loan you already have (except an interim construction loan) or with a loan which is part of a tax-exempt or veterans' bond program. Complete the following Mortgage Tax Credit Calculations:

Loan Amount \$  
 (times % interest rate of your loan)

X Approximate Annual Interest X  
 (times MCC credit rate of \_\_%\*)

Approximate Annual Mortgage Tax Credit \$

PLUS, in addition to taking the Mortgage Tax Credit dollar for dollar from the federal income taxes you owe each year, under current tax laws, you may also be able to deduct the interest paid on your loan each year (less an amount equal to the Mortgage Tax Credit) and your property taxes. If you think you qualify, go to your Participant for further information.

*This worksheet is for informational purposes only and the calculation methodology may change over the course of the Program. You should consult your own tax advisor with respect to the federal income tax implications of an MCC to your particular situation.*

*\*Subject to periodic adjustment.*

## APPENDIX A

## PROGRAM INCOME AND ACQUISITION COST LIMITS

As of July 1, 2022\*

<u>Purchase Price Limit</u>	<u>Non-Targeted</u>	<u>AMFI*</u>	<u>Targeted</u>	<u>AMFI*</u>
One Unit	\$382,194.90		\$467,127.10	
Two Units	\$489,251.70		\$597,974.30	
Three Units	\$591,405.30		\$722,828.70	
Four Units	\$734,977.80		\$898,306.20	
Income Limits				
Families 1 or 2 Persons	\$90,700	100%	\$108,840	120%
Families 3 or More Persons	\$104,305	115%	\$126,980	140%

\*Subject to periodic adjustment. Initial Area Median Family Income (AMFI) reflects high housing cost adjustment.

**APPENDIX B  
TARGETED AREAS MCC PROGRAM**

The determination of the Qualified Census Tracts in Broward County was made by the United States Department of Housing and Urban Development and the United States Department of the Treasury based on criteria in the 2010 Census and Section 143 of the Internal Revenue Code. Neither the Housing Finance Authority of Broward County, Florida (the "HFA") or Broward County, Florida participated in the determination of the Qualified Census Tracts although the Participants and/or the HFA may rely thereon.

Qualified Census Tracts/Federally Designated Targeted Areas

Broward County, Florida Federally Designated Targeted Areas are identified as: 0103.04, 0204.12, 0303.01, 0304.02, 0308.01, 0414.00, 0415.00, 0416.00, 0417.00, 0503.09, 0507.02, 0603.02, 0603.03, 0603.04, 0604.03, 1002.01, 1005.01, 1005.02 and 9800.00.\*

\*The Qualified Census Tracts listed above are subject to adjustment by the United States Department of Housing and Urban Development and/or the United States Department of the Treasury.



**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM  
REQUEST FOR MCC COMMITMENT LETTER**

Date: \_\_\_\_\_ MCC Commitment Fee (\$0\*)

Participant: \_\_\_\_\_

Participant Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact: \_\_\_\_\_ Email: \_\_\_\_\_

Applicant(s): \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_ Soc. Sec. No. \_\_\_\_\_

Property Address: \_\_\_\_\_

Property City: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Loan Amount: \_\_\_\_\_ Census Tract: \_\_\_\_\_

Property: New/Existing Targeted Area: Yes/No

First-Time Homebuyer: Yes/No Qualified Veteran: Yes/No

Mortgage Term: \_\_\_\_\_ Years

Annual Income: \_\_\_\_\_ Applicable Annual Income Limit: \_\_\_\_\_

Acquisition Cost: \_\_\_\_\_ Applicable Limit on Acquisition Cost: \_\_\_\_\_

Anticipated Closing Date: \_\_\_\_\_

**DOCUMENTS ENCLOSED:**

- Mortgage Affidavit
- Worksheet #1
- Worksheet #2
- First Time Home Buyer's Certificate
- Three (3) Years Tax Returns or IRS Transcript
- Worksheet #3
- Worksheet #4

The Housing Finance Authority of Broward County, Florida will issue an MCC Commitment Letter within fifteen (15) business days and will deliver via electronic mail the MCC Commitment Letter to the address listed above.

Housing Finance Authority of Broward County, Florida      Phone: (954) 357-4900  
 110 N.E. 3rd Street, Suite 300 Ft. Lauderdale, FL 33301      Fax: (954) 357-8221  
 Attention: Susie Barzey      [Email: cbarzey@broward.org](mailto:cbarzey@broward.org)

\*Subject to periodic adjustment by the HFA, in its sole discretion.

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**MORTGAGOR AFFIDAVIT**

STATE OF FLORIDA )

BROWARD COUNTY )

The undersigned Applicant (whether one or more), the proposed purchaser(s) or owner(s) of the Residence located in the Broward County, Florida described below (the "Residence") and an Applicant under the Housing Finance Authority of Broward County, Florida's ("HFA") Mortgage Credit Certificate Program (the "Program"), does hereby depose and say, under penalty of perjury and the civil penalties outlined herein, that each of the following statements are true, correct and complete in all respects:

1. **Income.** (a) My current Annualized Gross Income, when added to the aggregate current Annualized Gross Monthly Income of all persons who intend to reside with me in the Residence is \_\_\_\_\_. [See Worksheet One attached hereto].

(b) I agree to furnish true and accurate copies of federal income tax returns for the past three years, as signed and filed with the Internal Revenue Service, for myself and all persons intending to reside with me in the Residence. I hereby authorize the above Participant to review such returns to verify the statements set forth herein, and I hereby authorize the HFA and its agents to review such returns as may be necessary to process my application for a Mortgage Credit Certificate ("MCC") under the Program. In lieu of providing copies of tax returns, I may submit original tax account information letters from the Internal Revenue Service showing that I filed Form 1040 tax returns or any other tax return permitted by the IRS for the years in question and stating my filing status and adjusted gross income. *Not applicable if the Residence is located in a Targeted Area or is a Qualified Veteran.*

2. **Tax Returns.** The following federal income tax return information is accurate for all persons intending to reside with me in the Residence described on the Mortgagor Affidavit:

**CHECK WHICH APPLIES:**

Attached are true and accurate copies of federal income tax returns for the past three years, as signed and filed with the IRS.

Attached is the original tax account information letter from the IRS verifying the type of returns filed, filing status and adjusted gross income for the past three (3) years. These letters may be used in lieu of furnishing copies of tax returns for persons who filed either Form 1040 or any other tax return permitted by the IRS.

I have not filed my Federal income tax return for the preceding year with the IRS. I am not entitled to claim deductions for taxes or interest in indebtedness with respect to property constituting my Principal Residence for the preceding calendar year. This statement may be furnished during the period between January 1 and February 15 when the loan has not yet been executed.

The loan is for a Residence located in a Targeted Area, and, as such, I am not required to provide copies of tax returns.

The loan is for a Qualified Veteran, and, as such, I am not required to provide copies of tax returns.

**3. Family Size.** The number of persons constituting my family who will reside in the Residence (together with any other persons who will reside in the Residence) is \_\_\_\_\_

**4. Location of Residence.** The Residence is located within Broward County, Florida.

**5. Acquisition Cost.** (a) The Residence is (check one):

\_\_\_\_\_ New Housing                      \_\_\_\_\_ Existing Housing

(b) The "Acquisition Cost" of the Residence (as determined in accordance with Worksheet Two attached hereto) is \$\_\_\_\_\_. I understand that the term "Acquisition Cost" includes: (i) all amounts paid either in cash or in kind, by me (or by a related party or for my benefit) to the Seller (or to a related party or for Seller's benefit) as consideration for the Residence; (ii) if the Residence is incomplete, the reasonable cost of completing it; and (iii) if the Residence is being purchased subject to a ground lease, the capitalized value of the ground rent. I understand further that "Acquisition Cost" does not include: (i) settlement and financing costs (such as title and transfer fees, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and points paid by me (but not points paid by the Seller) and other similar costs) but only to the extent that such amounts do not exceed the usual and reasonable settlement and financing costs for a home mortgage loan in this area; or (ii) the value of any services to be performed by me or my family members (including brothers and sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants only) to complete the Residence; or (iii) the cost of the land on which the Residence is located if I owned such land at least two (2) years prior to the commencement of construction of the Residence.

(c) Worksheet Two attached hereto sets forth an accurate calculation of the "Acquisition Cost" of the Residence.

**6. Principal Residence.** (a) I intend to occupy the Residence as my "Principal Residence" within a reasonable time (not to exceed sixty (60) days) following the execution of the loan to provide financing on the Residence. I understand that the term "Principal

Residence” means a home which, depending on all of the facts and circumstances (including the good faith intent of the occupant), is occupied by me primarily for residential purposes. I understand further that a “Principal Residence” does not include a home used as an investment property or a recreational home or a home which is used primarily in a trade or business (as evidenced by the use of more than fifteen percent of the total floor space in a trade or business). I agree to notify the HFA immediately if at any time the Residence ceases to be my Principal Residence.

(b) I do not intend to claim, with respect to the Residence, any deductions pursuant to the Internal Revenue Code for expenses incurred in connection with the business use of a home.

**7. Prior Ownership of a Residence.** Either (a):

- (i) I have not had a present ownership interest in a “Principal Residence” at any time during the three (3)-year period ending on the date of the execution of the loan. I understand that the term “Principal Residence” has the same meaning set forth in the preceding paragraph, and I understand further that the term “present ownership interest” includes: a fee simple interest; a joint tenancy, a tenancy in common or a tenancy by the entirety; the interest of a tenant stockholder in a cooperative; a life estate, a land contract or contract for deed under which possession and the burdens and benefits of ownership are transferred although legal title is not transferred until some later date; and an interest held in trust for one person by another person; but that “present ownership interest” does not include a remainder interest, a lease with or without an option to purchase, a mere expectancy to inherit, the interest that a person acquires upon the execution of a real estate purchase contract, or any interest in other than a “Principal Residence”;
- (ii) Worksheet Three attached hereto sets forth an accurate statement of the places at which I have resided during the past three (3) years and an explanation of the rental or other arrangements under which I have resided at such places; and
- (iii) My federal income tax returns for the past three (3) years, as signed and filed with the Internal Revenue Service, reflect that I have not claimed deductions during the past three (3) years for real property taxes or interest on a loan with respect to a “Principal Residence”; or

(b) The Residence is located in a Targeted Area.

(c) I am a Qualified Veteran.

**8. Veteran Applicant.** (a) I am a “veteran” (as defined in 38 U.S.C. Section 101) who has not previously obtained a mortgage loan financed by single family mortgage revenue bonds utilizing the veteran exception set forth on Section 143(d)(2)(D) of the Internal Revenue Code as of 1986, as amended, as demonstrated on Worksheet Four attached hereto; and (b) attached hereto are true and correct copies of my discharge papers.

**9. New Loan.** Except as set forth below, the proceeds of the loan will not be used to replace an existing mortgage on the Residence to which I am a party or upon which I am an obligor. At no time prior to the date hereof have I been a party to a mortgage on the Residence (whether in the form of a deed of trust, conditional sales contract, pledge, agreement to hold title in escrow or other form of owner financing), other than a construction loan, construction bridge loan or other temporary initial construction financing initially incurred for the sole purpose of acquiring the Residence and initially incurred within twenty-four (24) months from the date of execution of the loan and having an original term not exceeding twenty-four (24) months, which will be paid with the proceeds of the loan.

If the proceeds of the loan will be used to replace a construction loan, construction bridge loan or other temporary initial construction financing, describe such financing in the space below, specifying the source, purpose and the term of such financing:

**10. Prohibited Mortgages.** No portion of the loan on the Residence shall be provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond.

**11. Size of Property; Income from Property.** The real estate associated with the Residence is not greater than the normal and usual size of a lot within the area and is not in excess of that necessary to maintain the basic livability of the Residence. I do not expect to derive any income from the real estate associated with the Residence.

**12. Other Owners of Residence.** There are no persons who have or who are expected to have a "present ownership interest" (as defined in paragraph 4 hereof) in the Residence following execution of the loan who have not executed this Affidavit or one substantially the same as this Affidavit.

**13. Verification.** I understand that the Participant, the Internal Revenue Service, Housing Finance Authority of Broward County, Florida and/or their authorized representatives, intend to conduct investigations in order to verify the truth and completeness of the statements set forth herein. I hereby agree to provide access to such information, past income tax returns, canceled checks or receipts evidencing payment of rent, utility statements, employment records and similar data, as may be necessary in connection with such verification procedures, and authorize the disclosure of such information to the parties listed above.

**14. Revocation of MCC.** I understand that if any of the statements set forth herein are not true, correct and complete in all respects, or that if federal law or regulations disqualify me from participation in this Program, the MCC issued to me may be immediately revoked.

**15. Qualification for Program.** I qualify in all respects as an Applicant under the Program. I have been furnished a copy of the MCC Information Guide and am familiar with and understand the provisions of the Program.

**16. No Other Applications.** I have not made application to and been rejected by another Participant for an MCC under the Program for a loan similar in type and amount, and

I have not been the recipient of an MCC under the Program.

**17. Participant.** I have not been required to seek financing for the purchase of the Residence through any particular Participant.

**18. Assumption.** I understand in the event that I sell this Residence at any time and desire to have my MCC transferred pursuant to the transfer provisions of the Program that (a) the person assuming my loan must qualify as an Applicant, (b) the "Acquisition Cost" may not exceed the maximum "Acquisition Cost" then applicable to Existing Housing, and (c) all other Program requirements must be satisfied, including without limitation, the payment of all applicable assumption fees.

**19. Tax Credit Recapture.** I understand in the event I sell this Residence within the nine (9) year period following the issuance of an MCC, all or a portion of the tax credit utilized under the Program will be subject to recapture pursuant to the provisions of Section 143(m) of the Internal Revenue Code.

**20. Family Members.** I further swear and affirm that I am not an employee of, nor am I the spouse of an employee of, the Participant or related within the third degree of affinity (marriage) or consanguinity (blood) to an employee of the Participant.

**21. Interest to Related Persons.** No interest on the loan is being paid to a "related person" to the Applicant, as that term is defined in Section 144(a)(3)(A) of the Internal Revenue Code and the regulations promulgated pursuant thereto. Such a "related person" does not have, and is not expected to have, an interest as a creditor in the loan.

**22. Condition to Issuance of MCC.** I understand that the HFA's ability to issue an MCC in connection with the mortgage loan is contingent upon the availability of funds at the time of reservation, including the requirement that the HFA has made an election with the IRS to issue MCCs.

**23. Penalty.** The statements set forth herein are made under penalty of perjury and the following civil penalties: Any material misstatement in any Affidavit or certificate made in connection with application for or issuance of an MCC due to my negligence shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$1,000.00; and any such material misstatement due to my fraud shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$10,000.00. I understand that perjury is a felony offense punishable by fine or imprisonment, or both.

**24. Attachments.** All documents attached hereto (and any documents submitted to supplement and/or complete the application) are true and correct and not misleading in any material respect.

Name(s) of Applicant:

Signature(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

**WORKSHEET ONE  
CURRENT ANNUALIZED GROSS MONTHLY INCOME**

1. The names, relationships, ages and social security numbers of all persons intending to reside in the Residence are as follows:

<u>Name</u>	<u>Relationship to Application</u>	<u>Ages</u>	<u>Social Security No.</u>

Please provide any additional names on a separate sheet.

In determining gross monthly income, the income of the mortgagor(s) and anyone who is expected to live in the residence must be taken into account.

2. The name and address of the employer(s) of each of the above persons who is 18 years of age or older and his or her gross monthly income is as follows:

<u>First Name (from above)</u>	<u>Employer and Address</u>	<u>Gross Monthly Income*</u>

Total Income: \_\_\_\_\_



The Annualized Gross Monthly Income for all of the above persons [the total gross monthly income from Section 2 above multiplied by twelve (12)] is \$\_\_\_\_\_. [Insert this figure in the blank in Section 1(a) of the Mortgagor Affidavit.]

\*Gross monthly income shall include all current or anticipated wages and salaries, over time pay, part time employment compensation, commissions, fees, tips and bonuses, and other compensation for personal services, before payroll deductions, net income from the operation of a business or profession (without deducting expenditures for business expansion or amortization of capital indebtedness or an allowance for depreciation of capital assets), any interest, dividends, royalties, and other net income of any kind from any investment or from real or personal property (without deducting expenditures for amortization of capital indebtedness or an allowance for depreciation of capital assets), all income received from social security, annuities, insurance policies, retirement funds, pensions, Veterans Administration (VA) compensation, disability, or other benefits and other similar types of periodic receipts, including a lump sum payment for the delayed start of periodic payments, payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, the maximum amount of welfare assistance or any other form of public assistance available to the above persons, periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the Residence, all regular pay, special pay, and allowances of a member of the Armed Forces (whether or not living in the Residence) who is the head of the household or spouse or other person whose dependents' are residing in the Residence, and any earned income tax credit to the extent it exceeds income tax liability.

**WORKSHEET TWO  
ACQUISITION COST**

1. Amount paid for the Residence, in cash or in kind, by Applicant to the Seller (including any amount which Seller is required to pay as a real estate commission or loan discount points): \_\_\_\_\_

2. Amount paid for the Residence, in cash or in kind, by Applicant or any person related to the Applicant or by any person for the benefit of the Applicant, to Seller or any person related to Seller or for Seller's benefit (other than the amount set forth above): \_\_\_\_\_

3. If the Residence is incomplete or unfinished the estimated cost of completing it, including the cost of any necessary alterations or improvements (specify the nature of such alterations or improvements): \_\_\_\_\_

4. If the Residence is located on leased land, the capitalized value (using a discount rate equal to the interest rate borne by the mortgage loan) of the ground rent: \_\_\_\_\_

5. Total Acquisition Cost: \_\_\_\_\_

(Total of Lines 1, 2, 3, and 4)[Insert this figure in Paragraph 5(b) of the Mortgagor Affidavit]:

**WORKSHEET THREE  
PRIOR RESIDENCES**

[NOT REQUIRED FOR A RESIDENCE LOCATED IN A TARGETED AREA OR FOR A QUALIFIED VETERAN]

Provide residential history for the previous three (3)-year period. During the last three (3) years I have either:

(1) Lived as a tenant at the following address(es) for the following periods of time:

Address: \_\_\_\_\_ Landlord: \_\_\_\_\_

City: \_\_\_\_\_ From: \_\_\_\_\_

Phone No.: \_\_\_\_\_ To: \_\_\_\_\_

(Include area code)

Address: \_\_\_\_\_ Landlord: \_\_\_\_\_

City: \_\_\_\_\_ From: \_\_\_\_\_

Phone No.: \_\_\_\_\_ To: \_\_\_\_\_

(Include area code)

Address: \_\_\_\_\_ Landlord: \_\_\_\_\_

City: \_\_\_\_\_ From: \_\_\_\_\_

Phone No.: \_\_\_\_\_ To: \_\_\_\_\_

(Include area code)

(Indicate additional addresses on a separate sheet, if necessary.)

(2) Lived with the following members of my family (without having a "present ownership interest" in the Residence) at the following address(es) for the following period(s) of time:

Name(s) of family members: \_\_\_\_\_

Relationship: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

\_\_\_\_\_

Phone No:

\_\_\_\_\_

From:  
(Mo/Yr)

\_\_\_\_\_

To:  
(Mo/Yr)

**WORKSHEET FOUR  
FOR QUALIFIED VETERANS ONLY**

Qualification as "Veteran"  
within the meaning of 38 U.S.C. Section 101

In order to qualify as a "veteran" within the meaning of 38 U.S.C. Section 101, both (1) and (2) below must be satisfied.

I certify that the following is true:

(1) Applicant must have served in the active military, naval or air service in one of the following capacities (must mark (a), (b) or (c)):

(a) **Active duty** in one of the following manners:

- (i) full-time duty (other than active duty for training) in the Armed Forces (United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof);
- (ii) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (on or after July 29, 1945, or before that date if under circumstances affording entitlement to "full military benefits");
- (iii) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor the Coast and Geodetic Survey (on or after July 29, 1945, or before that date if while on transfer to one of the Armed Forces or if while assigned to duty on a project for one of the Armed Forces in an area determined by Secretary of Defense to be of immediate military hazard during time of war or national emergency declared by President or if in the Philippine Islands on December 7, 1941 and continuously in such islands thereafter; or
- (iv) service as a cadet in the United States Military, Air Force or Coast Guard Academy, or as a midshipman at the United States Naval Academy; or
- (v) authorized travel to or from such duty or service listed in (a)(i) through (iv) above.

- (b) **Active duty for training** in one of the following manners if the member was disabled during such period from a disease or injury incurred or aggravated in the line of duty (specifically excludes any duty performed as a temporary member of the Coast Guard Reserve):
  - (i) full-time duty for training purposes in the Armed Forces Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States and Air National Guard of the United States);
  - (ii) full-time duty for training purposes as a commissioned officer of the Reserve Corps of the Public Health Service (on or after July 29, 1945, or before that date if under circumstances affording entitlement to "full military benefits";
  - (iii) full-time duty for members of the Army National Guard or Air National Guard of any State under Title 32, Section 316 (detail of members of Army National Guard for rifle instruction of civilians), Section 502 (required drills and field exercises), Section 503 (participation in field exercises), Section 504 (National Guard schools and small arms competitions), or Section 505 (Army and Air Force schools and field exercises);
  - (iv) duty performed as a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purposes of training or a practice cruise under Chapter 103 of Title 10 for a period of not less than 4 weeks and which must be completed by the member before the member is commissioned; or
  - (v) authorized travel to or from such duty listed in items (b)(i) through (iv) above.
- (c) **Inactive duty training** in one of the following manners if the member was disabled during such period from an injury incurred or aggravated in the line of duty or from an acute myocardial infarction, a cardiac arrest or a cerebrovascular accident occurring during such training (specifically excludes any work or study performed in connection with correspondence courses, attendance at an educational institution in an inactive status or duty performed as a temporary member of the Coast Guard Reserve):
  - (i) duty (other than full-time duty) prescribed for Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States, Air

National Guard of the United States and commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under Section 206 of Title 37 or any other provision of law;

- (ii) special additional duties authorized for Reserves (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States, Air National Guard of the United States and commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with prescribed training or maintenance activities of the units to which they are assigned; or
- (iii) training (other than active duty for training) by a member of, or applicant for membership (as defined in Section 8140(g) of Title 5) in the Senior Reserve Officers' Training Corps prescribed under Chapter 103 of Title 10.

(2) Applicant has been discharged or released from the service referenced in (1) above under conditions other than dishonorable, including retirement or the satisfactory completion of the period of active military, naval or air service required if, due to enlistment or re-enlistment, discharge or release at the time of such completion was not awarded but was earned and would have been awarded under conditions other than dishonorable.

- Copy of Form DD214 (Certificate of Release or Discharge from Active Duty)

Name(s) of Applicant:

Signature(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY,  
FLORIDA MORTGAGE CREDIT CERTIFICATE PROGRAM**

**MCC SUBMISSION COVER SHEET**

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

Applicant: \_\_\_\_\_

Soc. Sec. No. \_\_\_\_\_

Property Address: \_\_\_\_\_

Property City/Zip Code: \_\_\_\_\_

MCC Commitment Number: \_\_\_\_\_

MCC Commitment Expiration Date: \_\_\_\_\_

Purchase Price: \_\_\_\_\_

Loan Amount: \$ \_\_\_\_\_

Loan Maturity Date: \_\_\_\_\_

Type of Loan: \_\_\_\_\_ VA \_\_\_\_\_ FHA \_\_\_\_\_ Conventional \_\_\_\_\_ USDA-RHS

Participant: \_\_\_\_\_

Participant Contact: Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

Participant Loan Reference Number: \_\_\_\_\_

% of AFMI \_\_\_\_\_ Family Size: \_\_\_\_\_

Property Type:

- |                          |                        |                          |            |
|--------------------------|------------------------|--------------------------|------------|
| <input type="checkbox"/> | Single Family Detached | <input type="checkbox"/> | Town House |
| <input type="checkbox"/> | Manufactured Housing   | <input type="checkbox"/> | Condo      |

Documents Submitted (check applicable):

_____	Program Income Affidavit
_____	Seller/Builder Affidavit or GSE/Institutional Seller Affidavit
_____	Certificate of Participant and Lending Best Practices
_____	Closing Affidavit
_____	Notice of Potential Recapture Tax on Sale of Home
_____	Settlement Statement (HUD-1)/Closing Disclosure Form (executed)
_____	Credit Analysis Worksheet
_____	Certificate of Completion of approved pre-purchase homebuyer education course, if applicable

The following fee(s) must be submitted with the MCC Submission Package, which fee(s) is/are payable by check or money order to the Housing Finance Authority of Broward County, Florida (the "HFA").

MCC Issuance Fee - \$175.00\*

Late fee, if required - \$75.00\*

**Housing Finance Authority of Broward County, Florida**  
**110 N.E. 3<sup>rd</sup> Street, Suite 300**  
**Ft. Lauderdale, FL 33301**  
**Attention: Susie Barzey**  
**Telephone: (954) 357-4900**

\*Subject to periodic adjustment by the HFA, in its sole discretion.



**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE**

**PROGRAM INCOME AFFIDAVIT**

The undersigned Applicant (whether one or more) under the Housing Finance Authority of Broward County, Florida's ("HFA") Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury and the civil penalties provided herein, that each of the following statements are true, correct and complete in all respects:

1. Current Income. Attached is a true and correct copy of the credit analysis worksheet, or comparable instrument (the "Credit Analysis"), prepared by the Participant in determining my gross monthly income. I hereby certify that the gross monthly income stated on the Credit Analysis is a true and accurate statement of my income and the income of all persons age 18 or older who intend to reside with me in the Residence, except as noted below [indicate in the space provided any additional monthly income not stated on the Credit Analysis such as alimony, child support, income of other adult family members, etc.]:

My total annualized gross monthly income (twelve (12) times the sum of my gross monthly income stated on the Credit Analysis and any additional monthly income stated above) is \$\_\_\_\_\_

2. All documents attached hereto (and any documents submitted to supplement and/or complete the application) are true and correct and not misleading in any material respect.

3. The statements set forth herein are made under penalty of perjury and the following civil penalties: any material misstatement in any Affidavit or certification made in connection with application for or issuance of an MCC due to my negligence shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$1,000.00; and any such material misstatement due to my fraud shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$10,000.00. I understand that perjury is a felony offense punishable by fine or imprisonment, or both.

[SIGNATURE PAGE TO FOLLOW]

Name(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

Signature(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

MCC Commitment No: \_\_\_\_\_

Applicant: \_\_\_\_\_

Participant: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**SELLER/BUILDER AFFIDAVIT**

The undersigned, the proposed Seller (whether one or more) of a Residence located in the Eligible Loan Area described below (the "Residence") to the above Applicant for which a Mortgage Credit Certificate is being sought under the Housing Finance Authority of Broward County, Florida's ("HFA") Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury, that each of the following statements are true, correct and complete in all respects:

\_\_\_\_\_

1. Location of Residence. The Residence is located within Broward County, Florida (the "Eligible Loan Area") at: \_\_\_\_\_

(Property Address)

2. New Mortgage. At no time prior to the date hereof has there been a mortgage on the Residence (whether in the form of a deed of trust, conditional sales contract, pledge, agreement to hold title in escrow or other form of owner financing) securing a loan to the above Applicant, the proposed purchase of the Residence, other than a construction loan, construction bridge loan or other temporary initial construction financing initially incurred for the sole purpose of acquiring the Residence and initially incurred within twenty-four (24) months from the date of execution of the loan and having an original term not exceeding twenty-four (24) months.

3. Acquisition Cost. (a) The Residence is (check one):

\_\_\_\_\_ a newly constructed Residence which has never been occupied;

\_\_\_\_\_ or an existing Residence which has been occupied previously;

\_\_\_\_\_ or incomplete or under construction; or

\_\_\_\_\_ located on leased land.

The "Acquisition Cost" to the Applicant (as determined in accordance with the Acquisition Cost Worksheet attached hereto) is \$\_\_\_\_\_. I understand that the term "Acquisition Cost" includes:(a) all amounts paid either in cash or in kind, by the Applicant (or by a related party or for the benefit of the Applicant) to me (or to a related party or for my benefit) as consideration for the Residence; (b) if the Residence is incomplete, the reasonable cost of

completing it; and (c) if the Residence is being purchased subject to a ground lease, the capitalized value of the ground rent. I understand further that "Acquisition Cost" does not include: (i) settlement and financing costs (such as title and transfer fees, title insurance, survey fees, credit reference fees, legal fees, appraisal fees and points paid by the Applicant (but not points paid by me) and other similar costs) but only to the extent that such amounts do not exceed the usual and reasonable settlement and financing costs for a home mortgage loan in this area; or (ii) the value of any services to be performed by the Applicant or the Applicant's family members (include the Applicant's brothers and sisters (whether by whole or half-blood), spouse, ancestors and lineal descendants only) to complete the Residence; or (iii) the cost of the land on which the Residence is located if the Applicant owned such land at least two (2) years prior to the commencement of the construction of the Residence.

(b) The Worksheet attached hereto sets forth an accurate calculation of the "Acquisition Cost" of the Residence to the Applicant.

4. Verification. I understand that the above Participant, the Internal Revenue Service, Housing Finance Authority of Broward County, Florida and/or their respective authorized representatives, may conduct investigations in order to verify the truth and completeness of the statements set forth herein. I hereby agree to provide access to such information, including my records pertaining to the Residence, as may be necessary in connection with such verification procedure.

5. Penalty. The statements set forth herein are made under penalty of perjury. I understand that perjury is a felony offense punishable by fine or imprisonment or both.

[SIGNATURE PAGE TO FOLLOW]

Name(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

Signature(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

**ACQUISITION COST  
WORKSHEET**

1. Amount paid for the Residence, in cash or in kind, by Applicant to the Seller (including any amount which Seller is required to pay as a real estate commission or loan discount points): \_\_\_\_\_

2. Amount paid for the Residence, in cash or in kind, by Applicant or any person related to the Applicant or by any person for the benefit of the Applicant, to Seller or any person related to Seller or for Seller's benefit (other than the amount set forth above): \_\_\_\_\_

3. If the Residence is incomplete or unfinished the estimated cost of completing it, including the cost of any necessary alterations or improvements (specify the nature of such alterations or improvements): \_\_\_\_\_

4. If the Residence is located on leased land, the capitalized value (using a discount rate equal to the interest rate borne by the mortgage loan) of the ground rent: \_\_\_\_\_

5. Total Acquisition Cost: \_\_\_\_\_

(Total of Lines 1, 2, 3, and 4) [Insert this figure on Page 1 of the Seller/Builder Affidavit to which this Acquisition Cost Worksheet is attached]:

MCC Commitment No: \_\_\_\_\_  
Applicant: \_\_\_\_\_  
Participant: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM  
GSE/INSTITUTIONAL SELLER AFFIDAVIT**

The undersigned, the proposed Seller of a Residence located in the Eligible Loan Area described below (the "Residence") to the above Applicant for which a Mortgage Credit Certificate is being sought under the Housing Finance Authority of Broward County, Florida's ("HFA") Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury, that each of the following statements are true, correct and complete in all respects:

\_\_\_\_\_

1. Location of Residence. The Residence is located within Broward County, Florida (the "Eligible Loan Area") at: \_\_\_\_\_  
(Property Address)

4. Acquisition Cost. (a) The Residence is (check one):

- \_\_\_\_\_ a newly constructed Residence which has never been occupied;
- \_\_\_\_\_ or an existing Residence which has been occupied previously;
- \_\_\_\_\_ or incomplete or under construction; or
- \_\_\_\_\_ located on leased land.

The "Acquisition Cost" to the Applicant is \$\_\_\_\_\_ (as determined in accordance with the Acquisition Cost Worksheet attached hereto). All consideration exchanged between the parties in connection with the purchase and sale of the Residence shall be reflected on the HUD-1 settlement statement signed by the parties at the closing of the transaction.

Name(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

Signature(s) of Applicant:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)



**ACQUISITION COST  
WORKSHEET**

1. Amount paid for the Residence, in cash or in kind, by Applicant to the Seller (including any amount which Seller is required to pay as a real estate commission or loan discount points): \_\_\_\_\_

2. Amount paid for the Residence, in cash or in kind, by Applicant or any person related to the Applicant or by any person for the benefit of the Applicant, to Seller or any person related to Seller or for Seller's benefit (other than the amount set forth above): \_\_\_\_\_

3. If the Residence is incomplete or unfinished the estimated cost of completing it, including the cost of any necessary alterations or improvements (specify the nature of such alterations or improvements): \_\_\_\_\_

4. If the Residence is located on leased land, the capitalized value (using a discount rate equal to the interest rate borne by the mortgage loan) of the ground rent: \_\_\_\_\_

5. Total Acquisition Cost: \_\_\_\_\_

(Total of Lines 1, 2, 3, and 4) [Insert this figure on Page 1 of the Seller/Builder Affidavit to which this Acquisition Cost Worksheet is attached]:

MCC Commitment No: \_\_\_\_\_

Applicant: \_\_\_\_\_

Participant: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**CERTIFICATE OF PARTICIPANT**

I, the undersigned authorized officer of the above Participant, do hereby certify, represent and warrant to the Housing Finance Authority of Broward County, Florida (the "HFA"), that:

1. I have read the Mortgagor Affidavit of the above Applicant, the Program Income Affidavit, and the Closing Affidavit, and, if applicable, the Seller/Builder Affidavit or GSE/Institutional Seller Affidavit and the Notice of Potential Recapture Tax on Sale of Home which were executed in connection with the Mortgage Credit Certificate Application made by the above Applicant and submitted to the HFA. Prior to the execution of such documents, I reviewed the contents thereof with the Applicant, and if applicable, the Seller and the closing agent, respectively.

2. (a) We have completed our due diligence and credit review ("credit analysis") in connection with the subject loan. Our credit analysis included confirmation of the information the Participant has obtained concerning the gross monthly income of the Applicant, and the Participant has complied with the requirements of the Program Manual in verifying the accuracy of such information.

(b) Based upon the credit analysis, the additional income, if any, disclosed by the Applicant on the Program Income Affidavit and the Participant's review of the Applicant's federal income tax return, Form W-2 or verification of income from third parties such as employers or state agencies paying unemployment compensation, to the Participant's best knowledge and belief, the Applicant's annualized gross monthly income, when added to the aggregate annualized gross monthly income of all persons who intend to reside with the Applicant in the Residence, is \$\_\_\_\_\_. The Participant certifies that such amount is within the required limit set forth in the Program Manual and MCC Information Guide

3. The Residence is located within Broward County, Florida.

4. I have conducted or have caused to be conducted an investigation regarding the truth of the facts set forth in such Affidavits, the nature of which investigation is as follows:

- |  |  |
|--|--|
| <input type="checkbox"/> Credit Verification | <input type="checkbox"/> First Time Homebuyer Verification |
| <input type="checkbox"/> Income Verification | <input type="checkbox"/> Employment Status                 |
| <input type="checkbox"/> Asset Verification  | <input type="checkbox"/> Other _____                       |

5. **NOTE: This Paragraph 5 shall be deleted in its entirety in the case of an Applicant who is (i) acquiring a Residence in a Targeted Area, or (ii) a Qualified Veteran.** The investigation described in paragraph 4 hereof complies with the requirements of the Program Manual, and such investigation included an examination of copies of income tax returns for the past three (3) years provided by the Applicant which were filed with the Internal Revenue Service (or tax account information letters from the Internal Revenue Service covering such years), and the returns or information furnished indicated that during the preceding three (3) years the Applicant did not claim deductions for taxes or interest on indebtedness with respect to the real property constituting a Principal Residence of the Applicant. [In the event that the Applicant was not required to file a federal income tax return for all three of the years preceding the execution of the loan, the Participant must make sure that the Program Income Affidavit executed by the Applicant states that fact.]

6. No facts have come to my attention as a result of such investigation or otherwise which would cause me to disbelieve or doubt the truth of the Mortgagor Affidavit of the above Applicant or the Program Income Affidavit, or, if applicable, the Seller/Builder Affidavit or the Closing Affidavit, or any portion of any of such Affidavits.

7. All terms used herein shall have the respective meanings assigned to them in the Program Manual.

8. The Participant has not originated a loan for the Residence for an employee of the Participant or a person related within the third degree of affinity (marriage) or consanguinity (blood) of said employee.

9. The loan is secured by a valid lien on a Residence, which, to the knowledge of the Participant is occupied by or is to be occupied by the Applicant as his or her Principal Residence, is made in accordance with the Program Manual, and is not for the purpose of refinancing any existing loan on any such property (other than a construction period loan, construction bridge loan, or similar temporary initial construction financing initially incurred for the sole purpose of acquiring the Residence and initially incurred within twenty-four (24) months of execution of the loan and having an original term not exceeding twenty-four (24) months).

10. The fees and charges collected by the Participant for the loan are in compliance with the Program Manual. The amounts collected by the Participant to reimburse the Participant for reasonable and customary charges paid or incurred for hazard or mortgage insurance premiums, surveys, title insurance, appraisal fees, abstract and attorneys' fees, recording or registration charges, escrow fees, file preparation fees, application fees, credit reports, and similar charges do not exceed the reasonable and customary amounts charged by the Participant for mortgage loans not made in connection with the Program.

11. To the best knowledge of the Participant, the Applicant has not conveyed the Applicant's right, title or interest to or in the property to any party other than a trust for the benefit of such Applicant and/or members of such Applicant's immediate family.

12. No portion of the financing of the Residence has come from the proceeds of qualified mortgage bonds or qualified veterans' mortgage bonds.

13. We have reviewed HFA's lending policy as set forth in Appendix A attached hereto and certify compliance with the HFA's lending policy described in Appendix A in connection with the referenced MCC Commitment.

14. The statements set forth herein are made under penalty of perjury. I understand that perjury is a felony offense punishable by fine or imprisonment or both.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Participant

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

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

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

## APPENDIX A

### LENDING BEST PRACTICES

To help protect consumers from abusive lending practices, the Housing Finance Authority of Broward County, Florida (the "HFA") is promoting anti-predatory lending policies for the loans originated under the HFA's Mortgage Credit Certificate Program (the "MCC Program"). The HFA identifies and promotes responsible lending practices that help borrowers become successful, long-term homeowners. The HFA is committed to working with responsible Participants serving the needs of borrowers with less-than-perfect credit.

The following is a summary of the HFA's lending guidelines, based on lending guidelines promulgated by Fannie Mae and Freddie Mac, for the MCC Program:

- **Suitability** -- For loans originated under the MCC Program, the HFA expects that borrowers will receive the best mortgage rate available, and commensurate with the borrowers' overall risk profile, at the time of the borrowers' loans.
- **Steering** -- For loans originated under the MCC Program, the HFA expects that Participants will have determined the borrower's ability and willingness to repay the mortgage debt regardless of the underwriting method the Participant uses. In addition, Participants should have practices and procedures to offer mortgage applicants the full range of products for which they qualify, and should specifically avoid the steering of borrowers to high-cost products that are designed for less creditworthy borrowers if the applicants can qualify for lower-cost products. Similarly, consumers who seek financing through a Participant's higher-priced subprime lending channel should be offered (or directed toward) the Participant's standard mortgage product line if they are able to qualify for one of the standard products.
- **Excessive Fees** -- Participants should have their own guidelines and policies that address the fees that originators and brokers can charge a borrower when a mortgage is originated and should apply those policies consistently. For loans originated under the MCC Program, the points and fees charged to a borrower should not exceed five percent (5%) of the loan amount.
- **Prepaid Single Premium Credit Life Insurance Policies** -- For loans originated under the MCC Program, the HFA will not permit any mortgages for which a prepaid single-premium credit life insurance policy was sold to the borrower in connection with the origination of the mortgage loan, regardless of whether the premium is financed in the mortgage amount or paid from the borrower's funds. This does not apply to credit life insurance policies that require separately identified premium payments on a monthly or annual basis or to prepaid hazard, flood, or mortgage insurance policies.
- **Prepayment Penalties** -- Fannie Mae will only consider allowing prepayment penalties under the terms of a negotiated contract, and where the Participant adheres to the following criteria: a mortgage that has a prepayment penalty should provide some benefit to the borrower (such as a rate or fee reduction for accepting the prepayment premium); the borrower also should be offered the choice of another mortgage product that does not require payment of such a

premium; the terms of the mortgage provision that requires a prepayment penalty should be adequately disclosed to the borrower; the prepayment penalty should not be charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments, and prepayment penalty terms shall not exceed three years.

- Full-file Credit Reporting – The HFA believes that it is important for a borrower's entire payment history to be reported to the credit repositories since that gives a borrower who has a good payment record more opportunities to obtain new financing (and better mortgage terms) when the need arises. Therefore, Participants must report on the status of any MCC loan that they are servicing each month to the credit repositories.
- Servicing Practices -- Servicers maintain escrow deposit accounts for the monthly deposit of funds to pay taxes, ground rents, mortgage insurance premiums, etc. The HFA suggests the use of escrow accounts for borrowers with blemished credit records to protect them from additional risk of default.

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM  
CLOSING AFFIDAVIT**

The undersigned, in connection with the Housing Finance Authority of Broward County, Florida's (the "HFA") Mortgage Credit Certificate Program, hereby certifies, with respect to the closing of the loan pertaining to the Residence purchased or owned by the above Applicant, that the attached closing statements are true and correct copies of the closing statements prepared and delivered in connection with the following transaction:

SELLER/BUILDER: \_\_\_\_\_

PURCHASER: \_\_\_\_\_

LENDER: \_\_\_\_\_

PROPERTY: \_\_\_\_\_

FINAL MORTGAGE  
LOAN AMOUNT: \_\_\_\_\_

REISSUANCE: \_\_\_\_\_ NO \_\_\_\_\_ YES<sup>1</sup>

LENDER OR CLOSING AGENT

\_\_\_\_\_  
(Name of Firm)

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

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

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

\_\_\_\_\_  
<sup>1</sup> For refinancings, the Participant or Closing Agent, as applicable, certifies that \$\_\_\_\_\_ is the outstanding balance on the loan associated with the existing MCC.

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of the corporation. He/she is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)



**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**NOTICE OF POTENTIAL RECAPTURE TAX ON SALE OF HOME**

(To be delivered to Applicant by the Participant at the Time of Settlement of Mortgage Loan)

Because you are receiving a Mortgage Credit Certificate in connection with your mortgage loan, you are receiving the benefit of a credit against your federal income taxes. If you sell or otherwise dispose of your home during the next nine (9) years, this benefit may be recaptured and you may have to pay back all or a part of the federal mortgage subsidy you received by increasing your federal income tax for the year in which you sold or disposed of your home. The recapture applies, however, only if you sell your home at a gain and your income increases above specified levels.

You may wish to consult a tax advisor or the local office of the Internal Revenue Service at the time you sell your home to determine the amount, if any, of the recapture tax. Along with this Notice of Potential Recapture, you are being given additional information necessary to calculate the recapture tax.

**NOTICE TO MORTGAGOR OF MAXIMUM RECAPTURE TAX AND OF METHOD TO  
COMPUTE RECAPTURE TAX ON SALE OF HOME**

**A. Introduction.**

1. General. When you sell your home, you may have to pay a recapture tax calculated in the manner described in Paragraph C below. The recapture tax may also apply if you dispose of your home in some other way. Any references in this Notice of Potential Recapture of the "sale" of your home also include other ways of disposing of your home. For instance, you may owe the recapture tax if you give your home to a relative.

2. Exceptions. In the following situations, no recapture tax is due and you do not need to do the calculations:

- (a) You dispose of your home later than nine (9) years after you close your mortgage loan;
- (b) Your home is disposed of as a result of your death;
- (c) You transfer your interest in your home to your spouse or to your former spouse incident to a divorce and no gain or loss is included in or deducted from your income on your federal income tax return; or
- (d) You dispose of your home at a loss.

**B. Maximum Recapture Tax.** The Maximum Recapture Tax that you may be required to pay as an addition to your federal income tax is \$\_\_\_\_\_. This amount is 6.25% of the

highest principal amount of your mortgage loan and is your "federally subsidized amount" with respect to the loan.

**C. Actual Recapture Tax.** The actual recapture tax, if any, can only be determined when you sell your home, and is calculated in the manner set forth in Part II of IRS Form 8828, Recapture of Federal Mortgage Subsidy (attached as Page 3 to this Tab 9), as may be amended by the Department of Treasury from time to time.

**D. Limitations and Special Rules on Recapture Tax.**

(1) If you give away your home (other than to your spouse or ex-spouse incident to divorce), you must determine your actual recapture taxes as if you had sold your home for its fair market value at the time of the disposition.

(2) If your home is destroyed by fire, storm, flood or other casualty, there generally is no recapture tax if, within two (2) years after the end of the tax year when the destruction happened, you replace the home (for use as your principal residence) on the original site of the home financed with your original federally subsidized mortgage loan.

(3) In general, except as provided in future regulations, if two (2) or more persons own a home and are jointly liable for the federally subsidized mortgage loan, the actual recapture tax is determined separately for each person based on the interest of each in the home.

(4) If you repay your loan in full or refinance other than with reissuance of an MCC within the first four (4) years after you close your subsidized mortgage loan and you sell or otherwise dispose of your home during the nine (9)-year recapture period, your holding period percentage may be reduced under the special rule in Section 143(m)(4)(C)(ii) of the Internal Revenue Code.

(5) Other special rules may apply in particular circumstances. You may wish to consult with a tax advisor or the local office of the Internal Revenue Service when you sell or otherwise dispose of your home to determine the amount, if any, of your actual recapture tax. See Section 143(m) of the Internal Revenue Code generally.

Received by Applicant On: \_\_\_\_\_

\_\_\_\_\_  
Applicant's Signature

\_\_\_\_\_  
Applicant's Signature

Form **8828**  
 (Rev. March 2010)  
 Department of the Treasury  
 Internal Revenue Service (50)

**Recapture of Federal Mortgage Subsidy**

OMB No. 1545-0074

▶ Attach to Form 1040. ▶ See separate instructions.

Attachment  
 Sequence No. **64**

Name(s) \_\_\_\_\_ Social security number (as shown on page 1 of your tax return) \_\_\_\_\_

**Part I Description of Home Subject to Federally Subsidized Debt**

- 1 Address of property (number and street, city or town, state, and ZIP code)  
 \_\_\_\_\_
  - 2 Check the box that describes the type of federal subsidy you had on the loan for your home.
    - a  Mortgage loan from the proceeds of a tax-exempt bond
    - b  Mortgage credit certificate

**Note.** If neither box applies, you are not subject to recapture tax on the sale or other disposition of your home. **Do not** complete this form.
  - 3 Name of the bond or certificate issuer \_\_\_\_\_  
State Political subdivision (city, county, etc.) Agency, if any
  - 4 Name and address of original lending institution \_\_\_\_\_
  - 5 Date of closing of the original loan \_\_\_\_\_  
Month Day Year
- Note.** If the date of closing of the loan was before January 1, 1991, recapture tax does not apply. **Do not** complete this form. If you (1) checked the box on line 2b (mortgage credit certificate), (2) refinanced your home, and (3) received a reissued mortgage credit certificate, see **Refinancing your home** on page 1 of the instructions.
- 6 Date of sale or other disposition of your interest in the home \_\_\_\_\_  
Month Day Year
  - 7 Number of years and full months between original closing date (line 5) and date of sale or disposition (line 6): \_\_\_\_\_  
Years Full months
  - 8 Date of full repayment of the original loan including a refinancing other than one for which a replacement mortgage credit certificate was issued (see instructions) \_\_\_\_\_  
Month Day Year

**Part II Computation of Recapture Tax**

9	Sales price of your interest in the home sold or disposed of (see instructions)	9	
10	Expenses of sale. Include sales commissions, advertising, legal fees, etc.	10	
11	Amount realized. Subtract line 10 from line 9	11	
12	Adjusted basis of your interest in the home sold or disposed of (see instructions)	12	
13	Gain or (loss) from sale or disposition. Subtract line 12 from line 11. If a loss, <b>stop</b> here and attach this form to your Form 1040. You <b>do not</b> owe recapture tax	13	
14	Multiply line 13 by 50% (.50)	14	
15	Modified adjusted gross income (see instructions)	15	
16	Adjusted qualifying income (see instructions)	16	
17	Subtract line 16 from line 15. If zero or less, <b>stop</b> here and attach this form to your Form 1040. You <b>do not</b> owe recapture tax	17	
18	Income percentage. If the amount on line 17 is \$5,000 or more, enter "100." Otherwise, divide the amount on line 17 by \$5,000 and enter the result as a percentage. Round to the nearest whole percentage	18	%
19	Federally subsidized amount (see instructions)	19	
20	Holding period percentage (see instructions)	20	%
21	Multiply line 19 by the percentage on line 20	21	
22	Recapture amount. Multiply line 21 by the percentage on line 18	22	
23	Tax. Enter the <b>smaller</b> of line 14 or line 22. Also, include this amount on the line for total tax on Form 1040. For details, see the Instructions for Form 1040	23	

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Cat. No. 13049F

Form **8828** (Rev. 3-2010)

Name of Applicant: \_\_\_\_\_

Social Security No: \_\_\_\_\_

Reference No: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM  
AFFIDAVIT OF COSIGNOR/GUARANTOR**

**THERE ARE IMPORTANT LEGAL CONSEQUENCES TO THIS LEGAL AFFIDAVIT.  
READ IT CAREFULLY BEFORE SIGNING.**

THE STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, an obligor on a note (the "Note") made in connection with a mortgage loan (the "Mortgage Loan") in the amount of \$ \_\_\_\_\_ from \_\_\_\_\_ the ("Participant") under the Housing Finance Authority of Broward County, Florida's Mortgage Credit Certificate Program, hereby certify that I am executing the Note solely for purposes of providing additional security for the Mortgage Loan.

I further certify that I have no other financial or ownership interest in the property subject to the Mortgage Loan and I have no intention to and will not occupy the property subject to the Mortgage Loan as a permanent residence.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

The statements set forth herein are made under penalty of perjury. I understand that perjury is a felony punishable by fine or imprisonment or both.

Cosigner/Guarantor

\_\_\_\_\_

Date

\_\_\_\_\_

THE STATE OF \_\_\_\_\_)  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me by means of \_\_\_ physical presence or \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature or person taking acknowledgment

\_\_\_\_\_  
Name typed, printed or stamped

\_\_\_\_\_  
Title or rank

\_\_\_\_\_  
Serial number, if any

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**  
**MORTGAGE CREDIT CERTIFICATE PROGRAM**  
**REISSUANCE OF MCC APPLICATION**  
(REQUEST FOR REISSUED MCC)

Borrower(s): \_\_\_\_\_

Residence Address: \_\_\_\_\_

MCC Commitment Number: \_\_\_\_\_

Principal Balance Owed on Original Loan: \$ \_\_\_\_\_

New Loan Amount: \$ \_\_\_\_\_

Original Loan Amount: \$ \_\_\_\_\_

Refinanced Loan Maturity: \_\_\_\_\_

Closing Date of Refinancing: \_\_\_\_\_

Participant: \_\_\_\_\_

Participant Loan Reference: \_\_\_\_\_

Attachments: Original Mortgage Credit Certificate (keep a copy for your files).

Copy of closing statement

MCC Reissuance Fee - \$50.00\*

The undersigned borrower (whether one or more), being the owner(s) of the above residence (the "Residence"), and the holder of a Mortgage Credit Certificate (the "MCC") issued in connection with the Housing Finance Authority of Broward County, Florida's \_\_\_\_\_ Mortgage Credit Certificate Program, does hereby depose and say, under penalty of perjury and the civil penalties outlined herein, that each of the following statements are, correct and complete in all respects:

1. **Property.** The refinanced loan pertains to the same property to which the original MCC related, which is the Residence described above.

2. **Replacement of Entire MCC.** The new MCC replaces the original MCC in its entirety. No portion of the original MCC is being retained with respect to any portion of the outstanding balance of the original loan amount specified on the original MCC.

3. **Loan Amount.** The refinanced loan amount does not exceed the outstanding balance of the original mortgage loan as of the date of the refinancing. (You may not refinance points, insurance premiums, taxes or other closing costs as part of your new loan amount unless permitted by federal law or regulation.)

4. **MCC Credit Rate.** The new MCC will be at the same credit rate as the original MCC.

\*Subject to periodic adjustment by the HFA, in its sole discretion.

5. **No Increase in Tax Credit Amounts.** The undersigned acknowledges that in the event the maturity of the refinanced loan is a date later than the maturity of the original loan, the new MCC will expire as of the original maturity date so that there shall be no increase in the tax credit amounts under the new MCC for any tax year over the amounts which would have been available under the original MCC.

6. **Date of Refinancing.** The date of the refinancing stated above is the true and correct date the refinancing documents were executed.

7. **Reaffirmation of the Original Obligations.** The undersigned further reaffirms all of the representations, obligations and agreements covered under the documents signed in connection with obtaining the original MCC and acknowledges that all such obligations and agreements shall continue in full force and effect in connection with the new MCC.

8. **Revocation of Mortgage Credit Certificate.** The undersigned understands that if any of the statements set forth herein are not true, correct and complete in all respects, or that if federal law or regulations disqualify further participation in the MCC Program, the MCC may be immediately revoked.

9. **Penalty.** The statements set forth herein are made under penalty of perjury and the following civil penalties. Any material misstatement in any affidavit or certification made in connection with application for or issuance of an MCC due to my negligence shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$1,000.00, and any such material misstatement due to my fraud shall result in a civil penalty fee payable to the United States Department of the Treasury or the Internal Revenue Service of \$10,000.00. I understand that perjury is a felony offense punishable by fine or imprisonment, or both.

Name(s) of Borrower(s):

Signature(s) of Borrower(s):

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

Signature(s) of Borrower:

\_\_\_\_\_  
\_\_\_\_\_

ATTACH THE ORIGINAL MCC CERTIFICATE AND A COPY OF YOUR CLOSING STATEMENT TO THIS FORM AND MAIL TO:

Housing Finance Authority of Broward County, Florida  
110 N.E. 3<sup>rd</sup> Street, Suite 300  
Ft. Lauderdale, FL 33301  
Attention: Susie Barzey



Name of Applicant: \_\_\_\_\_

Social Security No: \_\_\_\_\_

MCC Commitment No: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MORTGAGE CREDIT CERTIFICATE PROGRAM**

**AFFIDAVIT OF NON-OCCUPYING SPOUSE**

**THERE ARE IMPORTANT LEGAL CONSEQUENCES TO THIS LEGAL AFFIDAVIT.  
READ IT CAREFULLY BEFORE SIGNING.**

I, the undersigned, an obligor on a note (the "Note") made in connection with a mortgage loan (the "Mortgage Loan") in the amount of \$\_\_\_\_\_ from \_\_\_\_\_ ("Participant") under the Housing Finance Authority of Broward County, Florida's "Mortgage Credit Certificate Program, hereby certify that I have executed the Note solely for purposes of complying with the State of Florida law pertaining to a married couple.

I further certify that I have no other financial or ownership interest in the property being purchased, which is located at \_\_\_\_\_ (the "Property") and subject to the Mortgage Loan. I also certify that I reside at \_\_\_\_\_ and have no intention to and will not occupy the Property as a permanent residence.

The statements set forth herein are made under penalty of perjury. I understand that perjury is a felony punishable by fine or imprisonment or both.

Non-Occupying Spouse:

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Signature of person taking acknowledgment)

\_\_\_\_\_  
(Name typed, printed or stamped)

\_\_\_\_\_  
(Title or rank)

\_\_\_\_\_  
(Serial number, if any)

## **ATTACHMENT 2**

**PARTICIPATION AGREEMENT**  
**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**  
**2023 MORTGAGE CREDIT CERTIFICATE PROGRAM**

This Participation Agreement (the "Agreement") is made and entered into on the \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the Housing Finance Authority of Broward County, Florida (the "HFA") and \_\_\_\_\_ (the "Participant").

WHEREAS, the Tax Reform Act of 1984 authorized the issuance of Mortgage Credit Certificates ("MCCs") as a means of assisting qualified individuals with the acquisition of new and existing single family housing; and

WHEREAS, the HFA has duly authorized its 2023 Mortgage Credit Certificate Program (the "MCC Program") under which MCCs will be issued pursuant to the HFA's Master Program Administration Guidelines (the "Guidelines") and the Program Manual (the "Program Manual"); and

WHEREAS, the Participant wishes to participate in the MCC Program administered by its authorized representatives in connection with financing the Participant will make available for the acquisition of new and existing single family housing.

NOW, THEREFORE, in consideration of the promises set forth herein, the parties agree as follows:

1. The HFA appoints the Participant as one of its agents for receipt and processing of applications for MCCs under the MCC Program.
2. Participant shall make information available regarding the MCC Program to potential borrowers.
3. Participant shall (i) obtain from the borrower all documents and information required for an evaluation of eligibility and application for and receipt of an MCC including documents regarding (a) the first-time homebuyer requirement, (b) residence requirement, (c) income limitations, (d) purchase price limitations, (e) new mortgage requirement, (f) targeted area requirement, and (g) information reporting requirement, and (ii) provide the borrower with information regarding the recapture tax.
4. Participant shall conduct such reasonable investigation as is necessary to certify that the borrower has satisfied all requirements of the MCC Program, including those imposed by temporary and permanent regulations of the Internal Revenue Code of 1986, as amended (the "Code"), state law and the Program Manual.

5. Participant acknowledges and agrees that it is familiar with and will comply with (i) the requirements of the Code, all temporary and permanent regulations and state laws relating to the issuance of MCCs, (ii) the Program Manual, and (iii) the Guidelines.

6. Participant shall follow standard underwriting procedures in its processing of the loan application of each borrower and perform all investigation and verification that it would normally perform for underwriting financing not provided in connection with an MCC.

7. Participant warrants that all MCC Program information provided regarding the borrower's eligibility under the MCC Program (i) is provided in good faith, (ii) is accurate to the best of Participant's knowledge and (iii) is the result of standard due diligence on the part of the Participant.

8. Participant hereby agrees to comply with all data and record retention requirements which are required by the Code, all temporary and permanent regulations (including, but not limited to, Treasury Regulation Section 1.25-8T(a)(3)) and state law and regulations (including, but not limited to, Chapter 119, Florida Statutes) relating to the MCC Program.

9. Participant hereby agrees that the HFA and its authorized representatives during normal business hours have the authority to examine and inspect all books and records in the Participant's possession relating to the MCCs and the MCC Program.

10. Participant shall charge a borrower applying for an MCC only those reasonable fees in processing the financing as would be charged to borrowers applying for financing not provided in connection with an MCC. Upon the closing of each loan, Participant will also charge the applicable borrower a non-refundable MCC Program Fee (the "MCC Program Fee") which MCC Program Fee shall be subject to periodic adjustment by the HFA, in its sole discretion, without prior notice. The MCC Program Fee shall initially be \$300 (subject to periodic adjustment by the HFA, in its sole discretion, without prior notice), and shall consist of (i) an MCC Issuance Fee of \$175 (subject to periodic adjustment by the HFA, in its sole discretion, without prior notice) that shall be forwarded to the HFA, and (ii) an MCC Handling Fee of \$125 (subject to periodic adjustment by the HFA, in its sole discretion, without prior notice) to be retained by the Participant.

11. Participant hereby agrees that it will file annually (or such other period or frequency as may be required by Treasury regulations or any rules or law to which the HFA is subject) with the Internal Revenue Service for all MCCs issued in a calendar year the Lender's Information Return for Mortgage Credit Certificates (MCCs) (IRS Form 8329).

12. Participant hereby agrees that it will forward to the HFA or its authorized representatives all information which it receives during the life of the mortgage loan that in any way indicates that the borrower may have made a misrepresentation in applying for an MCC or that may affect the borrower's continued eligibility for an MCC.

13. Participant hereby agrees that it will provide written notification to the HFA, as soon as possible, if an affiliate of the Participant or other lending institution (“Affiliated Entity”) will provide the mortgage loan to the borrower and the Participant will provide any contact information for the Affiliated Entity.

14. Participant hereby represents and warrants as follows:

- (i) Organization Status. Participant is duly organized and is active as a corporation, limited partnership, limited liability company or other lawful entity, as applicable, under the laws of its state of organization or incorporation or creation, as applicable;
- (ii) Authority to Enter into this Agreement. The Participant has full power and authority to enter into this Agreement and consummate the transactions contemplated hereunder;
- (iii) Authorized Signatory. The individual executing this Agreement is an authorized signatory of the Participant, and he or she is duly authorized and qualified by the Participant to execute this Agreement, as evidenced by Exhibit A attached hereto.
- (iv) Validity of this Agreement. This Agreement has been duly entered into and delivered by the Participant, and to the best of Participant’s knowledge, constitutes the legal, valid and binding obligations of the Participant, enforceable against the Participant, in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency or other similar laws affecting the enforcement of creditors’ rights or by general principles of equity.
- (v) Pending Litigation. To the best of Participant’s knowledge, there are no proceedings pending or threatened before any court or administrative agency (a) contesting or affecting the existence of powers of the Participant, or (b) materially adversely affecting Participant’s ability to fulfill its duties and obligations under this Agreement.

15. Prior to or simultaneously with the execution of this Agreement, the Participant shall deliver the following documents to the HFA:

- (i) Incumbency certificates identifying the officer, director or member of the Participant authorized to execute this Agreement or a true and correct copy of a resolution of the Participant evidencing the granting of signatory authority to the person signing this Agreement; and

- (ii) Certified resolutions of the governing body of the Participant authorizing the execution and delivery of this Agreement.

16. This Agreement shall remain in full force and effect until terminated. Participant and the HFA may terminate this Agreement without cause, upon sixty (60) days written notice to the other party. Further, the HFA may immediately terminate this Agreement and prohibit the Participant from participation in the MCC Program upon (i) the Participant's failure to comply with the terms and conditions of this Agreement, and (ii) written notice from the HFA. No amendment to this Agreement shall be effective unless in writing and signed by both parties hereto.

17. By execution of this Agreement by the individual identified below, acting in his or her authorized capacity for the Participant, the Participant accepts the duties, conditions, terms and responsibilities of the Participant as set forth herein.

18. The HFA and the Participant each hereby designates the following individual as its contact person (the "Contact Person") at the following address for purposes of this Agreement:

HFA: Contact Person: Susie Barzey  
Housing Finance Authority of Broward County, Florida  
110 NE 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Email: [cbarzey@broward.org](mailto:cbarzey@broward.org)

and a copy to: Broward County Attorney's Office  
115 S. Andrews Avenue, Room 423  
Ft. Lauderdale, Florida 33301  
Attention: Annika Ashton  
Telephone: (954) 357-7600  
Email: [aashton@broward.org](mailto:aashton@broward.org)

Participant: Contact Person: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
License # \_\_\_\_\_  
Email: \_\_\_\_\_

All notices and information required to be given pursuant to this Agreement shall be given to the Contact Person at the above physical and email addresses. Any party to this Agreement may change its Contact Person or its notice information by giving the other party hereto written notice of such change in accordance with the foregoing provisions. Notwithstanding the foregoing, notice by email shall be ineffective as notice under this Agreement.

SIGNATURE PAGE TO  
PARTICIPATION AGREEMENT  
HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
2023 MORTGAGE CREDIT CERTIFICATE PROGRAM

IN WITNESS WHEREOF, the Authority and the Participant have caused this Participation Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

\_\_\_\_\_ HOUSING FINANCE AUTHORITY OF  
PARTICIPANT NAME (Print) BROWARD COUNTY, FLORIDA

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



**EXHIBIT A**

**CERTIFICATE OF INCUMBENCY**

## **ATTACHMENT 3**

RESOLUTION NO. 2022-\_\_\_

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 p.m. on October 19, 2022, at 110 Northeast Third Street, Suite 300, Fort Lauderdale, Florida.

Present: \_\_\_\_\_

\_\_\_\_\_

Absent: \_\_\_\_\_

Thereupon, the following resolution which was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA ("HFA") AUTHORIZING A MORTGAGE CREDIT CERTIFICATE PROGRAM; AUTHORIZING THE EXCHANGE OF A NOT TO EXCEED AMOUNT OF \$15,000,000 OF SINGLE FAMILY PRIVATE ACTIVITY BOND ALLOCATION FOR NOT TO EXCEED \$3,750,000 OF MORTGAGE CREDIT CERTIFICATE AUTHORITY; APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF THE MASTER PROGRAM ADMINISTRATION GUIDELINES; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF PARTICIPATION AGREEMENTS BETWEEN THE HFA AND LENDING INSTITUTIONS DESIRING TO PARTICIPATE IN THE MCC PROGRAM; AUTHORIZING CERTAIN OFFICIALS OF THE HFA TO TAKE ALL ACTIONS NECESSARY IN CONNECTION WITH THE IMPLEMENTATION OF THE MCC PROGRAM; PROVIDING CERTAIN OTHER FINDINGS AND DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida (the "State") has enacted the Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic to be known as a housing finance authority of the county for the purpose of alleviating a shortage of housing and capital for investment in housing in the area of operation of such housing finance authority; and

**WHEREAS**, pursuant to the Act, the Board of County Commissioners (the "Board of County Commissioners") of Broward County, Florida enacted Ordinance No. 79-41, as supplemented and amended (the "Ordinance") declaring a need for a housing authority to function in Broward County, Florida (the "County") and creating the Housing Finance Authority of Broward County, Florida (the "HFA"); and

**WHEREAS**, the HFA is authorized by the Act to borrow money through the issuance of bonds to assist in the financing of single family housing, or, in lieu of issuing qualified mortgage bonds, to issue mortgage credit certificates to qualifying individuals; and

**WHEREAS**, the HFA has received private activity bond allocation for the issuance of single-family mortgage revenue bonds; and

**WHEREAS**, pursuant to Section 25 of the Internal Revenue Code of 1986, as amended (the "Code"), the HFA may make an election to issue mortgage credit certificates in lieu of the issuance of single-family mortgage revenue bonds; and

**WHEREAS**, in furtherance of the purposes of the Act, the HFA desires to implement a mortgage credit certificate program (the "MCC Program") to assist persons of low and moderate income in Broward County, Florida to afford the cost of acquiring and owning decent, safe, and sanitary housing within the County; and

**WHEREAS**, in connection with the MCC Program, over a three year period, the HFA plans to exchange not to exceed \$50,000,000 of single-family private activity bond allocation for the authority to issue mortgage credit certificates with a maximum aggregate total proceeds amount of \$12,500,000; and

**WHEREAS**, in connection with the MCC Program to be established in 2023, the HFA desires to elect pursuant to Section 25 of the Code and Section 159.8075, Florida Statutes, to exchange not to exceed \$15,000,000 of single-family private activity bond allocation for the authority to issue its Mortgage Credit Certificates, Series 2023 (the "MCCs") with maximum total proceeds amount of \$3,750,000; and

**WHEREAS**, to implement and administer the MCC Program, the HFA desires to approve the form of and authorize the execution and delivery of the Master Program Administration Guidelines (the "Program Administration Guidelines"), substantially in the form attached hereto as Exhibit "A"; and

**WHEREAS**, the HFA desires to approve the form of and authorize the execution and delivery of Participation Agreements (the "Participation Agreements") substantially in the form attached hereto as Exhibit "B," to be entered into between the HFA and lending institutions or other parties facilitating the origination of mortgages and desiring to participate in the MCC Program.

**NOW, THEREFORE, BE IT RESOLVED** by the Housing Finance Authority of Broward County, Florida, as follows:

**SECTION 1. Authority.** This Resolution is adopted pursuant to the provisions of the Act, the Ordinance and other applicable provisions of law.

**SECTION 2. Findings.** The HFA has found and determined and does hereby declare

that:

A. Based upon existing and anticipated market and economic conditions and the knowledge of the members of the HFA of the housing industry and conditions in the County, it is in the best interests of the HFA and the residents of the County and serves a valid public purpose for the HFA to implement the MCC Program and issue MCCs pursuant thereto.

B. The implementation of the MCC Program and the issuance of MCCs pursuant thereto are necessary and in the best interests of the HFA and the residents of the County and will assist in alleviating a shortage of housing at prices which persons or families of moderate, middle, and low income can afford and the shortage of capital available for investment therein.

C. On August 17, 2022, the HFA authorized the publication of the notice of intent of the HFA to establish a mortgage credit certificate program and the notice is scheduled to be published in *The Sun Sentinel*, a newspaper of general circulation in the County, on September 21, 2022 and September 28, 2022, pursuant to Section 25(e)(5) of the Code.

**SECTION 3. Authorization and Establishment of the MCC Program; Authorization to file Election not to issue Qualified Mortgage Revenue Bonds.**

A. The HFA hereby authorizes and establishes the MCC Program, providing for the issuance of MCCs with an aggregate amount of proceeds of not to exceed \$3,750,000. The MCC Program shall have such terms as are specified in the Program Administration Guidelines attached hereto as Exhibit "A". The Mortgage Credit Certificate Rate for the MCC Program shall be determined by HFA (in its capacity as the Administrator of the MCC Program) on a case by case basis provided that such credit shall not be less than ten percent (10%) and not greater than

fifty percent (50%).

B. In order to implement the MCC Program, the HFA hereby determines to elect not to issue an amount not to exceed \$15,000,000 of qualified mortgage bonds for which it has previously received a private activity bond volume cap allocation and to thereby convert not to exceed \$15,000,000 of single-family private activity bond allocation to mortgage credit certificate authorization. The Chair or Vice Chair of the HFA is hereby authorized and directed to make all filings, declarations and notices as may be necessary or appropriate to make or implement such election on behalf of the HFA.

C. The HFA hereby authorizes MCC Program expenditures in the amount of not to exceed \$35,000 for 2023.

**SECTION 4. Designation of Administrator; Approval of Program Administration Guidelines and Form of Certificate.**

A. The HFA hereby designates and appoints the Executive Director of the HFA and his staff to act as the Administrator for the MCC Program pursuant to the Program Administration Guidelines. The Executive Director may, upon approval of the HFA, designate one or more individuals or firms to assist in administering the MCC Program as deemed necessary. Any contract to be entered into with any such individual or firm shall be approved by both the HFA and the Board of County Commissioners.

B. The form of the Program Administration Guidelines attached hereto as Exhibit "A", and the form of the MCCs attached thereto as Appendix C, are hereby authorized and approved. The Chair or Vice Chair and the Secretary or any Assistant Secretary of the HFA are

hereby authorized to approve the final form of Program Administration Guidelines on behalf of the HFA with such changes, modifications, insertions and deletions from the form thereof attached hereto as shall be approved by the officers of the HFA executing the approval page of the Program Administration Guidelines, with the advice of Bond Counsel and the County Attorney, and as shall not be inconsistent with the express terms of this Resolution, such execution to be conclusive evidence of such approval.

**SECTION 5. Authorization and Approval of Participation Agreements.** The form of the Participation Agreement attached hereto as Exhibit "B" is hereby authorized and approved. The Chair, Vice Chair or Executive Director and Secretary or Assistant Secretary of the HFA are hereby authorized to execute and deliver Participation Agreements between the HFA and lending institutions or other parties facilitating the origination of mortgages who desire to participate in the MCC Program, with such changes, modifications, insertions and deletions from the form attached hereto as shall be approved by the authorized agent of the HFA executing the Participation Agreement, with the advice of Bond Counsel and the County Attorney, and as shall not be inconsistent with the express terms of this Resolution, such execution and delivery to be conclusive evidence of such approval.

**SECTION 6. Authorizations.** The Chair, Vice Chair, Secretary, each Assistant Secretary, County Attorney, and such other officers, agents and employees of the HFA as may be designated by the Chair are each designated as agents of the HFA in connection with the implementation of the MCC Program as authorized and contemplated hereby and are authorized and empowered, collectively or individually, to take all actions and steps to execute



and deliver the Program Administration Guidelines, the Participation Agreements and all other instruments, certificates, notices, elections, documents, and contracts and to take all actions on behalf of the HFA, in each case as they may deem necessary or desirable in connection with the establishment and implementation of the MCC Program.

**SECTION 7. Resolution Effective.** This Resolution shall take effect immediately upon its passage.

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_

the foregoing Resolution was adopted by the following vote:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

Approved on October \_\_, 2022 as to form and legal sufficiency by:

Bryant Miller Olive P.A., Bond Counsel

STATE OF FLORIDA            )  
  )ss:  
COUNTY OF BROWARD        )

I, Scott Ehrlich, Secretary of the Housing Finance Authority of Broward County, Florida, DO HEREBY CERTIFY that the foregoing is an accurate copy of the Resolution of the Housing Finance Authority adopted at a meeting held on October 19, 2022, as set forth in the official minutes of the Housing Finance Authority, relating to the Mortgage Credit Certificate Program, and the execution of documents related thereto.

I DO HEREBY FURTHER CERTIFY that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

WITNESS my hand and the corporate seal of said Housing Finance Authority, this \_\_\_\_\_ day of October, 2022.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

(SEAL)

EXHIBIT "A"

FORM OF MASTER PROGRAM ADMINISTRATION GUIDELINES

EXHIBIT "B"

FORM OF PARTICIPATION AGREEMENTS

**Housing Finance HFA of Broward County**  
**October 19, 2022 – Board Meeting**

**Multifamily Bonds/Notes - Action Item**

*MOTION TO APPROVE a Resolution providing authorization and/or approval: a) to issue the HFA's Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens - Senior Health and Living) (the "Note") in an aggregate amount not to exceed \$77,000,000, b) of the parameters for the award of the sale and the terms of the Note, c) of the form, execution and delivery of the documents included as Exhibits A-G hereto, d) to execute certain additional agreements, instruments, certifications, and affidavits in connection with the issuance of the Note, e) to allow the Borrower to place subordinate financing on the Development (as defined within the HFA Resolution) and to execute such agreements as may be necessary for such subordinate financing, f) to waive the annual audit fee, g) to take other actions required to issue and deliver the Note, and h) for the establishment of an effective date; all the foregoing for the purpose of financing the acquisition, construction, and equipping of a multifamily residential rental development in Broward County, Florida.*

**Background**

1. On July 14, 2022, the HFA received a multifamily bond/note application from Douglas Gardens IV, Ltd. (identified as the "Owner") pertaining to the construction and equipping of a 410-unit development, known as Douglas Gardens – Senior Health and Living (the "Development"). The Development is located at 705 SW 88<sup>th</sup> Avenue, Pembroke Pines. The application requested that the HFA issue the Note in an amount of \$77,000,000 to finance the construction and equipping of the Development. The developer was identified as MHP Douglas Developer, LLC – 60% and Douglas Gardens IV Developer, LLC – 40%. (the "Developer").
2. At its August 17, 2022, meeting, the HFA adopted an Inducement Resolution (which also authorized HFA staff to hold a TEFRA hearing) for the Development in the amount not to exceed \$77,000,000.
3. The TEFRA hearing was held on October 17, 2022. The Mayor and City Manager of Pembroke Pines were provided notice regarding the potential construction of the Development prior to the HFA holding a TEFRA hearing.
4. The HFA has tax-exempt carry forward allocation available to fully fund this transaction and all pending transactions.

**Present Situation**

1. As the multifamily bond/note audit is no longer required per County Ordinance, the Developer requested a waiver of the HFA's Audit Fees. This waiver only pertains to the audit of funds held with the Fiscal Agent. The Developer's request is addressed within the HFA Resolution.
2. The closing for the financing of this Development is presently scheduled for December 2022.

## **Recommendation**

Motion to Approve:

Resolution including authorization and/or approval:

- a. to issue the HFA's Multifamily Housing Revenue Note, Series 2022 (the "Note") in an aggregate amount not to exceed \$77,000,000,
- b. of the parameters for the award of the sale and the terms of the Note,
- c. of the form, execution and delivery of the documents included as Exhibits A-G hereto,
- d. to execute certain additional agreements, instruments, certifications, and affidavits in connection with the issuance of the Note,
- e. to allow the Borrower to place subordinate financing on the Development (as defined within the HFA Resolution) and to execute such agreements as may be necessary for such subordinate financing,
- f. to waive the annual audit fee,
- g. to take other actions required to issue and deliver the Note, and
- h. for the establishment of an effective date; all the foregoing for the purpose of financing the acquisition, construction, and equipping of a multifamily residential rental development in Broward County, Florida.

## **EXHIBITS**

1. HFA Resolution including form of:

***(A copy of the Exhibits will be available at the meeting)***

- A. Funding Loan Agreement
- B. Borrower Loan Agreement
- C. Land Use Restriction Agreement
- D. Assignment of Mortgage and Loan Documents
- E. Placement Agent Agreement
- F. Fiscal Agent Fee Agreement
- G. Term Sheet

# **ATTACHMENT 1**

**RESOLUTION NO. 2022 - \_\_\_\_\_**

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 p.m. on October 19, 2022, at the offices of the Housing Finance Authority of Broward County, Florida, 110 Northeast Third Street, Suite 201, in the City of Fort Lauderdale, Florida.

Present: \_\_\_\_\_

Absent: \_\_\_\_\_

\* \* \* \* \*

Thereupon, the following resolution was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE “HOUSING FINANCE AUTHORITY”) AUTHORIZING THE ISSUANCE OF ITS NOT TO EXCEED \$77,000,000 MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2022 (DOUGLAS GARDENS – SENIOR HEALTH AND LIVING) (THE “NOTE”) FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF DOUGLAS GARDENS – SENIOR HEALTH AND LIVING LOCATED IN BROWARD COUNTY, FLORIDA (THE “PROJECT”); ESTABLISHING PARAMETERS FOR THE AWARD OF THE SALE THEREOF AND ESTABLISHING CRITERIA FOR DETERMINING THE TERMS THEREOF, INCLUDING INTEREST RATES, INTEREST PAYMENT DATES, MATURITY SCHEDULE AND OTHER TERMS OF SUCH NOTE; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF (I) A FUNDING LOAN AGREEMENT BY AND AMONG THE HOUSING FINANCE AUTHORITY, CITIBANK, N.A., AS FUNDING LENDER (THE “FUNDING LENDER”), AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS FISCAL AGENT (THE “FISCAL AGENT”); (II) A BORROWER LOAN AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND DOUGLAS GARDENS IV, LTD. (THE “BORROWER”); (III) A LAND USE RESTRICTION AGREEMENT BY AND AMONG THE HOUSING FINANCE AUTHORITY, THE FISCAL AGENT AND THE BORROWER; (IV) AN ASSIGNMENT OF MORTGAGE AND LOAN DOCUMENTS BY THE HOUSING FINANCE AUTHORITY TO THE FISCAL AGENT; (V) A PLACEMENT AGENT AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND RAYMOND JAMES & ASSOCIATES, INC.**



**AND RBC CAPITAL MARKETS, LLC, AS PLACEMENT AGENTS; AND (VI) A FISCAL AGENT FEE AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND THE FISCAL AGENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN ADDITIONAL AGREEMENTS NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF THE NOTE; AUTHORIZING THE HOUSING FINANCE AUTHORITY TO CONSENT TO THE BORROWER PLACING SUBORDINATE FINANCING ON THE PROJECT AND APPROVING THE EXECUTION OF SUCH AGREEMENTS AS MAY BE NECESSARY IN CONNECTION WITH SUCH CONSENT; WAIVING THE FEE FOR SERVICES RELATED TO THE HOUSING FINANCE AUTHORITY'S ANNUAL AUDIT OF THE PROJECT; AUTHORIZING THE PROPER OFFICERS OF THE HOUSING FINANCE AUTHORITY TO DO ALL THINGS NECESSARY OR ADVISABLE IN CONNECTION WITH THE ISSUANCE OF THE NOTE; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.**

**WHEREAS**, the Housing Finance Authority of Broward County, Florida (the "Housing Finance Authority") is empowered under (i) the laws of the State of Florida, including the Florida Housing Finance Authority Law, Florida Statutes, Sections 159.601 through 159.623, as amended (the "Act"), and (ii) Ordinance 79-41 enacted by the Board of County Commissioners (the "Board") of Broward County, Florida (the "County") on June 20, 1979 (the "Ordinance"), as amended, to issue multifamily housing revenue bonds; and

**WHEREAS**, the Housing Finance Authority is authorized under the Act to issue its revenue bonds for the purpose of paying the cost of a "qualifying housing development" within the meaning of the Act which includes the acquisition and construction of multifamily housing developments; and

**WHEREAS**, the Housing Finance Authority desires to issue a multifamily housing revenue note in an amount not to exceed \$77,000,000 (the "Note") for the purpose of financing the acquisition, construction and equipping of a 410-unit multifamily residential rental housing development in Pembroke Pines, Broward County, Florida, known as Douglas Gardens – Senior Health and Living (the "Project"); and

**WHEREAS**, Douglas Gardens IV, Ltd., a Florida limited partnership (the “Borrower”), has requested the Housing Finance Authority to issue its Note to Citibank, N.A., a national banking association, as funding lender (the “Funding Lender”), which will evidence a loan to the Housing Finance Authority (the “Funding Loan”), and which Funding Loan proceeds will be used by the Housing Finance Authority to make a loan to the Borrower (the “Borrower Loan”) to finance the acquisition, construction and equipping of the Project; and

**WHEREAS**, the Housing Finance Authority desires to enter into a Funding Loan Agreement by and among the Housing Finance Authority, the Funding Lender and The Bank of New York Mellon Trust Company, N.A., a national banking association, as fiscal agent (the “Fiscal Agent”) (the “Funding Loan Agreement”), in substantially the form attached hereto as Exhibit “A”, for the purpose of setting forth the terms, conditions and covenants (i) upon which the Funding Lender will make the Funding Loan to or on the account of the Housing Finance Authority, which proceeds shall be used in order for the Housing Finance Authority to make the Borrower Loan to Borrower to finance the acquisition, construction and equipping of the Project, and (ii) that are necessary to secure the Note and protect the rights of the holder of the Note; and

**WHEREAS**, the Housing Finance Authority desires to enter into a Borrower Loan Agreement, between the Housing Finance Authority and the Borrower (the “Borrower Loan Agreement”), in substantially the form attached hereto as Exhibit “B”, to evidence the terms and conditions of the Borrower Loan; and

**WHEREAS**, the Housing Finance Authority desires to enter into a Land Use Restriction Agreement among the Housing Finance Authority, the Borrower and the Fiscal Agent (the “Land Use Restriction Agreement”), in substantially the form attached hereto as Exhibit “C”, to evidence the terms and conditions upon which the Borrower shall maintain and operate the Project; and

**WHEREAS**, the Housing Finance Authority desires to enter into an Assignment of Mortgage and Loan Documents made by the Housing Finance Authority to and in favor of the Fiscal Agent for the benefit of the Funding Lender (the “Assignment of Loan Documents”), in substantially the form attached hereto as Exhibit “D”, pursuant to which the Housing Finance Authority will assign to the Fiscal Agent, for the benefit of the Funding Lender, its rights in the mortgage securing the Project and various other loan documents securing and evidencing the Borrower Loan, including the promissory note to be executed by the Borrower (the “Multifamily Note”) (which assignment to the Fiscal Agent for the benefit of the Funding Lender may be evidenced by a separate assignment or endorsement); and

**WHEREAS**, the Housing Finance Authority desires to enter into a Placement Agent Agreement between the Housing Finance Authority and Raymond James & Associates, Inc. and RBC Capital Markets, LLC, as placement agents (collectively, the “Placement Agents”) (the “Placement Agent Agreement”), in substantially the form attached hereto as Exhibit “E”, to evidence the Placement Agents’ responsibilities and obligations to the Housing Finance Authority in connection with the issuance of the Note; and

**WHEREAS**, the Housing Finance Authority desires to enter into a Fiscal Agent Fee Agreement by and between the Housing Finance Authority and the Fiscal Agent (the “Fiscal Agent Fee Agreement”), in substantially the form attached hereto as Exhibit “F”, to evidence the Fiscal Agent’s obligations and responsibilities in connection with the issuance of the Note and the fees payable to Fiscal Agent for its performance thereunder; and

**WHEREAS**, within the County there is a shortage of housing available at prices or rentals which many persons and families can afford and a shortage of capital for investment in such housing. This shortage constitutes a threat to the health, safety, morals and welfare of the residents of the County, deprives the County of an adequate tax base, and causes the County to make excessive

expenditures for crime prevention and control, public health, welfare and safety, fire and accident protection, and other public services and facilities; and

**WHEREAS**, the shortage of capital and housing cannot be relieved except through the encouragement of investment by private enterprise and the stimulation of construction of housing through the use of public financing; and

**WHEREAS**, the Project and the financing thereof will assist in alleviating the shortage of housing in the County and of capital for investment therein, will serve the purposes of the Act and the Project will constitute a “qualified housing development” under the Act; and

**WHEREAS**, the Housing Finance Authority desires to authorize the execution and delivery of any other documents, instruments, certificates and affidavits to be executed in connection with the issuance of the Note; and

**WHEREAS**, the Housing Finance Authority is not obligated to pay the Note except from the proceeds derived from the repayment of the Borrower Loan and other payments received from the Borrower or from other security pledged therefor pursuant to the Funding Loan Agreement. Neither the faith and credit nor the taxing power of the Housing Finance Authority, the County or the State of Florida (the “State”) or any other political subdivision thereof is pledged to the payment of the principal of or the interest on the Note; and

**WHEREAS**, due to the complexity of the financing, the turmoil in the capital markets and the need to coordinate matters among the Housing Finance Authority, the Borrower and the Funding Lender, or its affiliates, it is in the Housing Finance Authority’s best interest, and the Housing Finance Authority intends, to negotiate the sale of the Note. Prior to the sale of the Note, the Funding Lender shall provide to the Housing Finance Authority and/or the Fiscal Agent, as applicable, (i) the disclosure required pursuant to Section 218.385, Florida Statutes, as amended, and (ii) an executed investor letter in the form required by and attached to the Funding Loan Agreement; and

**WHEREAS**, a notice of public hearing inviting written and oral comments and discussions concerning the issuance of the Note was published in the *Sun Sentinel*, a newspaper of general circulation, on October 6, 2022, at least 7 days prior to the date of such hearing, all as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”); and

**WHEREAS**, on October 17, 2022, a public hearing concerning the issuance of the Note in an aggregate principal amount not to exceed \$77,000,000 to finance the Project was held by the Housing Finance Authority as required by Section 147(f) of the Code; and

**WHEREAS**, the Housing Finance Authority received from the State of Florida Division of Bond Finance an allocation of (i) 2019 private activity bond volume cap in the amount of \$97,397,445 (the “2019 Volume Cap”), and (ii) 2020 private activity bond volume cap in the amount of \$97,647,789.10 (the “2020 Volume Cap”), each of which has been carried forward pursuant to Section 145(f) of the Code and designated for the issuance of bonds or notes for qualified residential rental projects; and

**WHEREAS**, \$94,826,719 of the 2019 Volume Cap remains available to finance the acquisition, construction and equipping of the Project; and

**WHEREAS**, the Housing Finance Authority plans to use up to \$77,000,000 of such remaining 2019 Volume Cap to finance the acquisition, construction and equipping of the Project, but will use 2020 Volume Cap in the event 2019 Volume Cap is no longer available; and

**WHEREAS**, the Ordinance requires that all contracts of the Housing Finance Authority in connection with the issuance of the Note be approved by the Board.

**NOW THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA:**

Section 1. Adoption of Representations. The foregoing WHEREAS paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of the Note. The Housing Finance Authority hereby authorizes, under the authority of the Act and the Ordinance, and subject to the terms as hereinafter set forth, the issuance of the Note to be designated “Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living)” in an aggregate principal amount not to exceed \$77,000,000.

Section 3. Details of the Note. The Note shall be issued under and secured by the Funding Loan Agreement, by which reference is hereby incorporated into this Resolution as if set forth in full herein. The proceeds of the Note, together with any commitment fees, shall be applied as provided in the Funding Loan Agreement, and the Note shall mature in the years and in the amounts, bear interest at such rates, be subject to redemption and shall have such other characteristics as shall be provided in the Funding Loan Agreement.

Section 4. The Note is a Special Obligation of the Housing Finance Authority. The Note is a special obligation of the Housing Finance Authority which is payable solely from moneys derived under the Funding Loan Agreement and the Borrower Loan Agreement. The Note, together with the interest thereon, is a limited obligation of the Housing Finance Authority and neither the Housing Finance Authority, the County, the State, nor any political subdivision thereof, shall be obligated to pay the Note or the interest thereon or other costs or payments incident thereto, except from the aforementioned revenues and receipts and neither the faith and credit nor the taxing power of the County or the State or any political subdivision thereof is pledged to the payment of the Note or the interest thereon or other costs or payments incident thereto. The Housing Finance Authority has no taxing power. The Note and obligations arising thereunder do not create or reflect liability of

the Housing Finance Authority or any member, official or employee thereof, except as otherwise described in this Section 4 with respect to the Housing Finance Authority.

Section 5.       Execution of Note. The Chair or Vice Chair and Secretary or Assistant Secretary of the Housing Finance Authority are hereby authorized and directed to execute by manual or facsimile signature, and place the seal of the Housing Finance Authority, in manual or facsimile form, on the Note. The Note shall be in substantially the form set forth in the Funding Loan Agreement, with such changes, modifications and deletions as the officers executing the Note, with the advice of Nabors, Giblin & Nickerson, P.A. (“Note Counsel”) and the County Attorney’s Office of Broward County (the “County Attorney”), may deem necessary and appropriate and as are not inconsistent with the Funding Loan Agreement and this Resolution. The execution and delivery of the Note by the aforementioned persons shall be conclusive evidence of the Housing Finance Authority’s approval and authorization thereof.

Section 6.       Authentication and Delivery of Note. Upon the execution of the Note, the Housing Finance Authority shall deliver the Note to the Fiscal Agent for authentication, and the Fiscal Agent is hereby authorized and directed to authenticate and deliver said Note to the Funding Lender, subject to the terms for delivery set forth in the Funding Loan Agreement.

Section 7.       Approval of Funding Loan Agreement. The form and content of the Funding Loan Agreement, attached hereto as Exhibit “A”, is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Funding Loan Agreement and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority’s seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such

execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Housing Finance Authority.

Section 8. Approval of Borrower Loan Agreement. The form and content of the Borrower Loan Agreement, attached hereto as Exhibit "B", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Borrower Loan Agreement and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Housing Finance Authority.

Section 9. Approval of the Land Use Restriction Agreement. The form and content of the Land Use Restriction Agreement, attached hereto as Exhibit "C", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Land Use Restriction Agreement and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Housing Finance Authority.

Section 10. Approval of Assignment of Loan Documents. The form and content of the Assignment of Loan Documents, attached hereto as Exhibit "D", and any separate assignment or endorsement of the Multifamily Note that may be required, is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby



authorized to execute and deliver the Assignment of Loan Documents, and any required separate assignment or endorsement of the Multifamily Note, and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Housing Finance Authority.

Section 11. Approval of Placement Agent Agreement. The form and content of the Placement Agent Agreement, attached hereto as Exhibit "E", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Placement Agent Agreement and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications and deletions as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Housing Finance Authority.

Section 12. Appointment of Fiscal Agent. The Bank of New York Mellon Trust Company, N.A., having its designated corporate trust office in Jacksonville, Florida, is hereby appointed Fiscal Agent under the Funding Loan Agreement, and the Housing Finance Authority approves the form and content of the Fiscal Agent Fee Agreement attached hereto as Exhibit "F". The Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Fiscal Agent Fee Agreement, and the Secretary or Assistant Secretary is authorized to place the Housing Finance Authority's seal thereon and attest thereto, in substantially the form presented at this meeting, with such changes, modifications, deletions and insertions as the Chair or Vice Chair, with

the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Housing Finance Authority.

Section 13. Subordinate Financing. The Housing Finance Authority hereby acknowledges that the Borrower intends to secure subordinate financing for the Project in the form of a loan from (i) Broward County of funds from the Broward County Affordable Housing Trust Fund in the approximate principal amount of \$14,000,000 (the “County Loan”), and (ii) Florida Pathways, Inc., a Florida not-for-profit corporation, or its affiliates, in the principal amount not to exceed \$18,500,000 (the “Land Loan” and, together with the County Loan, the “Subordinate Financing”). Given the need for additional affordable rental units in the County, the high development costs associated with the Project and the favorable financing terms of the Subordinate Financing, the Housing Finance Authority hereby determines that it is in the public interest to consent to such Subordinate Financing in this instance. Accordingly, the Housing Finance Authority (i) authorizes the Chair or Vice Chair of the Housing Finance Authority to consent to such Subordinate Financing and to execute and deliver any agreements that may be necessary in connection with such consent, with the advice of and in such form as Note Counsel and the County Attorney may deem necessary and appropriate, and (ii) directs the Fiscal Agent to, as necessary, consent to such Subordinate Financing and to execute and deliver any agreements that may be necessary in connection with such consent, with the advice of and in such form as Note Counsel and the County Attorney may deem necessary and appropriate.

Section 14. Waiver of Audit Fee. The Ordinance no longer requires an audit of multifamily developments. Accordingly, the Borrower has requested a waiver of the fee required to be paid by the Borrower for the services of the Housing Finance Authority’s auditor to audit the Project and the Note annually. The Housing Finance Authority waives such audit fee in connection with the Project.

Section 15. Sale of Note. It is hereby found and determined that due to the characteristics of the financing and the prevailing and anticipated market conditions, it is in the best interest of the Housing Finance Authority to negotiate the sale of the Note. The negotiated sale of the Note to the Funding Lender, or its affiliates, at a price of par pursuant to the Term Sheet attached hereto as Exhibit “G”, is hereby approved. The Chair or Vice Chair and the Secretary or Assistant Secretary are authorized to make any and all changes to the form of the Note which shall be necessary to conform the same to the Term Sheet. The Chair or Vice Chair and the Secretary or Assistant Secretary are also authorized to permit modifications to the Term Sheet as they, with the advice of Note Counsel and the County Attorney, may deem necessary and appropriate. The purchase of such Note shall constitute a "loan to a lending institution" within the meaning of Section 159.608(5), Florida Statutes. Additionally, the Note shall constitute “Bonds” for purposes of, and as defined under, the Act.

Section 16. Certificated Note. It is in the best interest of the Housing Finance Authority and the Borrower that the Note be issued utilizing a certificated form and not utilizing a book-entry system of registration.

Section 17. Further Actions and Ratification of Prior Actions. The officers, agents and employees of the Housing Finance Authority and the officers, agents and employees of the Fiscal Agent are hereby authorized and directed to do all acts and things required of them by the provisions of the Note, the Funding Loan Agreement, the Borrower Loan Agreement, the Land Use Restriction Agreement, the Assignment of Loan Documents, the Placement Agent Agreement, the Fiscal Agent Fee Agreement (collectively, the “Funding Loan Documents”) and this Resolution and to execute and deliver any and all additional documents necessary or advisable to effectuate the foregoing. All actions heretofore undertaken by the officers, agents and employees of the Housing Finance Authority with respect to (i) the provisions of the Note and the Funding Loan Documents, and (ii) the issuance of the Note are hereby ratified and approved.

Section 18. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Funding Loan Agreement and the Borrower Loan Agreement.

Section 19. Resolution Effective. This Resolution shall take effect immediately upon its adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing

Resolution was adopted by the following votes:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

Approved on October 11, 2022 as to form and legal  
sufficiency by:

Nabors, Giblin & Nickerson, P.A., Bond Counsel

STATE OF FLORIDA            )  
  )ss:  
COUNTY OF BROWARD        )

I, SCOTT EHRLICH, Secretary of the Housing Finance Authority of Broward County, Florida, DO HEREBY CERTIFY that the foregoing is an accurate copy of the Resolution of the Housing Finance Authority adopted at a meeting held on October 19, 2022, as set forth in the official minutes of the Housing Finance Authority, related to approval of certain actions to be taken in connection with the proposed issuance of that certain Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living) of the Housing Finance Authority.

I DO HEREBY FURTHER CERTIFY that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

WITNESS my hand and the corporate seal of said Housing Finance Authority, this 19th day of October, 2022.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
SCOTT EHRLICH, Secretary

(SEAL)

**EXHIBIT "A"**  
**FORM OF**  
**FUNDING LOAN AGREEMENT**  
**[ATTACHED]**

**EXHIBIT “B”**  
**FORM OF**  
**BORROWER LOAN AGREEMENT**  
**[ATTACHED]**



**EXHIBIT “C”**  
**FORM OF**  
**LAND USE RESTRICTION AGREEMENT**  
**[ATTACHED]**

**EXHIBIT “D”**  
**FORM OF**  
**ASSIGNMENT OF LOAN DOCUMENTS**  
**[ATTACHED]**

**EXHIBIT “E”**  
**FORM OF**  
**PLACEMENT AGENT AGREEMENT**  
**[ATTACHED]**

**EXHIBIT “F”**  
**FORM OF**  
**FISCAL AGENT FEE AGREEMENT**  
**[ATTACHED]**

**EXHIBIT “G”**

**TERM SHEET**

**[ATTACHED]**

## **ATTACHMENT 2**

**EXHIBIT "A"**  
**FORM OF**  
**FUNDING LOAN AGREEMENT**  
**[ATTACHED]**

**FUNDING LOAN AGREEMENT**

Among

**CITIBANK, N.A.,**  
as Funding Lender

and

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**  
as Governmental Lender

and

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**  
as Fiscal Agent

Dated as of December 1, 2022

**Relating to:**

**[\$77,000,000]**

**Housing Finance Authority of Broward County, Florida**  
**Multifamily Housing Revenue Note, Series 2022**  
**(Douglas Gardens – Senior Health and Living)**



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## FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of December 1, 2022 (this “Funding Loan Agreement”), is entered into by CITIBANK, N.A. (together with any successor hereunder, the “Funding Lender”), the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic duly organized and existing under the laws of the State of Florida (together with its successors and assigns, the “Governmental Lender”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as fiscal agent (together with any successor fiscal agent hereunder, the “Fiscal Agent”).

### RECITALS

WHEREAS, pursuant to Ordinance 79-41, enacted by the Board of County Commissioners of Broward County, Florida (the “County”) on June 20, 1979, as amended and a resolution adopted by the County on December [6], 2022, and Resolution No. 2022-\_\_ adopted by the Governmental Lender on October 19, 2022, and in accordance with Florida Housing Finance law, Sections 159.601 through 159.623, Florida Statutes, as amended (the “Act”), the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, construction and equipping of multifamily rental housing facilities for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender; (b) to issue its revenue bonds, notes or other evidence of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, Douglas Gardens IV, Ltd., a Florida limited partnership (together with its successors and assigns, the “Borrower”), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender will (i) advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower to finance a portion of the costs of the acquisition and construction of a 410-unit multifamily residential housing facility located in Pembroke Pines, Florida, to be commonly known as Douglas Gardens – Senior Health and Living (the “Project”); and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement dated as of December 1, 2022 (as it may be supplemented or amended, the “Borrower Loan Agreement”), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount

which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Note (as defined in the Borrower Loan Agreement) and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Borrower's leasehold interest in Land upon which the Project is located pursuant to a Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "Security Instrument"), encumbering the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations under this Funding Loan Agreement; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note (Douglas Gardens – Senior Health and Living), Series 2022 (the "Governmental Lender Note"), dated the Closing Date, with respect to funds advanced and to be advanced under the Funding Loan Agreement, evidencing its limited obligation to make the payments due to the Funding Lender as provided in this Funding Loan Agreement; and

WHEREAS, all things necessary to make this Funding Loan Agreement, the valid, binding and legal limited obligations of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS FUNDING LOAN AGREEMENT WITNESSETH:

It is hereby covenanted and declared that in consideration of the premises and the mutual representations, covenants and agreements herein contained, (i) the Governmental Lender Note is to be delivered to evidence the payment obligations of the Governmental Lender pursuant to this Funding Loan Agreement and (ii) the collateral subject to this Funding Loan Agreement is to be held and applied by the Funding Lender or Fiscal Agent, as applicable, subject to the covenants, conditions and trusts hereinafter set forth, and the Governmental Lender does hereby covenant and agree to and with the Funding Lender and the Fiscal Agent, for the benefit (except as otherwise expressly provided herein) of the Funding Lender, as follows:

## ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION

**Section 1.1. Definitions.** For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants.”

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to “Approved Accounting Method” refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) References to the Governmental Lender Note as “tax exempt” or to the “tax exempt status” of the Governmental Lender Note is to the exclusion of interest on the Governmental Lender Note (other than any portion of the Governmental Lender Note held by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

“Act” shall have the meaning assigned to such term in the recitals above.

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“Approved Transferee” means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender or (3)

a trust or custodial arrangement established by the Funding Lender or one of its affiliates, or any state or local government or any agency or entity which is a political subdivision of a federal, state or local government (a "Governmental Entity"), in each case (i) the beneficial interests in which will be owned only by QIBs or (ii) the beneficial interests in which will be rated in the "BBB" category or higher without regard to modifier (or the equivalent investment grade category) by at least one nationally recognized rating agency, or (4) a Governmental Entity.

"Authorized Amount" shall mean \$[77,000,000], the aggregate maximum principal amount of the Funding Loan under this Funding Loan Agreement.

"Authorized Attesting Officer" means the Chair, Vice Chair, Secretary or Assistant Secretary of the Governmental Lender, or such other officer or official or member of the Governmental Lender, including but not limited to the Finance Director of the Governmental Lender who, in accordance with the law of the State, the bylaws or other governing documents of the Governmental Lender, or practice or custom, regularly attests or certifies official acts and records of the Governmental Lender, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

"Authorized Governmental Lender Representative" shall mean the Chair, Vice Chair, and any other, officer or employee of the Governmental Lender designated to perform a specified act, to sign a specified document or to act generally on behalf of the Governmental Lender as evidenced by a written certificate furnished to the Funding Lender, the Fiscal Agent, the Servicer (if any) and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by the Chair or Vice Chair of the Governmental Lender. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative.

"Borrower" shall mean Douglas Gardens IV, Ltd., a Florida limited partnership, and its successors and assigns.

"Borrower Equity Account" shall mean the account by that name created and established in the Project Fund under this Funding Loan Agreement.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

"Borrower Loan Agreement" shall mean the Borrower Loan Agreement dated as of December 1, 2022 between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

"Borrower Loan Agreement Default" shall mean any event of default set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall "exist" if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Amount” shall mean the amount of \$[77,000,000].

“Borrower Loan Documents” shall have the meaning given such term in the Borrower Loan Agreement.

“Borrower Note” shall mean the “Borrower Note” as defined in the Borrower Loan Agreement.

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Closing Cost Account” shall mean the account by that name created and established in the Expense Fund under this Funding Loan Agreement.

“Closing Costs” shall mean the costs relating to the delivery of the Governmental Lender Note.

“Closing Date” shall mean the date that initial Funding Loan proceeds are disbursed hereunder.

“Code” shall mean the Internal Revenue Code of 1986, as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Compliance Monitoring Fee” means a compliance monitoring fee in an annual amount equal to \$25.00 per rental unit in the Project (or such other amount as is implemented by the Governmental Lender) to be paid to the Governmental Lender, if, but only if, at any time during the Qualified Project Period or for such longer period if the set-aside requirements required by the Code, Chapter 159, Part IV, Florida Statutes or other Governmental Lender requirements remain in force and the Note is no longer outstanding. Such fee will be due in a lump sum payment on the date the Note is paid in full. The fee will be calculated for the period commencing on the date the Note is paid in full and ending on the last date of the Qualified Project Period, or such longer period if the set-aside required by the Code, Chapter 159, Part IV, Florida Statutes or other Governmental Lender requirements remain in force after the Note is no longer outstanding.

“Conditions to Conversion” shall have the meaning given such term in the Construction Funding Agreement.

“Construction Funding Agreement” means that certain Construction Funding Agreement dated as of December 1, 2022, between the Funding Lender, as agent for the Governmental Lender, and the Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Fiscal Agent



for disbursement to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

“Contingency Draw-Down Agreement” means that certain Contingency Draw-Down Agreement of even date herewith among the Funding Lender, the Borrower and the Fiscal Agent relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“County” shall mean Broward County, Florida.

"County Loan" shall mean a Broward County Affordable Housing Trust Fund loan in the principal amount of \$[14,000,000].

"County Loan Account" shall mean the County Loan Account within the Project Fund established pursuant to Section 7.3 hereof.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the applicable Funding Loan Document or a Borrower Loan Agreement Default.

“Draw-Down Notice” shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

“Equity Investor” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Expense Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

"Final Closing Memorandum" means the final closing memorandum dated December \_\_, 2022 executed by the Borrower and setting forth certain deposits to be made by the Fiscal Agent into the funds and accounts established hereunder, and also setting forth certain costs and expenses to be paid by the Fiscal Agent on the Closing Date.

"Final Credit Underwriting Report" means the Credit Underwriting Report of the Governmental Lender Credit Underwriter, dated \_\_\_\_\_, 2022 related to the Project.

“Fiscal Agent” shall mean The Bank of New York Mellon Trust Company, N.A., a national banking association, as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent’s Fees” shall mean the Fiscal Agent’s initial acceptance fee and expenses of \$2,500.00 plus fees, costs and expenses of its counsel in conjunction with the delivery of the Governmental Lender Note and the ongoing compensation and expenses payable to the Fiscal Agent as follows:

(i) the annual administration fees of the Fiscal Agent, for the ordinary services of the Fiscal Agent rendered under this Funding Loan Agreement during each twelve-month period and shall be \$3,750.00 per annum, payable in advance in semiannual installments of \$1,875.00 on the Closing Date and each June 1 and December 1 thereafter; beginning June 1, 2023;

(ii) the reasonable fees and charges of the Fiscal Agent for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Funding Loan Agreement as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Fiscal Agent shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Fiscal Agent shall have been made; and

(iii) for purposes of the Borrower Loan Agreement, indemnification of the Fiscal Agent by the Borrower; and

(iv) when the Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

“Funding Lender” shall mean Citibank, N.A, a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement dated as of December 1, 2022, by and among the Funding Lender, the Governmental Lender and the Fiscal Agent, as it may from time to time be supplemented, modified or amended by one or more instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

"Funding Loan Payment Fund" shall mean the fund by that name created and established under this Funding Loan Agreement.

"Governmental Lender" shall mean the Housing Finance Authority of Broward County, Florida.

"Governmental Lender Fee" shall mean collectively, the Governmental Lender's (i) Governmental Lender's Closing Fee, (ii) Ongoing Governmental Lender Fee and (iii) Late Fees and Compliance Monitoring Fees as applicable pursuant to the Regulatory Agreement.

"Governmental Lender Credit Underwriter" shall mean First Housing Development Corporation of Florida, a Florida corporation, and its permitted successors and assigns.

"Governmental Lender Note" shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

"Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating given by that Rating Agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is "A 1+" for debt with a term of one year or less and "AAA" for a term greater than one year, with corresponding ratings by Moody's of "MIG 1" (for fixed rate) or "VMIG 1" (for variable rate) for three (3) months or less and "Aaa" for greater than three months. If at any time (i) both S&P and Moody's rate a Permitted Investment and (ii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that Rating Agency. For example, a Permitted Investment rated "AAA" by S&P and "Aa3" by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that Rating Agency, then the Permitted Investment will not be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated "AAA" by S&P and "A1" by Moody's is not rated in the Highest Rating Category.

"Maturity Date" shall mean \_\_\_\_\_ 1, [2056].

"Maximum Rate" shall mean the lesser of (i) 12% per annum and (ii) the maximum interest rate that may be paid on the Governmental Lender Note under State law.

"Minimum Beneficial Ownership Amount" shall mean an amount not less than fifteen percent (15%) of the aggregate outstanding principal amount of the Funding Loan, but in no event less than \$500,000.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

“Negative Arbitrage Account” means the Negative Arbitrage Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Negative Arbitrage Deposit” has the meaning set forth in the Contingency Draw-Down Agreement.

“Ongoing Governmental Lender Fee” shall mean the annual program administration fee of the Governmental Lender, payable in advance by the Borrower to the Fiscal Agent for payment to the Governmental Lender in the amount of eighteen (18) basis points per annum of the outstanding principal amount of the Loan (calculated on the Business Day prior to any principal reduction of the Loan). The first payment of the Ongoing Governmental Lender Fee shall be payable on the Closing Date for the period beginning on the Closing Date and ending on [December 31], 2023. Thereafter, the Ongoing Governmental Lender Fee shall be payable in semi-annual installments on each June 1 and December 1, with the first semi-annual payment due and payable on June 1, 2023; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, the Fiscal Agent, Bond Counsel, the Governmental Lender’s counsel, or the Fiscal Agent’s counsel to be paid by the Borrower pursuant to the Borrower Loan Agreement.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).

(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least “VMIG-1”/“A-1+” by Moody’s/S&P which

deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency.

(d) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(e) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Fiscal Agent or its affiliates.

(f) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the "A" category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one (1) business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the "Collateral Agent"), and the Collateral Agent cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities). Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(g) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (1) shall not apply to Permitted Investments listed in paragraph (g).

(2) Any obligation bearing interest at an inverse floating rate.

(3) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(4) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any Prepayment Premium as set forth in such Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Project Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Rating Agency” shall mean any one and each of S&P and Moody’s then rating the Permitted Investments or any other nationally recognized statistical rating agency then rating the Permitted Investments, which has been approved by the Funding Lender.

“Rebate Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Record Date” shall mean the last day of each calendar month.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreement” shall mean that certain Land Use Restriction Agreement dated as of the date hereof, by and among the Governmental Lender, the Borrower and the Fiscal Agent, as hereafter amended or modified.

“Remaining Funding Loan Proceeds Account” means the Remaining Funding Loan Proceeds Account of the Project Fund established under Section 7.3, as otherwise described in the Contingency Draw-Down Agreement.

“Required Transferee Representations” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

“Resolution” shall mean the resolution of the Governmental Lender adopted on October 19, 2022 authorizing the Funding Loan, as evidenced by the Governmental Lender Note, and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Responsible Officer” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time), made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations with respect to the Funding Loan, as evidenced by the Governmental Lender Note.

“Servicer” shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“Standard & Poor’s” or “S&P” shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, Inc., and its successors.

“State” shall mean the State of Florida.

“Tax Certificate” shall mean, collectively, (i) the Certificate as to Arbitrage and Certain Other Tax Matters dated the Closing Date and executed by the Governmental Lender, and (ii) the Borrower Tax Certificate dated the Closing Date and executed and delivered by the Borrower, and (iii) the Arbitrage Rebate Agreement by and among the Governmental Lender, the Borrower and the Fiscal Agent, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

“Tax Counsel” shall mean, Nabors, Giblin & Nickerson, P.A., or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Note constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not, in and of itself, impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.18 thereof, its rights to indemnification under Section 5.16 thereof and under any of the other Funding Loan Documents, if such right exists, its rights to attorneys’ fees and expenses under Sections 5.12 and 5.15 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement, the Borrower Loan Agreement and under any of the other Funding Loan Documents, if such right exists.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an



Authorized Borrower Representative, an Authorized Governmental Lender Representative, a Responsible Officer of the Fiscal Agent or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer, the Fiscal Agent or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

**Section 1.2. Effect of Headings and Table of Contents.** The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 1.3. Date of Funding Loan Agreement.** The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

**Section 1.4. Designation of Time for Performance.** Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

**Section 1.5. Interpretation.** The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## ARTICLE II TERMS; GOVERNMENTAL LENDER NOTE

### **Section 2.1. Terms.**

(a) **Principal Amount.** The aggregate principal amount of the Funding Loan and the Governmental Lender Note evidencing such Funding Loan is hereby expressly limited to the Authorized Amount.

(b) **Draw-Down Funding.** The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent (pursuant to the wiring instructions on Exhibit D attached hereto) for the account of the Governmental Lender for disbursement to or for the benefit of the Borrower as and when needed to make each advance in accordance with the provisions of Section 7.6 hereof and of the Borrower Loan Agreement and the Construction Funding Agreement. Upon each advance of principal under the Borrower Loan Agreement and the Construction Funding Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this

Funding Loan Agreement, including the initial advance of \$\_\_\_\_\_. Subject to the terms and conditions of the Borrower Loan Agreement, the Funding Lender agrees to advance, on behalf of the Governmental Lender, to the Fiscal Agent for disbursement to the Borrower under the Borrower Loan Agreement the initial advance on the Closing Date, and the Governmental Lender agrees that such advance shall be deemed an advance on the Funding Loan for the account of the Governmental Lender under this Funding Loan Agreement. No portion of the Funding Loan shall be advanced after [the third anniversary of the Closing Date]; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender (but only at the expense of the Borrower) in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

(c) Origination Date; Maturity. The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(d) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances with respect to the Borrower Note under the Borrower Loan Agreement and the Construction Funding Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Fiscal Agent shall keep a record of all principal advances and principal repayments made under the Governmental Lender Note and shall upon written request provide the Governmental Lender and the Funding Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

(e) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the related Borrower Note and otherwise as set forth in the Borrower Loan Agreement; provided, however, that in no event shall interest paid on the Governmental Lender Note exceed the Maximum Rate.

(f) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees

and other amounts due on the Borrower Note. Payments on the Borrower Note shall be made to the Fiscal Agent, and such payments shall be immediately credited to the account of the Funding Lender as payments on the Governmental Lender Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note.

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

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

**Section 2.2. Form of Governmental Lender Note.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement or State law. In connection with Conversion, the Funding Lender shall have the right to exchange the then existing Governmental Lender Note on or after the Conversion Date for a new Governmental Lender Note with a dated date of the Conversion Date and in a stated principal amount equal to

the then outstanding principal amount of the Governmental Lender Note, which amount will equal the Permanent Period Amount of the Borrower Loan.

**Section 2.3. Execution and Delivery of Governmental Lender Note.** The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Governmental Lender Representative, and attested by the manual or facsimile signature of an Authorized Attesting Officer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Lender Note. In case any officer of the Governmental Lender whose manual or facsimile signature shall appear on a Governmental Lender Note shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also a Governmental Lender Note may bear the facsimile signatures of, or may be signed by, such persons as at the actual time of the execution thereof shall be the proper officers to sign such Governmental Lender Note although at the date of such Governmental Lender Note such persons may not have been such officers.

**Section 2.4. Authentication.** The Governmental Lender Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Lender Note, substantially in the form set forth in Exhibit A hereto, shall have been manually executed by the Fiscal Agent. The Fiscal Agent shall authenticate the Governmental Lender Note by execution of the certificate of authentication on or attached to such Governmental Lender Note, and the certificate of authentication so executed on or attached to the Governmental Lender Note shall be conclusive evidence that such Governmental Lender Note has been authenticated and delivered under this Funding Loan Agreement.

**Section 2.5. Registration and Transfer of Governmental Lender Note.**

(a) The Fiscal Agent acknowledges that the Funding Lender is the initial holder of the Governmental Lender Note and shall remain the sole holder of the Governmental Lender Note except as otherwise provided herein.

(b) The Fiscal Agent, on behalf of the Governmental Lender, shall provide for the registration of the Governmental Lender Note or interests therein and the registration of transfers thereof. In that regard, the Fiscal Agent shall maintain a register which shall contain a record of every Governmental Lender Note at any time authenticated hereunder, together with the name and address of the holder thereof, the date of authentication, the date of transfer or payment, and such other matters as may be deemed appropriate by the Fiscal Agent or the Governmental Lender. The Governmental Lender, the Fiscal Agent and any agent of the Governmental Lender or the Fiscal Agent shall treat the person in whose name the Governmental Lender Note is registered as of the Record Date as the owner of the Governmental Lender Note for the purpose of receiving payment of the Governmental Lender Note and for all other purposes whatsoever whether or not the Governmental Lender Note payments are overdue, and, to the extent

permitted by law, neither the Governmental Lender, the Fiscal Agent nor any such agent shall be affected by notice to the contrary.

(c) The transfer of the Governmental Lender Note is subject to registration by the holder thereof only upon compliance with the conditions for registration of transfer imposed on the holder under this Section 2.5 and under Section 2.6 hereof. Upon surrender of the Governmental Lender Note at the principal corporate trust office of the Fiscal Agent, the Governmental Lender shall execute (if necessary), and the Fiscal Agent shall authenticate and deliver, in the name of the designated transferee (but not registered in blank or to “bearer” or a similar designation), a new Governmental Lender Note of a like principal amount, and having the same stated maturity, tenor and interest rate.

(d) A Governmental Lender Note delivered in exchange for or upon transfer of the Governmental Lender Note shall be a valid limited obligation of the Governmental Lender evidencing the same debt, and entitled to the same benefits under this Funding Loan Agreement, as the Governmental Lender Note surrendered for such exchange or transfer.

(e) Registration of the transfer of the Governmental Lender Note may be made on the Fiscal Agent’s register by the holder thereof by such holder’s attorney duly authorized in writing; provided, that the Governmental Lender Note presented or surrendered for registration of transfer or exchange (i) is accompanied by evidence of compliance with the provisions of Section 2.6 hereof, (ii) is duly endorsed or be accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Governmental Lender and the Fiscal Agent, duly executed by the holder thereof or his, her or its attorney duly authorized in writing and (iii) includes written instructions as to the details of the transfer of the Governmental Lender Note. The transferor shall also provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Fiscal Agent may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(f) No service charge shall be made to the registered holder of the Governmental Lender Note for any registration, transfer or exchange, but the Fiscal Agent and the Governmental Lender may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of the Governmental Lender Note, and any legal or unusual costs of transfers. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(g) The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

**Section 2.6. Restrictions on Transfer.**

(a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Closing Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Lender Note and the Funding Loan in whole (but not in part), or (ii) a participation interest or other beneficial ownership interest in the Governmental Lender Note and the Funding Loan to the extent permitted by Section 2.6(c) below, provided that such sale shall be only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent, the Required Transferee Representations; provided, however, that no Required Transferee Representations shall be required to be delivered by transferees or beneficial interest holders described in clauses (3) or (4) of the definition of "Approved Transferee."

(c) Notwithstanding the other provisions of this Section 2.6, no beneficial ownership interest in the Governmental Lender Note and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount; provided, however, that beneficial ownership interests in the Governmental Lender Note and Funding Loan described in clause (3) of the definition of "Approved Transferee" may be sold in any amount without regard to the Minimum Beneficial Ownership Amount.

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

The Fiscal Agent shall be entitled to rely, without any further inquiry, on any Required Transferee Representations delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Lender Note in reliance on any such Required Transferee Representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost or expense (including attorneys' fees, costs and expenses) that may result if the transfer is not exempt from registration under the Securities Act or is not made in accordance with such federal and state laws. Notwithstanding anything to the contrary herein, the holder shall not transfer or sell the Governmental Lender Note or any interest therein to a party related to or affiliated with the Borrower, any general partner, limited partner or member of the Borrower without the prior written consent of the Governmental Lender.

### ARTICLE III PREPAYMENT

**Section 3.1. Prepayment of the Governmental Lender Note from Prepayments Under the Borrower Note.** The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Note shall be subject to voluntary prepayment to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

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

**Section 3.2. Notice of Prepayment.** Notice of prepayment of a Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to Funding Lender and Fiscal Agent in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

#### **ARTICLE IV SECURITY**

**Section 4.1. Security for the Funding Loan.** To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender and the Fiscal Agent for the benefit of the holder from time to time of the Governmental Lender Note or any interests therein, a lien on and security interest in the following described property (excepting, however, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments (except those related to the Unassigned Rights) derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan

Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

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

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement (other than the Expense Fund and the Rebate Fund) and any amounts held at any time in the Remaining Funding Loan Proceeds Account, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

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

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 4.2. Delivery of Security.** In order to secure payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding



Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

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

The Governmental Lender shall, at the expense of the Borrower, deliver and deposit with the Fiscal Agent or the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require and direct from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender, without limitation any amounts held under the Contingency Draw-Down Agreement.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interest or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the UCC. The Fiscal Agent shall cause to be filed a continuation statement with respect to each UCC financing statement relating to the Governmental Lender Note which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed, original financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (i) relying on such initial filing and description in filing any financing or continuation statements or modifications thereto pursuant to this Section 4.2 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

**ARTICLE V  
LIMITED LIABILITY**

**Section 5.1. Source of Payment of Funding Loan, the Governmental Lender Note and Other Obligations.** The Governmental Lender Note evidencing the Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the County, the State, or any political subdivision thereof nor any public agency shall in any event be liable for the payment of the principal of, premium (if any) or interest on the Governmental Lender Note and the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Note or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. Neither the faith, revenues, credit nor taxing power of the Governmental Lender, the State or any other political corporation or subdivision or agency thereof shall be pledged to the payment of the principal of, premium (if any), or interest on the Governmental Lender Note or this Funding Loan Agreement.

**Section 5.2. Exempt from Individual Liability.** No recourse under or upon any obligation, covenant, warranty or agreement contained in this Funding Loan Agreement or in the Governmental Lender Note, or under any judgment obtained against the Governmental Lender, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this Funding Loan Agreement, shall be had against any of the members, officers, agents or employees of the Governmental Lender (past, present or future), either directly or through the Governmental Lender or otherwise, for the payment for or to the Governmental Lender or any receiver of the Governmental Lender, or for or to the owner of the Governmental Lender Note, or otherwise, of any sum that may be due and unpaid by the Governmental Lender upon the Governmental Lender Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owner of a Governmental Lender Note or otherwise of any sum that may remain due and unpaid upon a Governmental Lender Note secured by this Funding Loan Agreement or any of them is, by the acceptance of the Governmental Lender Note, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. Anything in this Funding Loan Agreement to the contrary notwithstanding, it is expressly understood by the parties to this Funding Loan Agreement that (a) the Governmental Lender may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Servicer, the Borrower or the owner of the Governmental Lender Note as to the existence of any fact or state of affairs, (b) the Governmental Lender shall not be under any obligation under this Funding Loan Agreement to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be

performed by the Fiscal Agent or by the Servicer and its respective counsel, as applicable, and (c) none of the provisions of this Funding Loan Agreement shall require the Governmental Lender to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Funding Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Governmental Lender Note or for the satisfaction of any liability arising from, founded upon or existing by reason of the initial delivery, purchase or ownership of a Governmental Lender Note shall be had against any officer, member, agent or employee of the Governmental Lender, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. No covenant, stipulation, obligation or agreement of the Governmental Lender contained in this Funding Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Governmental Lender in other than that person's official capacity. No member, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Governmental Lender Note or be subject to any personal liability or accountability by reason of the delivery of the Governmental Lender Note.

It is recognized that notwithstanding any other provision of this Funding Loan Agreement, neither the Borrower, the Fiscal Agent nor any owner of the Governmental Lender Note shall look to the Governmental Lender for damages suffered by the Borrower, the Fiscal Agent or such owner as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Funding Loan Agreement, the Borrower Loan Agreement, the Governmental Lender Note or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, or for any other reason. Although this Funding Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Funding Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 5.3. Limited Obligation.** Notwithstanding any other provision of this Funding Loan Agreement to the contrary:

THE GOVERNMENTAL LENDER NOTE IS ISSUED PURSUANT TO THE RESOLUTION AND IN ACCORDANCE WITH THE ACT, AND ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER NOR ANY PERSON

EXECUTING A GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON SUCH GOVERNMENTAL LENDER NOTE OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THIS FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE GOVERNMENTAL LENDER NOTE OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE GOVERNMENTAL LENDER NOTE OR OTHER COSTS INCIDENT THERETO. THE GOVERNMENTAL LENDER NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA.

## ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS

**Section 6.1. Conditions Precedent to Closing.** Closing of the Funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Funding Lender and the Governmental Lender in their sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement (other than the requirements in clauses (g) and (h) of this section as applicable to deliverables to the Governmental Lender, or the requirements in clauses (e) and (i) below, each of which may only be waived by the Governmental Lender), including but not limited to the following:

(a) Receipt by the Funding Lender of the original, executed Governmental Lender Note dated the Closing Date, authenticated by the Fiscal Agent;

(b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed by the Governmental Lender to the Funding Lender, and receipt by the Fiscal Agent of an executed copy of the Borrower Note;

(c) Receipt by the Funding Lender and the Fiscal Agent of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Construction Funding Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument, as well as copies of any UCC financing statement required under the Security Instrument;

(d) Receipt by the Funding Lender and the Fiscal Agent of a certified copy of the Resolution;

(e) Receipt by the Fiscal Agent of an executed Required Transferee Representations from the Funding Lender;

(f) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan, and any underlying real estate transfers or transactions, including the Costs of Funding Deposit, in accordance with, Section 2.3(c)(ii) of the Borrower Loan Agreement, as set forth in the closing Final Closing Memorandum executed and delivered by the Borrower on the Closing Date;

(g) Receipt by the Governmental Lender, the Funding Lender and Fiscal Agent of a Tax Counsel Approving Opinion with respect to the Governmental Lender Note dated the Closing Date;

(h) Receipt by the Governmental Lender, the Funding Lender and the Fiscal Agent of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(i) delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender, the Funding Lender and the Fiscal Agent to the effect that the Borrower Loan Documents and the Regulatory Agreement are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender; and

(j) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender, the Governmental Lender or Tax Counsel may require.

(k) Receipt by Funding Lender and Governmental Lender of a letter from the Governmental Lender Credit Underwriter that all contingencies listed in the Final Credit Underwriting Report have been satisfied or otherwise addressed by the parties.

## ARTICLE VII FUNDS AND ACCOUNTS

**Section 7.1. Authorization to Create Funds and Accounts.** Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Fiscal Agent is authorized to establish and create from time to time such other funds and accounts or subaccounts as directed in writing by the Funding Lender or, if there is a Servicer, by the Servicer, as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 7.2. Investment of Funds.** Amounts held in any funds or accounts created by the Fiscal Agent under this Funding Loan Agreement shall be invested in Permitted Investments

at the written direction of the Borrower. Such written direction of the Borrower may not violate the restrictions of Section 8.7 hereof or of the Tax Certificate.

The Fiscal Agent may conclusively rely upon the Borrower's written direction as to both the suitability and legality of any directed investments and that such written direction does not violate the restrictions of Section 8.7 hereof or of the Tax Certificate. The Fiscal Agent shall have no liability for any loss, expense or liability incurred as a result of any investment made in accordance with written directions of the Borrower.

Although the Governmental Lender and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Governmental Lender and the Borrower hereby agree that confirmations of permitted investments are not required to be issued by the Fiscal Agent for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

**Section 7.3. Establishment of Funds and Accounts.**

There are established with the Fiscal Agent the following funds and accounts:

- (a) The Funding Loan Payment Fund;
- (b) The Project Fund and within such fund, a Borrower Equity Account, a Note Proceeds Account, a Remaining Funding Loan Proceeds Account, a Negative Arbitrage Account and a County Loan Account;
- (c) The Rebate Fund; and
- (d) The Expense Fund and within such fund, a Closing Cost Account.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent in trust for the benefit of the Funding Lender, and except for money held in the Expense Fund and Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

All money to be deposited with or paid to the Fiscal Agent shall be wired to the Fiscal Agent pursuant to the wiring instructions contained in Exhibit D attached hereto. The Fiscal Agent shall provide Written Notice of any change to such wiring instructions to the Funding Lender and the Borrower no less than five (5) Business Days prior to the next payment date for which such revised instructions will be applicable.

**Section 7.4. Funding Loan Payment Fund.** The Governmental Lender and the Borrower shall have no interest in the Funding Loan Payment Fund or the moneys therein, which shall always be maintained by the Fiscal Agent completely separate and segregated from all other

moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Funding Loan Payment Fund any amounts received from the Borrower as payments of principal of, premium, if any, or interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Expense Fund or Rebate Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Funding Loan Payment Fund in the following order of priority:

First, to pay or provide for the payment of the interest then due on the Governmental Lender Note;

Second, to pay or provide for the payment and premium, if any, or the prepayment of principal on the Governmental Lender Note, provided moneys have been transferred or deposited into the Funding Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Governmental Lender Note on the Maturity Date.

If the Fiscal Agent has not received, by 11:00 a.m. Eastern time on the date interest is due on the Governmental Lender Note, an amount sufficient to pay such interest, the Fiscal Agent shall provide immediate telephonic or electronic notice to the Funding Lender of such deficiency. The Fiscal Agent may rely on the payment terms of the Governmental Lender Note for purposes of payments described above. Any funds remaining in the Funding Loan Payment Fund after (i) payment in full of the Borrower Loan, and (ii) satisfaction of all of the Borrower's obligations under the Borrower Loan Agreement, shall be disbursed to the Borrower.

**Section 7.5. Expense Fund.** The Fiscal Agent shall deposit in the Expense Fund the amounts required by the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent, as provided in this Section 7.5. Amounts on deposit in the Expense Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (a) on each June 1 and December 1, commencing on June 1, 2023, the Governmental Lender Fee due and payable, (b) on each June 1 and December 1, commencing on the Closing Date, to the Fiscal Agent amounts due pursuant to subparts (i) and (ii) of the definition of "Fiscal Agent's Fees" herein, (c) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (b) above, and (d) upon receipt, to, or at the written direction of, the Governmental Lender, any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (a) above.

On the Closing Date, the Fiscal Agent shall deposit \$[\_\_\_\_\_] of Borrower Equity into the Closing Cost Account and shall pay closing costs from the Closing Cost Account in accordance with the written direction of the Borrower and the Funding Lender, except that closing costs to be paid from the Closing Cost Account on the Closing Date may be paid in accordance with the Final Closing Memorandum.

On the date six (6) months after the Closing Date, the Fiscal Agent shall transfer any balance remaining in the Closing Cost Account to the Funding Loan Payment Fund and close the Closing Cost Account.

In addition, any additional fees and expenses of Tax Counsel shall be timely funded by additional deposits by the Borrower into the Expense Fund of moneys not derived from the proceeds of the Borrower Loan, and the Fiscal Agent shall use such amounts to pay such additional fees and expenses of Tax Counsel, as directed by the Borrower in writing.

In the event that the amounts on deposit in the Expense Fund or Closing Cost Account therein are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraphs on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) not later than 10 days after the respective due date.

Upon payment by the Borrower to the Fiscal Agent of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Governmental Lender Fee not later than 10 days prior to the due date for payment of such the Governmental Lender Fee, and shall remit moneys received from the Borrower to the Governmental Lender for payment of such fee. Failure of the Fiscal Agent to prepare or submit such notice shall not excuse the Borrower from making the required payments.

**Section 7.6. Project Fund.**

(a) Proceeds of the Funding Loan provided by the Funding Lender shall be deposited into to the Note Proceeds Account of the Project Fund, and be disbursed as provided herein; provided, however, that any proceeds of the Funding Loan funded pursuant to the Contingency Draw-Down Agreement shall be deposited into the Remaining Funding Loan Proceeds Account of the Project Fund and be disbursed as provided herein. [In addition, proceeds from Borrower Initial Equity in the amount of \$\_\_\_\_\_ shall be deposited into the Borrower Equity Account and Borrower Deferred Equity shall be deposited into the Borrower Equity Account, and be



disbursed as provided herein.] The County shall deposit or cause to be deposited with the Fiscal Agent monies from the County Loan into the County Loan Account of the Project Fund. The Fiscal Agent shall disburse moneys in the Project Fund for the acquisition and construction of the Project, to pay other Qualified Project Costs and to pay other costs related to the Project as provided herein.

Not less than 95% of the proceeds of the Funding Loan deposited in and credited to the Project Fund, including Investment Income thereon, will be expended for Qualified Project Costs (the "95% Requirement"). The amounts on deposit in the Project Fund shall not be applied to the payment of Closing Costs.

Before any payment shall be made from the Project Fund, the Regulatory Agreement shall have been executed and submitted to a title company for recordation in the official records of the County and there shall be filed with the Fiscal Agent a Written Requisition of the Borrower substantially in the form attached hereto as Exhibit C and approved by (i) the Funding Lender pursuant to the terms, conditions and provisions of the Construction Funding Agreement, and (ii) the Governmental Lender Credit Underwriter with respect to disbursements from the County Loan Account. The Fiscal Agent shall be entitled to conclusively rely upon any Written Requisition in determining whether to disburse amounts from the Project Fund. Any funds remaining on deposit in the Borrower Equity Account of the Project Fund following the completion of the Project shall be applied as set forth in the written instructions of the Borrower and the Funding Lender. Any amounts remaining on deposit in the Borrower Equity Account of the Project Fund on the Conversion Date shall be paid by the Fiscal Agent to the Borrower except that funds to be paid from the Project Fund on the Closing Date may be paid in accordance with the Final Closing Memorandum.

In connection with a Written Requisition:

(i) Only the signature of an authorized officer of the Funding Lender shall be required on a Written Requisition during any period in which a Default by the Borrower has occurred and is then continuing under the Borrower Loan (notice of which Default has been given in writing by an authorized officer of the Funding Lender to the Fiscal Agent, and the Fiscal Agent shall be entitled to conclusively rely on any such Written Notice as to the occurrence and continuation of such a default).

(ii) The Fiscal Agent shall disburse amounts in the Project Fund for the payment of interest due on the Governmental Lender Note upon receipt from the Funding Lender of a statement detailing the amount due (and without any need for a Written Requisition signed by the Funding Lender or any approval by an Authorized Representative of the Borrower).

(iii) The Fiscal Agent may conclusively rely on all Written Requisitions, the execution of the Written Requisitions by the Authorized Borrower Representative and the approval of all Written Requisitions by the Funding Lender, as required by this Section, as conditions of payment from the Project Fund, which Written Requisitions constitute, as to the

Fiscal Agent, irrevocable determinations that all conditions to payment of the specified amounts from the Project Fund have been satisfied. These documents shall be retained by the Fiscal Agent, subject at all reasonable times to examination by the Borrower, the Governmental Lender, the Funding Lender and the agents and representatives thereof upon reasonable notice to the Fiscal Agent. The Fiscal Agent is not required to inspect the Project or the construction work or to make any independent investigation with respect to the matters set forth in any Written Requisition or other statements, orders, certifications and approvals received by the Fiscal Agent. The Fiscal Agent is not required to obtain completion bonds, lien releases or otherwise supervise the acquisition, construction, equipping, improvement and installation of the Project.

(b) Upon receipt of each Written Requisition submitted by the Borrower and approved in writing by (i) the Funding Lender, and (ii) by the Governmental Lender Credit Underwriter with respect to amounts disbursed from the County Loan Account, the Fiscal Agent shall promptly, but in any case within three (3) Business Days, make payment from the appropriate account within the Project Fund in accordance with such Written Requisition. The Fiscal Agent shall have no duty to determine whether any requested disbursement from the Project Fund complies with the terms, conditions and provisions of the Funding Loan Documents, constitutes payment of Qualified Project Costs or complies with the 95% Requirement. The approval in writing of a Written Requisition by the Funding Lender shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, shall constitute conclusive evidence that all of the terms, conditions and requirements of the Funding Loan Documents applicable to such disbursement have been fully satisfied or waived and the Written Requisition from the Borrower shall, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence that the costs described in the Written Requisition constitute Qualified Project Costs or other permitted Project costs.

The Fiscal Agent shall immediately provide Written Notice to the Borrower and the Funding Lender if there are not sufficient funds available to or on deposit with the Fiscal Agent to make the disbursements as and when required by this Section 7.6(b). Except as provided in the next sentence, all such payments shall be made by check or draft payable, or by wire transfer, either (i) directly to the person, firm or entity to be paid, (ii) to the Borrower and such person, firm or entity, or (iii) upon receipt by the Funding Lender of evidence that the Borrower has previously paid such amount and Written Direction to the Fiscal Agent as to the Borrower. Upon the occurrence of an Event of Default of the Borrower of which the Fiscal Agent has knowledge as provided herein, which is continuing under the Funding Loan Documents, with the Written Consent of the Funding Lender, the Fiscal Agent may apply amounts on deposit in the Project Fund to the payment of principal of and interest on the Governmental Lender Note. Upon final disbursement of all amounts on deposit in the Project Fund and the accounts therein, the Fiscal Agent shall close the Project Fund.

(c) Moneys deposited to the Negative Arbitrage Account of the Project Fund pursuant to the Contingency Draw-Down Agreement, together with investment earnings thereon, which shall be retained therein, shall be transferred to the Funding Loan Payment Fund and applied pursuant to Section 7.4 on each Borrower Loan Payment Date to the extent necessary to enable

the Fiscal Agent to pay interest due on the Funding Loan on such date. The transfer of moneys from the Negative Arbitrage Account of the Project Fund to the Funding Loan Payment Fund shall occur automatically without the need for a Written Requisition of the Borrower, or consent of the Funding Lender.

(d) Immediately prior to any mandatory prepayment of the Funding Loan pursuant hereto, any amounts then remaining in the Project Fund shall, at the written direction of the Funding Lender, be transferred to the Funding Loan Payment Fund to be applied to the prepayment of the Governmental Lender Note pursuant hereto.

(e) Amounts on deposit in the Project Fund and the accounts therein shall be invested in Permitted Investments directed in writing by the Borrower. Investment Income earned on amounts on deposit in the Project Fund and the accounts therein shall be retained in and credited to and become a part of the amounts on deposit in the Project Fund and the accounts therein.

Notwithstanding anything herein, in the Borrower Loan Agreement or in any of the related documents to the contrary, funds disbursed by the Fiscal Agent from the County Loan Account shall be used only for the purposes set forth in the loan agreement between the County and the Borrower. Further, notwithstanding anything herein, in the Borrower Loan Agreement or in any of the related documents to the contrary, any County Loan funds deposited with the Fiscal Agent and not drawn down within 6 months after the completion of the Project shall be returned to the County upon the written direction of either the County or the Governmental Lender Credit Underwriter to the Fiscal Agent.

**Section 7.7. Rebate Fund.** All amounts in the Rebate Fund shall be held, invested and disbursed by the Fiscal Agent in accordance with the written instructions of the Borrower or the Rebate Analyst and the provisions of the Tax Certificate, the terms of which are incorporated herein by reference and made a part hereof as if fully set forth herein. The Borrower shall have the absolute obligation to deposit funds into the Rebate Fund in accordance with the provisions of the Tax Certificate. The Fiscal Agent shall make rebate payments to the United States Treasury in accordance with the applicable provisions of the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Borrower or the Rebate Analyst and shall not be required to take any actions under the Tax Certificate on behalf of the Borrower in the absence of written instructions from the Borrower or the Rebate Analyst. Any amounts remaining in the Rebate Fund after (i) payment in full of the Governmental Lender Note, and (ii) payment of any and all amounts (a) due to the Rebate Analyst, and (b) required by the final rebate report to the paid to the United States Treasury, shall be disbursed to the Borrower.

**ARTICLE VIII**  
**REPRESENTATIONS AND COVENANTS**

**Section 8.1. General Representations.**

The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a public body corporate and politic under the Act, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the indebtedness represented by the Governmental Lender Note and the Funding Loan and apply the proceeds of such indebtedness to finance a portion of the costs of the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Note, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of, (i) the Act or the Resolution, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representations as to the necessity of registering the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(d) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Note and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan, as evidenced by the Governmental Lender Note.

(e) The Florida Division of Bond Finance has provided an allocation of a portion of the State's [2020] private activity bond volume cap under section 146 of the Code to the Governmental Lender for the Governmental Lender Note, and the Governmental Lender has timely made any required carry forward election with respect to such allocation. The Governmental Lender hereby elects to apply the alternative option under clause (2) of the first paragraph of Section 3.01 of IRS Notice 2011-63 with respect to the issue date of the Governmental Lender Note; and, in connection therewith, has directed Tax Counsel to include the information on Form 8038 filed for the Governmental Lender Note that is required by section 3.03 of said Notice.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

**Section 8.2. No Encumbrance on Security.** The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

**Section 8.3. Repayment of Funding Loan.** Solely from amounts pledged therefor, and subject to the provisions of Article V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement.

**Section 8.4. Servicer.** The Funding Lender may appoint a Servicer to service and administer the Funding Loan and/or the Borrower Loan on behalf of the Funding Lender and the Fiscal Agent, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement.

**Section 8.5. Borrower Loan Agreement Performance.**

(a) The Funding Lender, the Fiscal Agent and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any

such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify or cause to be notified the Borrower, the Fiscal Agent, the Servicer, if any, and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

**Section 8.6. Maintenance of Records; Inspection of Records.**

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

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

**Section 8.7. Tax Covenants.** The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will (subject to the limited liability provisions hereof):

(a) Require the Borrower to execute the Regulatory Agreement as a condition of funding the Borrower Loan;

(b) Not knowingly take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Governmental Lender Note to be includable in gross income for federal income tax purposes;

(c) Whenever and so often as requested by the Funding Lender, the Governmental Lender (at the sole cost and expense of the Borrower) shall do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note

or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(d) Not knowingly take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of a Governmental Lender Note, or any other moneys which may be deemed to be proceeds of such Governmental Lender Note pursuant to the Code, which would cause such Governmental Lender Note to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay or cause to be paid pursuant to the provisions of Section 7.7 hereof any rebatable arbitrage in accordance with Section 148(f) of the Code in accordance with the applicable provisions of the Tax Certificate.

(g) In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full. In the event of any conflict between this Funding Loan Agreement and the Tax Certificate, the requirements of the Tax Certificate shall control.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

**Section 8.8. Performance by the Borrower.** Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

**Section 8.9. Maintenance of Records.** The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan not established with the Fiscal Agent, if any, including all deposits to and disbursements from said funds and

accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

## **ARTICLE IX DEFAULT; REMEDIES**

**Section 9.1. Events of Default.** Subject in all respects to Article V hereof, any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or Governmental Authority):

(a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender, the Fiscal Agent and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payments; or

(e) Any default under any of the other Funding Loan Documents which continues beyond any applicable cure period.

**Section 9.2. Acceleration of Maturity; Rescission and Annulment.**

(a) Subject to the provisions of Article V and Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender



may declare the principal of the Funding Loan and the Governmental Lender Note and the interest accrued to be immediately due and payable, by notice to the Fiscal Agent, the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Governmental Lender Note shall become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Fiscal Agent, the Borrower and the Governmental Lender, rescind and annul such declaration and its consequences if:

(i) The Borrower has deposited with the Fiscal Agent or the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Governmental Lender Note, (2) the principal of and Prepayment Premium on the Governmental Lender Note that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Governmental Lender Note, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Governmental Lender Note, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the non-payment of the principal of the Governmental Lender Note which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

### **Section 9.3. Additional Remedies; Funding Lender Enforcement.**

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Article V, this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute. The Funding Lender acknowledges and agrees that the

Governmental Lender shall not be responsible or liable for any fees and expenses incurred by the Funding Lender in connection with pursuing remedies under this Article IX.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan

Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower, the Governmental Lender, the Fiscal Agent and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.15 or 5.16 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

**Section 9.4. Application of Money Collected.** Any money collected by the Funding Lender or the Fiscal Agent pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

First: To the payment of any and all amounts due to the Fiscal Agent under the Funding Loan Documents;

Second: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Servicer and the Rebate Analyst;

Third: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Governmental Lender Note) on overdue principal of, and Prepayment Premium, if any, and overdue installments of interest on the Governmental Lender Note; provided, however, that partial interests in any portion of the Funding Loan, as evidenced by the Governmental Lender Note shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

Fourth: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

**Section 9.5. Remedies Vested in Funding Lender.** All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto.

**Section 9.6. Restoration of Positions.** If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

**Section 9.7. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 9.8. Delay or Omission Not Waiver.** No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

**Section 9.9. Waiver of Past Defaults.** Before any judgment or decree for payment of money due has been obtained by the Funding Lender against the Borrower, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Fiscal Agent, the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Note.** As set forth in this Section 9.10 but subject to the last paragraph of Section 9.11 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the Governmental Lender Note have been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11. Waiver of Appraisal and Other Laws.**

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

**Section 9.12. Suits to Protect the Security.** The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

**Section 9.13. Remedies Subject to Applicable Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**Section 9.14. Assumption of Obligations.** In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement

and any other Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth in such Borrower Loan Documents or Funding Loan Documents and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

**ARTICLE X**  
**AMENDMENT; AMENDMENT OF FUNDING LOAN AGREEMENT**  
**AND OTHER DOCUMENTS**

**Section 10.1. Amendment of Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender, the Fiscal Agent or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender and the Fiscal Agent.

**Section 10.2. Amendments Require Funding Lender Consent.** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

**Section 10.3. Consents and Opinions.** No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

**ARTICLE XI**  
**THE FISCAL AGENT**

**Section 11.1. Appointment of Fiscal Agent; Acceptance.** The Governmental Lender hereby appoints The Bank of New York Mellon Trust Company, N.A. as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

**Section 11.2. Certain Duties and Responsibilities of Fiscal Agent.**

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document of which Fiscal Agent has been provided Written Notice, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(f)(iii) hereof, use the same degree of care and skill in its exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business. The Fiscal Agent, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent.

(c) The Fiscal Agent may consult with counsel, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Fiscal Agent hereunder in good faith and in reliance thereon.

(d) The Fiscal Agent shall not be accountable for the use or application by the obligor of the Governmental Lender Note or the proceeds thereof or for the use or application of any money paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement or for the use and application of money received by any paying agent.

(e) The Fiscal Agent shall have no liability for any loss, expense or liability incurred as a result of any investment made in accordance with directions of the Borrower or the Governmental Lender, as applicable.

(f) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligence, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(ii) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

(iii) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(iv) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(g) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section.

(h) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(i) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.

(j) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

(k) In connection with the issuance of Governmental Lender Note, certain moneys may be deposited with the Fiscal Agent before the Closing Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held uninvested by the Fiscal Agent subject to the terms and conditions of the Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities and indemnification and other sections



relating to the Fiscal Agent contained in the Funding Loan Agreement and the Borrower Loan Agreement (the "Effective Provisions") shall be effective as of the first date of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 11.3. Notice of Defaults.** Upon the occurrence of any Default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent is aware of or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

**Section 11.4. Certain Rights of Fiscal Agent.** Except as otherwise provided in Section 11.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the purported proper party or parties;

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender, the Servicer or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Section 8.6 hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may consult with counsel of its choice concerning all matters hereof, and the Fiscal Agent may rely on the advice of such counsel or any Opinion of Counsel in respect of any action taken, suffered or omitted by the Fiscal Agent hereunder in good faith and in reliance thereon. The Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice; and

(g) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or the Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the Office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

(h) Any term of this Funding Loan Agreement, the Borrower Loan Agreement, the Security Instrument or of any related document to the contrary notwithstanding, the Fiscal Agent shall have no responsibility, obligation or duty to enter upon, or otherwise take possession or control of, the Project, or take any other action which could constitute taking possession or control of the Project (i) if it will require the approval of a governmental regulator that cannot be obtained, (ii) until the Fiscal Agent shall be indemnified to its sole satisfaction and (iii) until the Fiscal Agent shall be satisfied, in its sole discretion and determination, that neither it nor the trusts created under the Funding Loan Agreement shall incur, by reason of such action, any personal liability under any federal, state or local law for hazardous wastes, hazardous materials or other environmental liabilities or any other liability. If the Fiscal Agent believes it prudent or appropriate prior to taking any action with respect to possession or control of the Project, the Fiscal Agent may, but shall not be obligated to, contract for, at the Borrower's expense or the expense of the trust created under the Funding Loan Agreement, in its sole discretion, an environmental inspection of the Project.

**Section 11.5. Not Responsible for Recitals, Offering Documents or Financial Condition.** The recitals contained herein and in the Governmental Lender Note shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Governmental Lender Note.

The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. The Fiscal Agent shall be under no obligation to analyze, review, verify the accuracy of or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement. The Fiscal Agent shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

**Section 11.6. Fiscal Agent May Hold Governmental Lender Note.** The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Governmental Lender Note and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

**Section 11.7. Moneys Held in Trust.** Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

**Section 11.8. Compensation and Reimbursement.** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

**Section 11.9. Fiscal Agent Required; Eligibility.** Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

**Section 11.10. Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower, the Servicer, if any, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the Written Consent of the Funding Lender, (ii) the Borrower (unless the Borrower is in Default under any of the Borrower Loan Documents), with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender by Written Notice delivered to the Fiscal Agent, the Governmental Lender and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the Office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 30 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any institution acceptable to the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

**Section 11.11. Acceptance of Appointment by Successor.**

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

**Section 11.12. Merger, Conversion, Consolidation or Succession to Business.** Any corporation or association into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

**Section 11.13. Appointment of Co-Fiscal Agent.** It is the purpose of this Funding Loan Agreement that there shall be no violation of any laws of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co Fiscal Agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised

by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

**Section 11.14. Loan Servicing.** The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and Borrower Loan, as set forth in a Servicing Agreement. The Funding Lender shall provide Written Notice to the Fiscal Agent of the appointment, termination or replacement of any Servicer. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

**Section 11.15. No Recourse Against Officers or Employees of Fiscal Agent.** No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

**Section 11.16. USA Patriot Act Requirements of the Fiscal Agent.** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such person or other relevant documentation.

## ARTICLE XII MISCELLANEOUS

**Section 12.1. Notices.** All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, e-mail, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Borrower:	Douglas Gardens IV, Ltd. c/o McDowell Housing Partners, LLC 777 Brickell Avenue, Suite 1300 Miami, Florida 33131 Attention: Chris Shear Telephone: (786) 257-2767 Email: <a href="mailto:cshear@mcdhousing.com">cshear@mcdhousing.com</a>
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with a copy to: Nelson Mullins Riley & Scarborough LLP  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attention: Roman J. Petra, Esq.  
Telephone: (407) 669-4247  
Email: [roman.petra@nelsonmullins.com](mailto:roman.petra@nelsonmullins.com)

If to the Governmental Lender: Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director  
Telephone: (954) 357-4900

with a copy to: Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Facsimile: (954) 357-5728

If to Funding Lender: Citibank, N.A.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013  
Attention : Transaction and Asset Management Group  
Re: [Project Name] ID#[\_\_\_\_\_]  
Facsimile: (212) 723-8209

with a copy to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: [Project Name] ID#[\_\_\_\_\_]  
Facsimile: (805) 557-0924

Prior to the Conversion Date, with a copy to: Citibank, N.A.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Douglas Gardens – Senior Health and Living  
ID#[\_\_\_\_\_]  
Facsimile: (212) 723-8209

Following the Conversion Date, with a copy to: Citibank, N.A.



c/o Berkadia Commercial Servicing Department  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: Douglas Gardens – Senior Health and Living  
ID#[\_\_\_\_\_]  
Facsimile: (215) 328-0305

And a copy of any notices  
of default sent to:

Citibank, N.A.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel’s Office  
Re: Douglas Gardens – Senior Health and Living  
ID#[\_\_\_\_\_]  
Facsimile: (646) 291-5754

If to Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Broward HFA Relationship Manager  
Facsimile: (904) 645-1930

If to Equity Investor:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

with a copy to:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, e-mail or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees

overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

**Section 12.2. Term of Funding Loan Agreement.** This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

**Section 12.3. Successors and Assigns.** All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

**Section 12.4. Legal Holidays.** In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

**Section 12.5. Governing Law.** This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

**Section 12.6. Invalidity, Illegality or Unenforceability of Provisions.** If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

**Section 12.7. Execution in Several Counterparts.** This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

**Section 12.8. Nonrecourse Obligation of the Borrower.** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to the provisions of the Borrower Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

**Section 12.9. Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 12.10. Electronic Transactions.**

(a) The transactions described in this Funding Loan Agreement may be conducted and the related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The Fiscal Agent shall have the right to accept and act upon directions or instructions given pursuant to this Funding Loan Agreement and delivered using Electronic Means (defined below); provided, however, that Borrower, the Governmental Lender or such other party giving such direction or instruction, as the case may be, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such directions or instructions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. For purposes of this subsection (b), "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Borrower, the Governmental Lender or such other party giving such direction or instruction elects to give the Fiscal Agent directions or instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such directions or instructions, the Fiscal Agent's understanding of such directions or instructions shall be deemed controlling. The Borrower, the Governmental Lender and any other party giving such direction or instruction

understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such directions or instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Borrower, the Governmental Lender or such other party giving such instruction shall each be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Fiscal Agent and that only Authorized Officers transmit such directions or instructions to the Fiscal Agent and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the Fiscal Agent and that there may be more secure methods of transmitting directions or instructions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 12.11. Reference Date.** This Funding Loan Agreement is dated for reference purposes only as of the first day of December, 2022.

[The remainder of this page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the Funding Lender, the Fiscal Agent and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

**CITIBANK, N.A.**, a national banking association, as the Funding Lender

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

Name:

Title:

Deal ID#:

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

By: \_\_\_\_\_  
Name: Terence Rawlins  
Title: Vice President

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA, as the  
Governmental Lender**

(SEAL)

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

ATTEST:

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS GOVERNMENTAL LENDER NOTE AGREES (A) THAT (I) IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT, IF REQUIRED, AND (II) IT WILL NOT SELL OR OTHERWISE TRANSFER THIS GOVERNMENTAL LENDER NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS GOVERNMENTAL LENDER NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2022  
(DOUGLAS GARDENS – SENIOR HEALTH AND LIVING)

[\$77,000,000]

Date of Issuance: December \_\_, 2022

FOR VALUE RECEIVED, the undersigned Housing Finance Authority of Broward County (“Obligor”), promises to pay to the order of CITIBANK, N.A., (“Holder”) the maximum principal sum of SEVENTY-SEVEN MILLION AND NO/100 DOLLARS (\$77,000,000.00) on \_\_\_\_\_, [2056] or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement dated as of December 1, 2022 (the “Funding Loan Agreement”), among Obligor, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as fiscal agent (the “Fiscal Agent”), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.



This Governmental Lender Note is a pass-through obligation relating to a portion of a construction and permanent loan (the "Borrower Loan") made by Obligor from a portion of the proceeds of the Funding Loan to Douglas Gardens IV, Ltd., a Florida limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement dated as of December 1, 2022 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and moneys and Security pledged and assigned under the Funding Loan Agreement. THIS GOVERNMENTAL LENDER NOTE IS NOT A DEBT OR AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NEITHER THE FAITH, REVENUES, CREDIT NOR TAXING POWER OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY), OR INTEREST ON THIS GOVERNMENTAL LENDER NOTE. THIS GOVERNMENTAL LENDER NOTE IS PAYABLE, AS TO PRINCIPAL, PREMIUM (IF ANY), AND INTEREST, SOLELY OUT OF THE PLEDGED REVENUES AND THE SECURITY WHICH IS THE SOLE ASSET OF THE OBLIGOR PLEDGED THEREFOR, AND THEN ONLY TO THE EXTENT PROVIDED IN THE FUNDING LOAN AGREEMENT. NEITHER THE MEMBERS OF THE OBLIGOR NOR ANY PERSONS EXECUTING THIS GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE BY REASON OF THE ISSUANCE HEREOF. THE OBLIGOR HAS NO TAXING POWER.

THIS GOVERNMENTAL LENDER NOTE HAS BEEN ISSUED PURSUANT TO THE RESOLUTIONS AND IN ACCORDANCE WITH THE ACT.

NO MEMBER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY INDIVIDUAL EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS GOVERNMENTAL LENDER NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS GOVERNMENTAL LENDER NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS GOVERNMENTAL LENDER NOTE, OR FOR ANY CLAIM BASED ON THIS GOVERNMENTAL LENDER NOTE, OR OTHERWISE IN RESPECT OF THIS GOVERNMENTAL LENDER NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENT THERETO, AGAINST ANY MEMBER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE

CONSIDERATION FOR THE ISSUE OF THIS GOVERNMENTAL LENDER NOTE, EXPRESSLY WAIVED AND RELEASED.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

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

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

The rights and remedies of the Holder hereof during the occurrence of a default are as set forth in the Funding Loan Agreement. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

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

Subject to the limits on liability set forth herein and in the Funding Loan Agreement, and solely from the collateral pledged therefor, Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

The transfer of this Governmental Lender Note is subject to certain restrictions as provided in the Funding Loan Agreement and described below and to registration by the holder in person or by the holder's attorney hereof upon surrender of this Governmental Lender Note at the principal corporate trust office of the Fiscal Agent, duly endorsed or accompanied by a written instrument or instruments of transfer in form satisfactory to the Fiscal Agent and the Governmental Lender and executed by the holder hereof or his, her or its attorney duly

authorized in writing, containing written instructions as to the details of the registration of the transfer of this Governmental Lender Note. Thereupon the Obligor shall execute (if necessary) and the Fiscal Agent shall authenticate and deliver in the name of the transferee or transferees (but not registered in blank or to "bearer" or a similar designation), a new Governmental Lender Note.

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

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

OBLIGOR:

(SEAL)

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

Attest:

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

**CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is the Governmental Lender Construction/Permanent Note described in the within mentioned Funding Loan Agreement.

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

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent

\_\_\_\_\_  
Authorized Signatory

## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[ \_\_\_\_\_, 20\_\_ ]

The undersigned, as holder (the "Holder") of a loan (the "Funding Loan") in the Maximum Amount of \$[77,000,000] from CITIBANK, N.A. (the "Funding Lender") to Housing Finance Authority of Broward County (the "Governmental Lender") pursuant to a Funding Loan Agreement dated as of December 1, 2022 (the "Funding Loan Agreement"), among the Funding Lender, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent"), and the Governmental Lender, evidenced by the Multifamily Housing Revenue Note (Douglas Gardens – Senior Health and Living), Series 2022 (the "Governmental Lender Note"), or an interest therein, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Governmental Lender Note. The Holder is able to bear the economic risks of such investment.
2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Governmental Lender Note and the security therefor so that, as a reasonable lender, the Holder has been able to make its decision to make the Funding Loan and to acquire the Governmental Lender Note. The Holder acknowledges that it has not relied upon the addressee hereof for any information in connection with the Holder's purchase of the Governmental Lender Note. In addition, the Funding Lender has not relied upon the use of any offering memorandum, placement memorandum or any other similar document with regards to its decision to make the Funding Loan and to acquire the Governmental Lender Note. The Holder is making its decision to make the Funding Loan to the Governmental Lender directly through its credit review and due diligence concerning the Project. The undersigned is acquiring the Governmental Lender Note directly from the Governmental Lender and not through a placement of the Governmental Lender Note with the Holder through any financial institution acting as an intermediary between the Governmental Lender and the Holder
3. The Holder is an Approved Transferee (as defined in the Funding Loan Agreement).
4. The Holder acknowledges that it is making the Funding Loan and acquiring the

Governmental Lender Note for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Governmental Lender Note; provided, however, that the Holder may transfer the Governmental Lender Note as provided in Section 2.6 of the Funding Loan Agreement.

5. The Holder will not utilize any placement memorandum in connection with any sale or transfer of the Governmental Lender Note without providing the Governmental Lender with a draft of any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Governmental Lender Note evidencing the Funding Loan, and the Governmental Lender shall have the right to approve any description of the Governmental Lender and the Governmental Lender Note therein (which approval shall not be unreasonably withheld).
6. The Holder understands that the Governmental Lender Note is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Note are expressly limited as set forth in the Funding Loan Agreement and related documents.
7. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[Remainder of page intentionally left blank]

[\_\_\_\_\_], as Holder

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

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

Its: \_\_\_\_\_

**EXHIBIT C**

**FORM OF WRITTEN REQUISITION**

**(Project Fund)**

**Requisition# \_\_\_\_\_**

**Amount \$ \_\_\_\_\_**

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256  
Attention: Broward HFA Relationship Manager

Re:                 \$[77,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living) dated December \_\_, 2022

This requisition is being delivered to you in accordance with the Funding Loan Agreement dated as of December 1, 2022 (the “Funding Loan Agreement”) among Citibank, N.A. (the “Funding Lender”), the Housing Finance Authority of Broward County, Florida and The Bank of New York Mellon Trust Company, N.A., as fiscal agent, pursuant to which the above-referenced note was issued. Capitalized terms not defined herein shall have the meanings assigned thereto in the Funding Loan Agreement.

1.         You are requested to disburse funds from the Project Fund pursuant to Section 7.6 of the Funding Loan Agreement from the account(s), in the amount(s) and to the person(s) as follows:

[Insert grid (see below) summarizing all funds, including amount, source and payee, which are being requisitioned from the Fiscal Agent pursuant to this requisition.]

Amount	Funding Source	Payable To

2.         The undersigned certifies that:

(i)         the obligation stated on this Requisition has been incurred in, or in relation to, the acquisition, construction or equipping of the Project, each item is a proper charge against the Project Fund, and the obligation has not been the basis for a prior requisition that has been paid;



(ii) this Requisition contains no items representing any Closing Costs or any other amount constituting an issuance cost under Section 147(g) of the Code and payment of the costs referenced herein will not violate any representation, warranty or covenant of the Borrower in the Borrower Loan Agreement, the Regulatory Agreement or the Tax Certificate;

(iii) not less than 95% of the sum of: (a) the proceeds of the Funding Loan requisitioned by this Requisition to be funded from the Project Fund plus (b) all proceeds of the Funding Loan previously disbursed from the Project Fund have been or will be applied by the Borrower to pay Qualified Project Costs;

(iv) the Borrower acknowledges that fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) are not deemed to be Qualified Project Costs; and

(v) as of the date hereof, no event or condition has happened or is happening or exists that constitutes, or that with notice or lapse of time or both, would constitute, an Event of Default under the Funding Loan Agreement, under the Borrower Loan Agreement or under the loan agreement by and between the County and the Borrower with respect to the County Loan.

3. You hereby authorize Funding Lender to use the wire instructions contained in Exhibit D of the Funding Loan Agreement to wire the funds to, and Funding Lender may continue to rely on these instructions until it shall have received any written notice of modification or revocation from you.

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

DOUGLAS GARDENS IV, LTD., a Florida limited partnership

By: MHP Douglas SLP, LLC, a Florida limited liability company, its Special Limited Partner

By: \_\_\_\_\_  
W. Patrick McDowell, Chief Executive Officer

Approved by Funding Lender:

CITIBANK, N.A.

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

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

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

Approved by First Housing Development Corporation of Florida (only with respect to amounts disbursed from the County Loan Account):

[\_\_\_\_\_]

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

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

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

**EXHIBIT D**

**FISCAL AGENT WIRING INSTRUCTIONS**

Bank Name: \_\_\_\_\_  
Bank City and State: \_\_\_\_\_  
ABA Number: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
For Further Credit Account Name (if applicable): \_\_\_\_\_  
For Further Credit Account # (if applicable): \_\_\_\_\_  
Reference: \_\_\_\_\_

**EXHIBIT "B"**  
**FORM OF**  
**BORROWER LOAN AGREEMENT**  
**[ATTACHED]**

**BORROWER LOAN AGREEMENT**

**Between**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA,  
as Governmental Lender,**

**and**

**DOUGLAS GARDENS IV, LTD.,  
as Borrower**

**Dated as of December 1, 2022**

**Relating to:**

**[\$77,000,000]**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Note, Series 2022  
(Douglas Gardens – Senior Health and Living)**

**Funding Loan originated by CITIBANK, N.A., as Funding Lender**

The interest of the Governmental Lender in this Borrower Loan Agreement (except for certain rights described herein) has been pledged and assigned to Citibank, N.A., as funding lender (the "**Funding Lender**"), and The Bank of New York Mellon Trust Company, N.A. as fiscal agent (the "Fiscal Agent") under that certain Funding Loan Agreement, of even date herewith, by and among the Housing Finance Authority Of Broward County, Florida (the "**Governmental Lender**"), the Fiscal Agent, and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender to fund the Borrower Loan made under this Borrower Loan Agreement.

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## BORROWER LOAN AGREEMENT

THIS BORROWER LOAN AGREEMENT (this “**Borrower Loan Agreement**”) is entered into as of the 1st day of December, 2022, by and between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic duly organized and existing under the laws of the State of Florida (together with its successors and assigns, the “**Governmental Lender**”) and DOUGLAS GARDENS IV, LTD., a Florida limited partnership (together with its successors and assigns, the “**Borrower**”).

### WITNESSETH:

### RECITALS

WHEREAS, pursuant to Ordinance 79-41, enacted by the Board of County Commissioners of Broward County, Florida (the “**County**”) on June 20, 1979, as amended and a resolution adopted by the County on December [6], 2022 (collectively, the “**County Authorization**”), and Resolution No. 2022-\_\_\_ adopted by the Governmental Lender on October 19, 2022, and in accordance with Florida Housing Finance law, Sections 159.601 through 159.623, Florida Statutes, as amended (the “**Act**”), the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, construction and equipping of multifamily rental housing facilities for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low, moderate and middle income, as determined by the Governmental Lender; (b) to issue its revenue bonds, notes or other evidences of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the “**Borrower Loan**”), for the acquisition, construction, development and equipping of a 410-unit multifamily residential housing facility located in Pembroke Pines, Florida, to be commonly known as Douglas Gardens – Senior Health and Living (the “**Project**”); and

WHEREAS, the Borrower’s repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Note, as defined herein; and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain Funding Loan Agreement, of even date herewith (the "**Funding Loan Agreement**"), by and among the Governmental Lender, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "**Fiscal Agent**"), and Citibank, N.A. (the "**Funding Lender**"), under which the Funding Lender will make a loan (the "**Funding Loan**") to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction, development and equipping of the Project; and;

WHEREAS, the Governmental Lender's sole obligation to fund the Borrower Loan is limited to the proceeds from the Funding Loan; and

WHEREAS, the Borrower Loan is secured by, among other things, a lien on and security interest in the Project pursuant to that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof (as amended, restated and/or supplemented from time to time, the "**Security Instrument**"), encumbering the Borrower's leasehold interest in the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Funding Lender and the Fiscal Agent to secure the performance by the Governmental Lender of its obligations under the Funding Loan Agreement, and the Borrower Loan will be advanced to the Borrower pursuant to this Borrower Loan Agreement, the Funding Loan Agreement and the Construction Funding Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## **ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

### **Section 1.1 Specific Definitions.**

For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

(c) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(d) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(e) Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words “hereof,” “herein” and “hereunder” and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word “including” means “including but not limited to.”

## **Section 1.2 Definitions.**

The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“**Act**” shall have the definition given to it in the Recitals hereof.

“**Act of Bankruptcy**” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“**ADA**” shall have the meaning set forth in Section 4.1.38 hereof.

“**Additional Borrower Payments**” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default) and Section 5.15 (Expenses) of this Borrower Loan Agreement; Section 3.3.3 (Borrower Loan in Balance) of the Construction Funding Agreement; and Section 10 (Prepayments) of the Borrower Note.

“**Agreement of Environmental Indemnification**” shall mean the Agreement of Environmental Indemnification, dated as of the date hereof, executed by the Borrower and the Guarantor for the benefit of the Beneficiary Parties (as defined therein) and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“**Appraisal**” shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by the Funding Lender, and (ii) satisfactory to the Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by the Funding Lender) in all respects.

“**Approved Developer Fee Schedule**” shall have the meaning set forth in the Construction Funding Agreement.

**“Architect”** shall mean any licensed architect, space planner or design professional that the Borrower may engage from time to time, with the approval of the Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications.

**“Architect’s Agreement”** means any agreement that the Borrower and any Architect from time to time may execute pursuant to which the Borrower engages such Architect to design any portion of the Improvements, including the preparation of the Plans and Specifications, as approved by the Funding Lender.

**“Authorized Borrower Representative”** shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its General Partner which certificate may designate one or more alternates.

**“Bankruptcy Code”** shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

**“Bankruptcy Event”** shall have the meaning given to that term in the Security Instrument.

**“Bankruptcy Proceeding”** shall have the meaning set forth in Section 4.1.8 hereof.

**“Beneficiary Parties”** shall mean, collectively, the Fiscal Agent, the Governmental Lender and the Funding Lender.

**“Borrower”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Borrower Affiliate”** shall mean, as to the Borrower, the General Partner or the Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, the General Partner or the Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, the General Partner or the Guarantor, (iii) any partner, shareholder or, if a limited liability company, member of Borrower, the General Partner or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, the General Partner or the Guarantor (to the extent any of the Borrower, the General Partner or the Guarantor is a natural person).

**“Borrower Controlling Entity”** shall mean, if the Borrower is a partnership, any general partner or managing general partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower, or if the Borrower is a not-for-profit corporation, the members or directors thereof, as applicable.

**“Borrower Deferred Equity”** shall have the meaning set forth in the Construction Funding Agreement.

**“Borrower Initial Equity”** shall have the meaning set forth in the Construction Funding Agreement.

**“Borrower Loan”** shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

**“Borrower Loan Agreement”** shall mean this Borrower Loan Agreement.

**“Borrower Loan Amount”** shall mean \$[77,000,000], the aggregate original maximum principal amount of the Borrower Note.

**“Borrower Loan Documents”** shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Note, the Security Instrument, the Agreement of Environmental Indemnification, the Guaranty, the Governmental Lender Guaranties, the Replacement Reserve Agreement, the Contingency Draw-Down Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

**“Borrower Loan Payment Date”** shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

**“Borrower Loan Payments”** shall mean the monthly loan payments payable pursuant to the Borrower Note.

**“Borrower Loan Proceeds”** shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement, Section 7.6 of the Funding Loan Agreement and the Construction Funding Agreement.

**“Borrower Note”** shall mean that certain [Multifamily Note] dated as of the Closing Date in the original maximum principal amount of the Borrower Loan Amount made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Borrower Payment Obligations”** shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

**“Business Day”** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida, or federally insured depository

institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

**“Calculation Period”** shall mean three (3) consecutive full Calendar Months occurring prior to the Conversion Date, as the same may be extended in accordance with Section 3.1 hereof.

**“Calendar Month”** shall mean each of the twelve (12) calendar months of the year.

**“CC&R’s”** shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property.

**“Closing Date”** means the date that the initial Funding Loan proceeds are delivered and the initial Borrower Loan Proceeds are disbursed hereunder.

**“Code”** shall mean the Internal Revenue Code of 1986, as in effect on the Closing Date and each Date of Disbursement or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated (the **“Regulations”**), and applicable official public guidance published, under the Code.

**“Collateral”** shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Governmental Lender and/or the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the Project, all of which collateral (exclusive of the Unassigned Rights) is pledged and assigned to the Fiscal Agent and the Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

**“Completion”** shall have the meaning set forth in Section 5.26.

**“Completion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Computation Date”** shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

**“Condemnation”** shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

**“Conditions to Conversion”** shall have the meaning set forth in the Construction Funding Agreement.

**“Construction Consultant”** shall mean a third-party architect or engineer selected and retained by the Funding Lender, at the cost and expense of the Borrower, to monitor the progress

of construction and/or rehabilitation of the Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

**“Construction Contract”** shall mean any agreement that the Borrower and any Contractor from time to time may execute pursuant to which the Borrower engages the Contractor to construct any portion of the Improvements, as approved by the Funding Lender.

**“Construction Funding Agreement”** means that certain Construction Funding Agreement dated as of December 1, 2022, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the proceeds of the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf) to the Fiscal Agent, as agent of the Governmental Lender, for the benefit of the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

**“Construction Schedule”** shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender.

**“Contingency Draw-Down Agreement”** means the Contingency Draw-Down Agreement of even date herewith, among the Funding Lender, the Fiscal Agent and the Borrower relating to possible conversion of the Funding Loan from a draw-down loan to a fully funded loan.

**“Continuing Disclosure Agreement”** shall mean that certain Continuing Disclosure Agreement dated as of December 1, 2022, by and between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

**“Contractor”** shall mean any licensed general contractor or subcontractor that the Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

**“Contractual Obligation”** shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

**“Conversion”** shall mean the Funding Lender’s determination that the Conditions to Conversion have been satisfied in accordance with the provisions of this Borrower Loan Agreement and the Construction Funding Agreement.



**“Conversion Date”** shall mean the date to be designated by the Funding Lender once the Conditions to Conversion have been satisfied, the determination of the Permanent Period Amount has been made and any loan balancing payments in accordance with Section 3.3 hereof and the Construction Funding Agreement have been made. The Conversion Date must occur no later than the Outside Conversion Date.

**“Cost Breakdown”** shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement, as the same may be amended from time to time with the Funding Lender’s consent.

**“Cost of Improvements”** shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

**“Costs of Funding”** shall mean the Governmental Lender’s Closing Fee and the fees, costs, expenses and other charges incurred in connection with the funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, the Borrower’s counsel, Fiscal Agent’s counsel and Funding Lender’s counsel); (ii) financial advisor fee incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) any additional fees charged by the Governmental Lender or the Fiscal Agent; and (v) costs incurred in connection with the required public notices generally and costs of the public hearing. Any other costs occurring after the Closing Date relating to subsequent Disbursements shall be borne by the Borrower upon demand of the Governmental Lender and evidence of such costs.

**“Costs of Funding Deposit”** shall mean the amount required to be deposited by the Borrower with the Fiscal Agent (or a separate escrow company, if applicable) to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date pursuant to the closing memorandum executed by the Borrower and the Funding Lender.

**“County”** shall mean Broward County, Florida.

**“County Loan”** shall mean the subordinate construction and permanent loan to Borrower in the amount of \$[14,000,000] being made by Broward County, Florida, as of the Closing Date pursuant to the Subordinate Loan Documents.

**“Date of Disbursement”** shall mean the date of a Disbursement.

**“Day”** or **“Days”** shall mean calendar days unless expressly stated to be Business Days.

**“Debt”** shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse or nonrecourse, short term or long term, direct or contingent), all

committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

**“Default Rate”** shall have the meaning given to that term in the Borrower Note.

**“Determination of Taxability”** shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Note issued by the National Office of the Internal Revenue Service in which the Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Note, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

**“Developer”** shall mean, collectively, MHP Douglas Developer, LLC, a Florida limited liability company, and Douglas Gardens IV Developer, LLC, a Florida limited liability company, and their respective successors and assigns.

**“Developer Fee”** shall have the meaning set forth in the Construction Funding Agreement.

**“Development Agreement”** shall mean the Development Agreement, dated the Closing Date, between the Borrower and Developer.

**“Disbursement”** means a disbursement of the Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement, the Funding Loan Agreement and the Construction Funding Agreement.

**“Engineer”** shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that the Borrower may engage from time to time, with the approval of the Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

**“Engineer’s Contract”** shall mean any agreement that the Borrower and any Engineer from time to time may execute pursuant to which the Borrower engages such Engineer to perform

any engineering services with respect to any portion of the Improvements, as approved by the Funding Lender.

**“Equipment”** shall have the meaning given to the term “Personalty” in the Security Instrument.

**“Equity Contributions”** shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Partnership Agreement.

**“Equity Investor”** shall mean [CREA Corporate Fund 83, LP, a \_\_\_\_\_ limited partnership], its successors and assigns.

**“ERISA”** shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

**“ERISA Affiliate”** shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

**“Event of Default”** shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement.

**“Excess Revenues”** shall have the meaning ascribed thereto in Section 2.2(e) hereof.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended.

**“Expenses of the Project”** shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents or from insurance proceeds actually received by the Borrower), a management fee (however characterized) not to exceed the Underwritten Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

**“Extended Outside Conversion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Fair Market Value”** shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

**“Fiscal Agent”** shall mean the fiscal agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is The Bank of New York Mellon Trust Company, N.A.

**“Force Majeure”** shall have the meaning given to such term in the Construction Funding Agreement.

**“Funding Lender”** shall mean Citibank, N.A., a national banking association, in its capacity as lender under the Funding Loan, and its successors and assigns.

**“Funding Loan”** means the Funding Loan in the original maximum principal amount of \$[77,000,000] made by the Funding Lender to the Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

**“Funding Loan Agreement”** means the Funding Loan Agreement, dated of even date herewith, by and among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

**“Funding Loan Documents”** shall have the meaning given to that term in the Funding Loan Agreement.

**“GAAP”** shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

**“General Partner”** shall mean (i) Douglas Gardens Senior Housing, Inc., a Florida not-for-profit corporation, and/or (ii) any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender’s approval pursuant to the Borrower Loan Documents or the Partnership Agreement), selected to be a general partner of the Borrower.

**“Governmental Authority”** shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

**“Governmental Lender”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Governmental Lender Note”** shall mean that certain Multifamily Housing Revenue Note (Douglas Gardens – Senior Health and Living), Series 2022 dated December \_\_, 2022, in the original maximum principal amount of \$ [77,000,000], made by the Governmental Lender and payable to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

**“Governmental Lender’s Closing Fee”** shall mean the (i) Governmental Lender’s one (1) time initial issuance fee in the amount equal to fifty (50) basis points of the original aggregate principal amount of the Funding Loan, as evidenced by the Governmental Lender Note, for a total of \$\_\_\_\_\_, (ii) Governmental Lender’s indemnification fee of \$20,000.00 and (iii) Governmental Lender’s counsel fee of \$5,000.00 all of which shall be payable by the Borrower to the Governmental Lender on the Closing Date from money contributed by or on behalf of the Borrower and deposited with the Title Company for payment to the Governmental Lender pursuant to Section 2.3(c)(ii) hereof.

**“Governmental Lender Guaranties”** shall mean, collectively, the Absolute and Unconditional Guaranty of Completion, the Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, the Absolute and Unconditional Guaranty of Operating Deficits, and the Environmental Indemnity Agreement, each made by the Guarantors for the benefit of the Governmental Lender and the Fiscal Agent.

**“Gross Income”** shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of the Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by the Borrower in accordance with applicable law.

**“Gross Proceeds”** shall mean, without duplication, the aggregate of:

(a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;

(b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;

(c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and

(d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

**“Ground Lease”** shall mean that certain Subsublease Agreement between the Subsublessor, as subsublessor, and the Borrower, as subsublessee.

**“Guarantors”** shall mean collectively, [the Borrower, MHP Developers, LLC, a Florida limited liability company, and Douglas Gardens Senior Housing, Inc., a Florida corporation], as guarantors pursuant to and under the Guaranty and the Governmental Lender Guaranties.

**“Guaranty”** shall mean, collectively, (i) the Completion and Repayment Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein), (ii) the Exceptions to Non-Recourse Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties (as defined therein), and (iii) the Governmental Lender Guaranties.

[**“Guaranty of Recourse Obligations”** means the Continuing, Absolute, and Unconditional Guaranty of Recourse Obligations, dated as of December 1, 2022, from the Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.]

**“Improvements”** shall mean the approximately 410-unit multifamily residential rental project to be acquired and constructed on the Land and known or to be known as Douglas Gardens – Senior Health and Living, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be acquired, constructed, rehabilitated or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

**“Indemnified Party”** shall have the meaning set forth in Section 5.16 hereof.

**“Installment Computation Date”** shall mean any Computation Date other than the first Computation Date or the final Computation Date.

**“Interest Rate”** shall mean, with respect to a Borrower Note, the rate of interest accruing on such Borrower Note pursuant to the terms thereof.

**“Interim Phase Amount”** shall mean \$[77,000,000].

**“Land”** means the real property described on Exhibit A to the Security Instrument.

**“Land Loan”** shall mean the subordinate loan to Borrower in the amount of \$ \_\_\_\_\_ being made by Subsublessor, or its affiliate, as of the Closing Date pursuant to the Subordinate Loan Documents.

**“Late Charge”** shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in Section 7 of the Borrower Note and Section 2.5(a)(v) hereof.

**“Legal Action”** shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

**“Legal Requirements”** shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

**“Liabilities”** shall have the meaning set forth in Section 5.16 hereof.

**“Licenses”** shall have the meaning set forth in Section 4.1.22 hereof.

**“Lien”** shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

**“Management Agreement”** shall mean the [Property Management Agreement] dated as of [the Closing Date], between the Borrower and the Property Manager, pursuant to which the

Property Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

**“Material Adverse Change”** means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, General Partner, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender or the Fiscal Agent under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or the Fiscal Agent or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

**“Moody’s”** shall mean Moody’s Investors Service, Inc., or its successor.

**“Mortgaged Property”** shall have the meaning given to that term in the Security Instrument.

**“Net Operating Income”** shall mean: (i) the Gross Income, less (ii) the Expenses of the Project.

**“Nonpurpose Investment”** shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

**“Ongoing Governmental Lender Fee”** shall mean the annual program administration fee of the Governmental Lender, payable in advance by the Borrower to the Fiscal Agent for payment to the Governmental Lender in the amount of eighteen (18) basis points per annum of the outstanding principal amount of the Loan (calculated on the Business Day prior to any principal reduction of the Loan). The first payment of the Ongoing Governmental Lender Fee shall be payable on the Closing Date for the period beginning on the Closing Date and ending on November 30, 2023. Thereafter, the Ongoing Governmental Lender Fee shall be payable in semi-annual installments on each June 1 and December 1, with the first semi-annual payment due and payable on June 1, 2023; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, the Fiscal Agent, Bond Counsel, the Governmental Lender’s counsel, or the Fiscal Agent’s counsel to be paid by the Borrower pursuant to Section 2.5(ii) hereof.



**“Other Borrower Moneys”** shall mean moneys of the Borrower other than Borrower Loan Proceeds and includes, but is not limited to, the County Loan, the Land Loan, Net Operating Income, the Borrower’s Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the Project.

**“Other Charges”** shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

**“Outside Conversion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Partnership Agreement”** shall mean that certain Amended and Restated Agreement of Limited Partnership of the Borrower dated December \_\_\_, 2022, as the same may be amended, restated or modified in accordance with its terms.

**“Patriot Act”** shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

**“Patriot Act Offense”** shall have the meaning set forth in Section 4.1.48 hereof.

**“Permanent Period”** shall mean the period of time from the Conversion Date to the Maturity Date (as defined in the Funding Loan Agreement).

**“Permanent Period Amount”** shall mean the principal amount of the Borrower Loan following the calculation provided for in the Construction Funding Agreement.

**“Permitted Encumbrances”** shall have the meaning given to that term in the Security Instrument.

**“Permitted Lease”** shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

**“Person”** shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

**“Plan”** shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is

obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

**“Plans and Specifications”** shall mean the plans and specifications for the construction and/or rehabilitation, as the case may be, of the Project approved by the Funding Lender.

**“Potential Default”** shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or the passage of time, or both, be an Event of Default.

**“Prepayment Premium”** shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any prepayment premium as set forth in the Borrower Note).

**“Project”** shall mean the Mortgaged Property and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

**“Project Agreements and Licenses”** shall mean any and all Construction Contracts, Engineer’s Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

**“Property Manager”** shall mean Weller Management, LLC, a Florida limited liability company, or any other management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

**“Provided Information”** shall have the meaning set forth in Section 9.1.1(a) hereof.

**“Qualified Project Costs”** shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by a Borrower Affiliate or persons or entities treated as related to the Borrower within the meaning of Sections 1504, 267 and 707 of the Code (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such

affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by such affiliate, and (C) any overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to August 17, 2022, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the Regulations) or the date or dates of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Governmental Lender Note such costs were (A) costs of issuance of the Governmental Lender Note, (B) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Lender Note (as defined in Section 1.148-1 of the Regulations), or (C) capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) Costs of Funding shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk and are allocable to the construction or rehabilitation period of the Project (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

“**Rebate Amount**” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

“**Rebate Analyst**” shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender [and the Funding Lender]. The initial Rebate Analyst shall be \_\_\_\_\_.

“**Rebate Analyst’s Fee**” shall mean the fee of the Rebate Analyst payable by the Borrower to the Rebate Analyst.

“**Rebate Fund**” shall mean the Rebate Fund created pursuant to Section 5.36(b) hereof.

**“Regulations”** shall have the meaning given to that term in the definition of the **“Code”** in this Section 1.2.

**“Regulatory Agreement”** shall mean that certain Land Use Restriction Agreement dated as of the date hereof, among the Governmental Lender, the Fiscal Agent and the Borrower.

**“Related Documents”** shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Partnership Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

**“Replacement Reserve Agreement”** shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

**“Replacement Reserve Fund Requirement”** means the Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

**“Resolution”** shall mean the resolution of the Governmental Lender adopted on October 19, 2022 authorizing the Funding Loan, as evidenced by the Governmental Lender Note, and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

**“Retainage”** shall have the meaning set forth in the Construction Funding Agreement.

**“Review Fee”** shall mean the three thousand dollar (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements[, but excluding pre-approved interest changes which have been requested prior to the Closing Date].

**“Secondary Market Disclosure Document”** shall have the meaning set forth in Section 9.1.2 hereof.

**“Secondary Market Transaction”** shall have the meaning set forth in Section 9.1.1 hereof.

**“Securities”** shall have the meaning set forth in Section 9.1.1 hereof.

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

**“Security Documents”** shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan

Agreement, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

**“Security Instrument”** shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

**“Servicer”** shall mean the servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

**“Servicing Agreement”** shall mean any servicing agreement or master servicing agreement, between the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

**“Standard & Poor’s”** or **“S&P”** shall mean S&P Global Ratings, a division of Standard & Poor’s Financial Services, Inc., and its successors.

**“State”** shall mean the State of Florida.

**“Subordinate Debt”** shall mean, collectively, the County Loan and the Land Loan.

**“Subordinate Lender”** shall mean, collectively, Broward County, Florida and the Subsublessor.

**“Subordinate Loan Documents”** shall mean, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

**“Substantial Completion Date”** shall have the meaning set forth in the Construction Funding Agreement.

**“Substantially Complete”** or **“Substantially Completed”** shall have the meaning set forth in the Construction Funding Agreement.

**“Subsublessor”** shall mean Florida Pathways, Inc., a Florida not-for-profit corporation, as subsublessor under the Ground Lease.

**“Tax Counsel”** shall have the meaning set forth in the Funding Loan Agreement.

**“Taxes”** shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

**“Term”** shall mean the term of this Borrower Loan Agreement pursuant to Section 10.13.

**“Title Company”** shall mean First American Title Insurance Company.

“**Title Insurance Policy**” shall mean the mortgagee title insurance policy, or marked title insurance commitment, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“**Transfer**” shall have the meaning given to that term in the Security Instrument.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State.

“**Underwritten Management Fee**” shall have the meaning set forth in the Construction Funding Agreement.

“**Unit**” shall mean a residential apartment unit within the Improvements.

“**Written Consent**” and “**Written Notice**” shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender, the Funding Lender or the Fiscal Agent, as appropriate.

## **ARTICLE II GENERAL**

### **Section 2.1    Origination of the Borrower Loan.**

In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, pursuant to the Resolution and in accordance with the Act, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Fiscal Agent for payment to or for the benefit of the Borrower in accordance with the terms of the Construction Funding Agreement, this Borrower Loan Agreement and the Funding Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf (other than with respect to the Unassigned Rights) to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may, in its discretion, designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1. Notwithstanding the foregoing, disbursements of the Borrower Loan shall be made from the Project Fund held under the Funding Loan Agreement by the Fiscal Agent.

### **Section 2.2    Security for the Funding Loan.**

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Funding Lender and the Fiscal Agent under and pursuant to the Funding Loan Agreement (a) the Borrower Note and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement other than the Rebate Fund and Expense Fund created and established thereunder. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Funding Lender and the Fiscal Agent.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) *Tax Covenants.* Seek specific performance of, and enforce, the tax covenants of the Funding Loan Agreement, the Regulatory Agreement, the Tax Certificate and the Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund; and

(ii) *Regulatory Agreement.* Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender or Fiscal Agent under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) only against Excess Revenues (defined below), if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) *Unassigned Rights.* Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) against Excess Revenues, if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

- (i) prosecute its action to a lien on the Project; or
  - (ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or
  - (iii) interfere with the exercise by Funding Lender or the Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or
  - (iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.
- (d) The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.
- (e) As used in this Section 2.2, the term “**Excess Revenues**” means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, and the Subordinate Debt, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

### **Section 2.3 Loan; the Borrower Note; Conditions to Closing.**

(a) The Funding Loan shall be funded by the Funding Lender directly to the Fiscal Agent for disbursement to the Borrower upon satisfaction of the conditions set forth in the Construction Funding Agreement and the Funding Loan Agreement, in one or more installments not to exceed, in the aggregate, the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction Funding Agreement and the Funding Loan Agreement. Upon funding of each installment of the Funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The proceeds of the Borrower Loan shall be used by the



Borrower to pay costs of the acquisition, construction, rehabilitation, development, equipping and/or operation of the Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender has contracted with the Funding Lender to fund the Borrower Loan in the manner set forth herein and in the Funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the Funding Lender for the account of the Governmental Lender.

(b) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The Governmental Lender shall assign the Borrower Note to the Funding Lender on the Closing Date as a condition to closing of the Borrower Loan and the Funding Loan.

(c) Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the Funding Lender in their sole discretion of each of the conditions precedent to closing set forth in the Funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following:

(i) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the Funding Lender, the Regulatory Agreement, and each of the other documents specified for recording in instructions delivered to the Title Company by counsel to the Funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from Funding Lender's counsel or such other counsel as may be acceptable to the Funding Lender);

(ii) delivery to the Fiscal Agent or into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of Funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the Funding Lender (or such other counsel as may be acceptable to the Funding Lender) and/or as specified in a closing memorandum executed by the Borrower and the Funding Lender;

(iii) payment of all fees payable in connection with the closing of the Borrower Loan including the Governmental Lender's Closing Fee, the Ongoing Governmental Lender Fee payable on the Closing Date, and the initial fees, costs and expenses of the Fiscal Agent.

In addition, closing of the Borrower Loan shall be subject to the delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender and the Funding Lender, dated the Closing Date, in form and substance acceptable to Tax Counsel, regarding the due execution

by the Borrower of, and the enforceability against the Borrower of, the Borrower Loan Documents.

**Section 2.4 Borrower Loan Payments.**

(a) The Borrower shall make the Borrower Loan Payments in accordance with the Borrower Note. Through and including the Conversion Date, each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 11:00 a.m., New York City time, on the Borrower Loan Payment Date or, if to the Fiscal Agent, by 11:00 a.m., New York City time, on the Borrower Loan Payment Date. Following the Conversion Date, each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 2:00 p.m., New York City time, on the date that is two (2) Business Days prior to the Borrower Loan Payment Date. Each such payment shall be made to the Fiscal Agent or Servicer, as applicable, by deposit to such account as the Fiscal Agent or Servicer, as applicable, may designate by Written Notice to the Borrower. If payments are to be made to the Fiscal Agent, such payments shall be deposited into the Funding Loan Payment Fund established under the Funding Loan Agreement. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Governmental Lender Note. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) Unless there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent for deposit into the Funding Loan Payment Fund created under the Funding Loan Agreement. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid by the Borrower to the Fiscal Agent.

**Section 2.5 Additional Borrower Payments.**

(a) The Borrower shall pay the following amounts:

(i) to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.36 hereof and the Rebate Analyst's Fee to be deposited in the Expense Fund and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Fiscal Agent for remittance to the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents, the Funding Loan Documents or the Project, including, without

limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(iii) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(iv) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(v) all Late Charges due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (v) shall be made to the Servicer, and, if there is no Servicer, such payments shall be made to the Funding Lender;

(vi) to the Fiscal Agent, the Fiscal Agent Fees as and when the same become due;

(vii) to the Governmental Lender, the Late Reporting Fees and Compliance Fees as defined and specified in the Regulatory Agreement;

(viii) to the Fiscal Agent, all fees, charges, costs, advances, indemnities and expenses, including without limitation agent and counsel fees, of the Fiscal Agent incurred under the Borrower Loan Documents or the Funding Loan Documents as and when the same become due; and

(ix) to the entity entitled thereto, when due and payable, all taxes and assessments levied by public agencies on the Project.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory

Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender, Fiscal Agent or the Servicer, as applicable;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

**Section 2.6 Overdue Payments; Payments in Default.** If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer, a Late Charge in the amount and to the extent set forth in the Borrower Note, if any.

**Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds.** The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender in accordance with the terms of the Borrower Note; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

**Section 2.8 Grant of Security Interest; Application of Funds.** To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts (other than the Rebate Fund and the Expense Fund) created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent (other than sums held in the Rebate Fund and the Expense Fund), the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

**Section 2.9 Marshalling; Payments Set Aside.** The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, Guarantor or General Partner and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender, the Fiscal Agent or the Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

**Section 2.10 Borrower Loan Disbursements.** The Borrower Loan shall be disbursed by the Funding Lender, as agent for the Governmental Lender, to the Fiscal Agent and deposited by the Fiscal Agent in the Project Fund held by the Fiscal Agent under the Funding Loan Agreement for further disbursement to the Borrower, or directly to the person, firm or entity to be paid, in accordance with the terms of the Funding Loan Agreement and subject to satisfaction of the conditions set forth in the Construction Funding Agreement.

### ARTICLE III CONVERSION

**Section 3.1 Conversion Date and Extension of Outside Conversion Date.** The Borrower shall satisfy each of the Conditions to Conversion and cause the Conversion Date to occur on or before the Outside Conversion Date (including the Extended Outside Conversion Date, if any), as further provided in the Construction Funding Agreement. The failure to satisfy each of the Conditions to Conversion on or before the Outside Conversion Date (or such earlier

time as may be required in the Construction Funding Agreement) shall constitute an Event of Default under the Borrower Loan Documents.

**Section 3.2 Notice From Funding Lender; Funding Lender's Calculation Final.**

(a) Following satisfaction of all of the Conditions to Conversion, the Funding Lender shall deliver Written Notice to the Borrower, Governmental Lender and the Fiscal Agent of: (i) the Conversion Date, (ii) the amount of the Permanent Period Amount, (iii) any required prepayment of the Borrower Note (as described below in Section 3.3) and (iv) any amendments to the amortization schedule, as applicable.

(b) The Funding Lender's calculation of the Permanent Period Amount and any amendments to the amortization of the Borrower Loan shall be, in the absence of manifest error, conclusive and binding on all parties.

**Section 3.3 Mandatory Prepayment of the Borrower Loan.**

(a) As further provided in the Construction Funding Agreement and Borrower Note, if and to the extent the Permanent Period Amount is less than the Interim Phase Amount, Funding Lender may in its sole discretion require the Borrower to make a partial prepayment of the Borrower Loan in an amount equal to the difference between the Interim Phase Amount and the Permanent Period Amount, provided, however, that if the Permanent Period Amount is less than the Minimum Permanent Period Amount (as defined in the Construction Funding Agreement), then Funding Lender may in its sole discretion require the Borrower to prepay the Borrower Loan in full.

(b) Any prepayment in full or in part of the Borrower Loan required pursuant to Section 3.3(a) above shall be subject to a prepayment premium under certain circumstances as more particularly set forth in the Borrower Note.

**Section 3.4 Release of Remaining Loan Proceeds.** If and to the extent that the Permanent Period Amount is greater than the principal amount of the Borrower Loan which has previously been disbursed to the Borrower, the Funding Lender shall deliver Written Notice thereof to the Borrower, the Governmental Lender and the County on or before the Conversion Date. Within ten (10) Business Days after delivery of such notice, but in no event later than the Outside Conversion Date, the Funding Lender shall disburse the Borrower Loan proceeds to the Fiscal Agent for disbursement to the Borrower so that the aggregate principal amount of the Borrower Loan disbursed equals the Permanent Period Amount. Any Borrower Loan proceeds previously disbursed to the Borrower in excess of the Permanent Period Amount shall be paid by the Borrower to the Fiscal Agent for the account of the Funding Lender.

**Section 3.5 No Amendment.** Nothing contained in this Article III shall be construed to amend, modify, alter, change or supersede the terms and provisions of the Borrower Note, Security Instrument, the Construction Funding Agreement or any other Borrower Loan Document and, if there shall exist a conflict between the terms and provisions of this Article III

and those of the Borrower Note, Security Instrument, the Construction Funding Agreement or other Borrower Loan Documents, then the terms and provisions of the Borrower Note, Security Instrument, the Construction Funding Agreement and other Borrower Loan Documents shall control, provided, however, that in the event of a conflict between the terms and provisions of this Article III and those of the Borrower's loan application with the Funding Lender, the terms and provisions of this Article III shall control.

**Section 3.6 Determinations by the Funding Lender.** In any instance where the consent or approval of the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Funding Lender under this Article III, including in connection with the Construction Funding Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Funding Lender (or its designated representative), at its sole and exclusive option and in its sole and absolute discretion, except as may be otherwise specifically provided herein.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Borrower Representations.** To induce the Governmental Lender, the Fiscal Agent and the Funding Lender to execute this Borrower Loan Agreement and to induce Funding Lender to make Disbursements, the Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and, subject to Section 4.2, shall survive the making of the Borrower Loan and will be complete and accurate, and deemed remade, except as otherwise noted through notice to Funding Lender and approved by Funding Lender, as of the date of each Disbursement, as of the original Outside Conversion Date, as of the date of any extension thereof and as of the Conversion Date in accordance with the terms and conditions of the Borrower Note.

**Section 4.1.1 Organization; Special Purpose.** The Borrower is a Florida limited partnership in good standing under the laws of the State, has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper limited partnership action, has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, in the name of and on behalf of the General Partner, is fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership (of a leasehold interest in), management and operation of the Project.

**Section 4.1.2 Proceedings; Enforceability.** Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan

Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

**Section 4.1.3**      **No Conflicts.** The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Partnership Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**Section 4.1.4**      **Litigation; Adverse Facts.** There is no Legal Action, nor is there a basis known to the Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened in writing, against or affecting the Borrower, the General Partner or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the General Partner or the Guarantor. None of the Borrower, the General Partner or Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of the Borrower, the General Partner and the Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, the General Partner or



the Guarantor. None of the Borrower, the General Partner or the Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), or condition (financial or otherwise) or prospects of Borrower, the General Partner or the Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, the General Partner or Guarantor, as applicable; or (c) in default with respect to any agreement to which the Borrower, the General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, the General Partner or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, the General Partner or Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

**Section 4.1.5**      **Agreements; Consents; Approvals.** Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**Section 4.1.6**      **Title.** The Borrower shall have marketable title to a leasehold interest in the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first

priority lien on the Borrower's leasehold interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

**Section 4.1.7** **Survey.** To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

**Section 4.1.8** **No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "**Bankruptcy Proceeding**"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

**Section 4.1.9** **Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

**Section 4.1.10** **No Plan Assets.** The Borrower is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

**Section 4.1.11** **Compliance.** The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

**Section 4.1.12 Contracts.** All service, maintenance or repair contracts affecting the Project have been entered into at arm's length (except for such contracts between the Borrower and its affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

**Section 4.1.13 Financial Information.** All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

**Section 4.1.14 Condemnation.** No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

**Section 4.1.15 Federal Reserve Regulations.** No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

**Section 4.1.16 Utilities and Public Access.** To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number

of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

**Section 4.1.17 Not a Foreign Person.** The Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

**Section 4.1.18 Separate Lots.** Each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land.

**Section 4.1.19 Assessments.** There are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

**Section 4.1.20 Enforceability.** The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

**Section 4.1.21 Insurance.** The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

**Section 4.1.22 Use of Property; Licenses.** The Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and equipping of the Project have been, or will be, timely obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the Project.

**Section 4.1.23 Flood Zone.** On the Closing Date, no structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area. Subsequent to the Closing Date, if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as amended, or as required by the Servicer pursuant to its underwriting guidelines.

**Section 4.1.24 Physical Condition.** The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are or, after completion of the construction, rehabilitation and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

**Section 4.1.25 Encroachments.** All of the Improvements included in determining the appraised value of the Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

**Section 4.1.26 State Law Requirements.** The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

**Section 4.1.27 Filing and Recording Taxes.** All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

**Section 4.1.28 Investment Company Act.** The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

**Section 4.1.29 Fraudulent Transfer.** The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

**Section 4.1.30 Ownership of the Borrower.** Except as set forth in the Partnership Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in the Borrower.

**Section 4.1.31 Environmental Matters.** To the best of the Borrower's knowledge, and except as disclosed in the Agreement of Environmental Indemnification, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification on the Closing Date.

**Section 4.1.32 Name; Principal Place of Business.** Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

**Section 4.1.33 Subordinated Debt.** There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by Funding Lender as

determined on the Closing Date and unsecured, subordinate partner loans to the Borrower permitted or required under the terms of the Partnership Agreement.

**Section 4.1.34 Filing of Taxes.** The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

**Section 4.1.35 General Tax.** All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

**Section 4.1.36 Approval of Borrower Loan Documents and Funding Loan Documents.** By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

**Section 4.1.37 Funding Loan Agreement.** The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

**Section 4.1.38 Americans with Disabilities Act.** The Project, as designed, will conform in all material respects, with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and its implementing regulations and the American Disabilities Act Amendments Act (ADAAA) Pub. L. 10-325 and all subsequent amendments (the "ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

**Section 4.1.39 Requirements of Act, County Authorization, Code and Regulations.** The Project satisfies all requirements of the Act, the County Authorization, the Code and the Regulations applicable to the Project.

**Section 4.1.40 Regulatory Agreement.** The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory

Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act, the Resolution, the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

**Section 4.1.41 Intention to Hold Project.** The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42 Concerning General Partner.**

(a) The General Partner is a Florida not-for-profit corporation, duly organized and validly authorized to do business under the laws of the State of Florida. The General Partner has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by the General Partner for its own account and on behalf of the Borrower, as general partner of the Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

(b) The General Partner has made all required filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of General Partner.

(c) The General Partner is duly authorized to do business in the State.

(d) The execution, delivery and performance by the Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of the General Partner on behalf of the Borrower, and by all necessary action on behalf of the General Partner.

(e) The execution, delivery and performance by the General Partner, on behalf of the Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) the General Partner's organizational documents; (ii) any other Legal Requirement affecting the General Partner or any of its properties; or (iii) any agreement to which the General Partner is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties,



any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

**Section 4.1.43 Government and Private Approvals.** All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that the Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, to the best of the Borrower's knowledge, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of the Borrower, are required for the due execution, delivery and performance by the Borrower or General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by the Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

**Section 4.1.44 Concerning Guarantors.** The Guaranty and all other Borrower Loan Documents and the Funding Loan Documents to which the Guarantors are a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantors and are legally valid and binding obligations of the Guarantors, enforceable against each Guarantor 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.

**Section 4.1.45 No Material Defaults.** Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by the Borrower under, and, to the best knowledge of the Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which the Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which the Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which the Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves

the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of the Borrower, General Partner or any Guarantor or to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

**Section 4.1.46**     **Payment of Taxes.** Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of the Borrower, the General Partner and the Guarantors required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon the Borrower, the General Partner and the Guarantors, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii) the Borrower knows of no proposed tax assessment against it or against the General Partner or any Guarantors that would be material to the condition (financial or otherwise) of the Borrower, the General Partner or the Guarantors, and neither the Borrower nor the General Partner have contracted with any Governmental Authority in connection with such taxes.

**Section 4.1.47**     **Rights to Project Agreements and Licenses.** The Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. The Borrower's interest in the Plans and Specifications and all Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents, the Funding Loan Documents and the Subordinate Loan Documents or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

**Section 4.1.48**     **Patriot Act Compliance.** The Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "**Patriot Act Offense**" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office

of Foreign Assets Control (“OFAC”), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified the Borrower in writing is now included in “Government Lists,” or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that the Funding Lender notified the Borrower in writing is now included in “Government Lists.”

**Section 4.1.49 Rent Schedule.** The Borrower has prepared a prospective Unit absorption and rent collection schedule with respect to the Project substantially in the form attached as an exhibit to the Construction Funding Agreement, which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule, the Borrower believes it will collect rents with respect to the Project in amounts greater than or equal to debt service on the Borrower Loan.

**Section 4.1.50 Other Documents.** Each of the representations and warranties of the Borrower or General Partner contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of the Funding Lender and the Governmental Lender.

**Section 4.1.51 Subordinate Loan Documents.** The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

**Section 4.1.52 Ground Lease.** The Ground Lease is in full force and effect and the Borrower has paid all rent and other amounts due and payable to the ground lessor thereunder. There exists no material violation of or material default by the Borrower under the Ground Lease, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default by any other party under the Ground Lease.

**Section 4.2 Survival of Representations and Covenants.** All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and

covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## ARTICLE V AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

**Section 5.1 Existence.** The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

**Section 5.2 Taxes and Other Charges.** The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all Taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including Taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income or gross receipts (to the extent such Taxes are assessed outside the Property Jurisdiction) of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such Taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such Taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such Taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.3 Repairs; Maintenance and Compliance; Physical Condition.** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

**Section 5.4 Litigation.** The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.5 Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

**Section 5.6 Notices.** The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

**Section 5.7 Cooperate in Legal Proceedings.** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

**Section 5.8 Further Assurances.** The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the Project, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer, the Fiscal Agent and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent or the Funding Lender shall reasonably require from

time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's, the Fiscal Agent's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Funding Lender in each of the locations reasonably designated by the Servicer or the Funding Lender.

**Section 5.9 Delivery of Financial Information.** After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

**Section 5.10 Environmental Matters.** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender, the Fiscal Agent, the Governmental Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

**Section 5.11 Title to the Project.** The Borrower will warrant and defend the title to the Project, subject only to Permitted Encumbrances, against the claims of all Persons.

**Section 5.12 Governmental Lender's, Fiscal Agent's and Funding Lender's Fees.** The Borrower covenants to pay the reasonable fees, costs and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by each of the Governmental Lender, the Fiscal Agent or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and/or the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in

effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.13 Estoppel Statement.** The Borrower shall furnish to the Funding Lender or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Note, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

**Section 5.14 Defense of Actions.** The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. Except as otherwise provided herein, the Funding Lender may take any such action without notice to or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay

all costs of collection and defense, including reasonable attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

**Section 5.15 Expenses.** The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees, costs and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the Fiscal Agent, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.15 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Borrower's leasehold interest in the Project by foreclosure or a conveyance in lieu of foreclosure thereof. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section [18(i)] of the Security Instrument. Notwithstanding anything to the contrary in this Agreement, neither the Borrower or the Governmental Lender shall be responsible for any costs associated with any securitization of the Borrower Loan as permitted under this Borrower Loan Agreement.



**Section 5.16 Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of the Governmental Lender, the Fiscal Agent or the Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, the Beneficiary Parties, Citigroup, Inc. and each of their respective officers, directors, employees, attorneys and agents (each an “**Indemnified Party**”), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the “**Liabilities**”) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any of the Borrower’s obligations under Article IX);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of the Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(g) Any Determination of Taxability;

(h) Any breach (or alleged breach) by the Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by the Borrower, the General Partner, Guarantor or their Affiliates to the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or any other Person in connection with the Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by the Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(i) any failure (or alleged failure) by the Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(j) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(k) the use of the proceeds of the Borrower Loan and the Funding Loan,

except in the case of the foregoing indemnification of the Governmental Lender or any related Indemnified Party, to the extent such damages are caused by the willful misconduct of such Indemnified Party, and except in the case of the foregoing indemnification of the Funding Lender, the Fiscal Agent or the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.16 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnify hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and in the case of the Servicer and the Fiscal Agent, any resignation or removal. The provisions of this Section 5.16 shall survive the termination of this Borrower Loan Agreement. The foregoing provisions of this Section 5.16 are not intended to and shall not negate, modify, limit or change the provisions of Section [9] of the Borrower Note.

**Section 5.17 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender.** Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

**Section 5.18 Right of Access to the Project.** The Borrower agrees that the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice and subject to the rights of residential tenants, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

**Section 5.19 Notice of Default.** The Borrower will provide the Governmental Lender, the Funding Lender and the Servicer as soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Potential Default or Event of Default, with a statement of an Authorized Borrower Representative describing the details of such Potential Default or Event of Default and any curative action Borrower proposes to take.

**Section 5.20 Covenant with Governmental Lender, the Fiscal Agent and the Funding Lender.** The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Note and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender, the Fiscal

Agent and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Note from time to time.

**Section 5.21 Obligation of the Borrower to Construct or Rehabilitate the Project.** The Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as the case may be, and equip the Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction or rehabilitation, as appropriate, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable to the Borrower or any other person if for any reason the Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the Project. The Governmental Lender and the Fiscal Agent shall not be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.22 Maintenance of Insurance.** Borrower will maintain the insurance required by the Security Instrument.

**Section 5.23 Information; Statements and Reports.** The Borrower shall furnish or cause to be furnished to the Funding Lender and, upon written request, the Governmental Lender:

(a) *Financial Statements; Rent Rolls.* In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(b) *General Partner.* As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the General Partner, copies of the financial statements of the General Partner as of such date, prepared in substantially the form previously delivered to the Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

(c) *Leasing Reports.* Prior to the Conversion Date, on a monthly basis (and in any event within fifteen (15) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the Project during such Calendar Month and on a cumulative basis since Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested

by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(d) *Audit Reports.* Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(e) *Notices; Certificates or Communications.* Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to the Borrower or General Partner naming the Governmental Lender or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of the Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(f) *Certification of Non-Foreign Status.* Promptly upon request of the Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by the Funding Lender;

(g) *Compliance Certificates.* Together with each of the documents required pursuant to Section 5.23(a) hereof submitted by or on behalf of the Borrower, a statement, in form and substance satisfactory to the Funding Lender and certified by an Authorized Borrower Representative, to the effect that the Borrower is in compliance with all covenants, terms and conditions applicable to the Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by the Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of the Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(h) *Other Items and Information.* Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of the Borrower, the General Partner, Guarantors or the Project, as the Funding Lender or the Governmental Lender reasonably requests from time to time.

In addition, and notwithstanding the foregoing, the Borrower shall furnish or cause to be furnished to the Governmental Lender all reports required under the Regulatory Agreement.

**Section 5.24 Additional Notices.** The Borrower will, promptly after becoming aware thereof, give written notice to the Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against the Borrower, the General Partner or any Guarantor, or any Legal Action which is threatened against the Borrower, the General Partner or any Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of the Borrower, the General Partner, Guarantors or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which the Borrower, the General Partner or any Guarantor is a party or by or to which the Borrower, the General Partner or any Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), or condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantors, as applicable;

(d) any default, alleged default or potential default on the part of the Borrower under any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of default, alleged default or potential default on the part of the Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by the Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of the Borrower's or General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by the Borrower or the General Partner; or (iii) the nature of the trade or business of the Borrower; and

(g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, General Partner and the Equity Investor) under the Partnership Agreement.

**Section 5.25 Compliance with Other Agreements; Legal Requirements.**

(a) The Borrower shall timely perform and comply with, and shall cause the General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership Agreement, and the Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) The Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project or construction and/or rehabilitation of the Improvements, and will furnish the Funding Lender

with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. The Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. The Funding Lender shall at all times have the right to audit, at the Borrower's expense, the Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and the Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with the Funding Lender in any such audit. Without limiting the generality of the foregoing, the Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to the Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the Project.

**Section 5.26 Completion and Maintenance of Project.** The Borrower shall cause the construction or rehabilitation, as the case may be, of the Improvements to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to the Borrower's rights of contest under Section 10.15 hereof) ("**Completion**") on or before the Completion Date. The Borrower shall thereafter maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

**Section 5.27 Fixtures.** The Borrower shall deliver to the Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which the Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

**Section 5.28 Income from Project.** The Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. Prior to the Conversion Date, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

**Section 5.29 Leases and Occupancy Agreements.**

(a) *Lease Approval.*

(i) Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without the Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease;

(B) The Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(C) The lease conforms to the Rent Schedule attached as an exhibit to the Construction Funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R.

(ii) If any Event of Default has occurred and is continuing, the Funding Lender may make written demand on the Borrower to submit all future leases for the Funding Lender's approval prior to execution. The Borrower shall comply with any such demand by the Funding Lender.

(iii) No approval of any lease by the Funding Lender shall be for any purpose other than to protect the Funding Lender's security for the Borrower Loan and to preserve the Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by the Funding Lender shall result in a waiver of any default of the Borrower. In no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) *Landlord's Obligations.* The Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements.

(c) *Leasing and Marketing Agreements.* Except as may be contemplated in the Management Agreement with the Property Manager, the Borrower shall not without the approval of the Funding Lender enter into any leasing or marketing agreement and the Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.30 Project Agreements and Licenses.** To the extent not heretofore delivered to the Funding Lender, the Borrower will furnish to the Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to the Funding Lender and consents to such assignments where required by the Funding Lender, all in form and substance acceptable to the Funding Lender. Neither the Borrower nor the General Partner has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender and the Subordinate Lender.



**Section 5.31 Payment of Debt Payments.** In addition to its obligations under the Borrower Note, the Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of the Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform the Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to the Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.32 ERISA.** To the extent applicable, the Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

**Section 5.33 Patriot Act Compliance.** The Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. The Funding Lender shall have the right to audit the Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that the Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then the Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

The Borrower covenants that it shall comply with all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, the Borrower shall not take any action, or permit any action to be taken, that would cause the Borrower's representations and warranties in Section 4.1.48 and this Section 5.33 to become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, the Borrower shall certify in writing to such Beneficiary Party that the Borrower's representations, warranties and obligations under Section 4.1.48 and this Section 5.33 remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, the Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. The Borrower shall immediately notify the Funding Lender in writing of (a) the Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached or (b) the Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) the Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and

economic sanctions. The Borrower shall also reimburse the Funding Lender for any expense incurred by the Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and the Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for the Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of the Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to the Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon the Funding Lender as a result thereof.

**Section 5.34 Funds from Equity Investor.** The Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms, conditions and adjustments of the Partnership Agreement.

**Section 5.35 Tax Covenants.** The Borrower further represents, warrants and covenants as follows:

(a) *General.* The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Note from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Note, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.35 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Note, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Governmental Lender Note for a period during which such portion of the Governmental Lender Note is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note or a "related person," as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.35.

(b) *Use of Proceeds.* The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) Limitation on Net Proceeds. At least ninety-five percent (95%) of the net proceeds of the Funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified Project Costs that are costs of a "qualified residential rental project" (within the

meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) Limit on Costs of Funding. The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan Agreement and no portion thereof in excess of two percent (2%) of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of Funding of the Funding Loan.

(iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) Limitation on Land. Less than twenty-five percent (25%) of the net proceeds of the Funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) Limitation on Existing Facilities. No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed fifteen percent (15%) of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting one hundred percent (100%) for fifteen percent (15%)). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in Section 147(d)(3) of the Code.

(vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower’s information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

(vii) Limitation of Project Expenditures. The acquisition, construction, rehabilitation and equipping of the Project were not commenced (each within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on August 17, 2022, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible “preliminary expenditures” not in excess of 20% of the aggregate issue

price of the Funding Loan which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs (other than land acquisition, site preparation and similar costs incident to commencement of construction) incurred prior to the commencement of the acquisition, construction or equipping of the Project.

(viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and that for the greatest number of buildings the proceeds of the Funding Loan shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that the buildings (including eligible furniture and fixtures and functionally related subordinate facilities) and the land on which they are located will have been financed fifty percent (50%) or more by the proceeds of the Funding Loan for the purpose of complying with Section 42(h)(4)(B) of the Code; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other affiliate of the Borrower or the holders or payees of the Funding Loan and the Borrower Note for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided, further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) *Limitation on Maturity*. The average maturity of the Governmental Lender Note does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) *No Arbitrage*. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Governmental Lender Note or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause a Governmental Lender Note to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Borrower Note relating to the Funding Loan, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the

redemption date of an equal principal amount of the Funding Loan, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Funding Loan to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Funding Loan and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and not later than forty-five days after the final Computation Date and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(e) *No Federal Guarantee.* Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) *Representations.* The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Note for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) *Qualified Residential Rental Project.* The Borrower hereby covenants and agrees that the Project will be operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Note remains outstanding, to the end that the interest on the Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) *Information Reporting Requirements.* The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Note to be filed with the Internal Revenue Service within prescribed time limits.

(i) *Funding Loan Not a Hedge Bond.* The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Closing Date.

(j) *Termination of Restrictions.* Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.13 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) *Public Approval.* The Borrower covenants and agrees that the proceeds of the Funding Loan will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) *40/60 Test Election.* The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) *Modification of Tax Covenants.* Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.35 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender, the Fiscal Agent and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Note to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion to the effect that such proposed amendment will not adversely impact the excludability of interest on the Governmental Lender Note in the gross income of the recipient thereof for federal income tax purposes. The

Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.35, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.35; provided, however, that the Funding Lender shall take no action under this Section 5.35 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.35.

The Borrower irrevocably authorizes and directs the Fiscal Agent, the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Fiscal Agent, Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan in an amount related to the amount of the Borrower Loan.

#### **Section 5.36 Payment of Rebate.**

(a) *Arbitrage Rebate.* The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Governmental Lender Note in accordance with Section 148(f) of the Code including:

(i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Fiscal Agent, the Governmental Lender, the Servicer, or, if there is no Servicer, to the Funding Lender, within 55 days after each Computation Date:

(A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) (1) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to

the Rebate Amount as of such final Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.36 of an amount described in Section 5.36(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Fiscal Agent (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Fiscal Agent an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.36 for at least six years after the later of the final maturity of the Governmental Lender Note or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.36, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.



(b) *Rebate Fund.* The Fiscal Agent shall establish under the Funding Loan Agreement and hold a separate fund designated as the “Rebate Fund.” The Servicer shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(c) Within fifteen (15) days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(d) All payments to the United States of America pursuant to this Section 5.36 shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Fiscal Agent by the Borrower or the Rebate Analyst as set forth in this Section 5.36).

(e) The Borrower shall preserve all statements, forms and explanations received or delivered pursuant this Section 5.36 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

(f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Funding Lender, the Fiscal Agent or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Funding Lender to secure the Funding Loan or any other obligations.

(g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender, the Fiscal Agent and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender, the Fiscal Agent and the Funding Lender with respect to such withdrawal.

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.36 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender and the Fiscal Agent.

**Section 5.37 Covenants under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The

foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

**Section 5.38 Continuing Disclosure Agreement.** The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement.

## ARTICLE VI NEGATIVE COVENANTS

The Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of the Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. The Borrower covenants and agrees that it will not, directly or indirectly:

**Section 6.1 Management Agreement.** Without first obtaining the Funding Lender's prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Property Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Property Manager to terminate the Management Agreement (or such successor management agreement); provided, however, that Funding Lender's prior Written Consent shall not be required for any extension or renewal of the Management Agreement on the same terms and conditions.

**Section 6.2 Dissolution.** Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

**Section 6.3 Change in Business or Operation of Property.** Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the Project).

**Section 6.4 Debt Cancellation.** Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

**Section 6.5 Assets.** Purchase or own any real property or personal property incidental thereto other than the Project.

**Section 6.6 Transfers.** Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument, nor transfer any material License required for the operation of the Project.

**Section 6.7 Debt.** Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iv) trade payables incurred in the ordinary course of business, (v) unsecured deferred developer fees as permitted pursuant to the terms of the Development Agreement, and (vi) unsecured loans made by partners of the Borrower in accordance with the Partnership Agreement.

**Section 6.8 Assignment of Rights.** Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

**Section 6.9 Principal Place of Business.** Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender, the Governmental Lender, the Fiscal Agent and the Servicer.

**Section 6.10 Partnership Agreement.** Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Security Instrument.

**Section 6.11 ERISA.** To the extent applicable, maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become "plan assets," whether by operation of law or under regulations promulgated under ERISA.

**Section 6.12 No Hedging Arrangements.** Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13 Loans and Investments; Distributions; Related Party Payments.**

(a) Without the prior Written Consent of the Funding Lender in each instance, the Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower, or make any distribution, in cash or in kind, in respect of interests in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower (except to the extent permitted by Section 5.28 hereof and subject to the limitations set forth in the Security Instrument).

(b) Disbursements for fees and expenses of any Borrower Affiliate and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage, if any. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any “deferred developer fees” shall be made prior to the Conversion Date other than in accordance with the Approved Developer Fee Schedule.

**Section 6.14 Amendment of Related Documents or CC&R’s.** Without the prior Written Consent of Funding Lender in each instance, except as provided herein or in the Construction Funding Agreement, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R’s (including, without limitation, those contained in this Borrower Loan Agreement, any Architect’s Agreement or Engineer’s Contract, any Construction Contract, and any Management Agreement, but excluding the Partnership Agreement, which is covered by Section 6.10 hereof), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

**Section 6.15 Personal Property.** The Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than the Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in the Borrower at the time of installation, without the Funding Lender’s prior Written Consent;

provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

**Section 6.16 Fiscal Year.** Without the Funding Lender’s Written Consent, which shall not be unreasonably withheld, neither the Borrower nor the General Partner shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

**Section 6.17 Publicity.** Neither the Borrower nor the General Partner shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify the Funding Lender or any of its Affiliates as the source of the financing provided for herein, without the prior written approval of the Funding Lender in each instance (provided that nothing herein shall prevent the Borrower or the General Partner from identifying the Funding Lender or its Affiliates as the source of such financing to the extent that the Borrower or the General Partner are required to do so by disclosure requirements applicable to publicly held companies). The Borrower and the General Partner agree that no sign shall be posted on the Project in connection with the construction or rehabilitation of the Improvements unless such sign identifies Citigroup and its affiliates as the source of the financing provided for herein or the Funding Lender consents to not being identified on any such sign.

**Section 6.18 Subordinate Loan Documents.** Without Funding Lender’s prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

**Section 6.19 Ground Lease.** Without the Funding Lender’s prior written consent, the Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Ground Lease.

## ARTICLE VII RESERVED

## ARTICLE VIII DEFAULTS

**Section 8.1 Events of Default.** Each of the following events shall constitute an “Event of Default” under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Note, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due, after the expiration of any applicable notice and cure period, in accordance with the terms and provisions of the Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, one or both of the Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) Business Days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default, as defined by a Borrower Note, the Security Instrument or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired) (to the extent no notice or cure period shall apply then such period as is stated in Section 8.1(\_\_) shall apply as to failure to perform or comply);

(d) any representation or warranty made by any of the Borrower, the Guarantor or the General Partner in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Guarantor or the General Partner in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) a Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section [21] of the Security Instrument; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit the Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) any portion of the Borrower Deferred Equity to be made by Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, (ii) the satisfaction of the Conditions of Conversion or (iii) the operation of the Improvements, is not received in accordance with the Partnership Agreement after the expiration of all applicable notice and cure periods [and Borrower has not funded any such shortfalls];

(h) the failure by the Borrower or any ERISA Affiliate of the Borrower to comply in all respects with ERISA, if applicable, or the occurrence of any other event (with respect to the failure

of the Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of the Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon the Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to the Borrower, any General Partner or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(j) all or any part of the property of the Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days of the date thereof;

(k) subject to Section 10.15 hereof, the Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of One Hundred Thousand Dollars (\$100,000), and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms

(or the date upon each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(m) a final judgment or decree for monetary damages in excess of [One Hundred] Thousand Dollars (\$[100,000]) or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty) , provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty);

(n) terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty has have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(o) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of [One Hundred] Thousand Dollars (\$[100,000]) or more shall be rendered against the Borrower, any General Partner or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against the Borrower, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of the Borrower, any General Partner or Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhande and unstayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of ten (10) days or (ii) after completion of the construction or



rehabilitation, as the case may be, of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder, provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(p) the inability of the Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of the Funding Lender for a period in excess of thirty (30) days after Written Notice from the Funding Lender unless (i) such inability shall have been caused by conditions beyond the control of the Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping; (ii) the Borrower shall have made adequate provision, acceptable to the Funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) the Borrower shall furnish to the Funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of the Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) the Borrower shall furnish to the Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date;

(q) the construction of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days, unless such cessation of construction shall have been caused by a Force Majeure;

(r) the Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the Project orders or requires that construction or rehabilitation of the Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(s) failure by the Borrower to Substantially Complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Substantial Completion Date;

(t) failure by the Borrower to complete the construction of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date, unless such cessation of construction shall have been caused by a Force Majeure;

(u) failure by the Borrower to satisfy the Conditions to Conversion on or before the Outside Conversion Date, as may be extended;

(v) failure by any Subordinate Lender to disburse the proceeds of its Subordinate Loan in approximately such amounts and at approximately such times as set forth in the Cost Breakdown and in the Subordinate Loan Documents;

(w) an “Event of Default” or “Default” (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, after the expiration of all applicable notice and cure periods; or

(x) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender’s judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

## **Section 8.2 Remedies.**

**Section 8.2.1 Acceleration.** Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Funding Lender, in Funding Lender’s sole and absolute

discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

**Section 8.2.2 Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender or the Fiscal Agent against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until it has exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations have been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender, the Fiscal Agent and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 8.2.3 Delay.** No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender or the Fiscal Agent shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender and the Fiscal Agent reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with

the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

**Section 8.2.4**      **Set Off.** Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of the Borrower to the Funding Lender or the Fiscal Agent arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

**Section 8.2.5**      **Assumption of Obligations.** In the event that the Funding Lender or assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

**Section 8.2.6**      **Accounts Receivable.** Upon the occurrence of an Event of Default, the Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing the Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

**Section 8.2.7**      **Defaults under Other Documents.** The Funding Lender shall have the right to cure any default under any of the Related Documents and Subordinate Loan Documents, but shall have no obligation to do so.

**Section 8.2.8**      **Abatement of Disbursements.** Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, the Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to the Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of the Borrower to fail to be true and correct in all material respects, unless and until the Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

**Section 8.2.9** **Completion of Improvements.** Upon the occurrence of any Event of Default, the Funding Lender shall have the right to cause an independent contractor selected by the Funding Lender to enter into possession of the Project and to perform any and all work and labor necessary for the completion of the Project substantially in accordance with the Plans and Specifications, if any, and to perform the Borrower's obligations under this Borrower Loan Agreement. All sums expended by the Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by the Borrower and shall be secured by the Security Documents.

**Section 8.2.10** **Right to Directly Enforce.** Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

**Section 8.2.11** **Power of Attorney.** Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, the Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by the Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of the Borrower's obligations under this Borrower Loan Agreement in the name of the Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

(a) to use any of the funds of the Borrower or General Partner, including any balance of the Borrower Loan, as applicable, and any funds which may be held by the Funding Lender for the Borrower (including all funds in all deposit accounts in which the Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction or rehabilitation, as the case may be, of the Improvements, in the manner called for by the Plans and Specifications;

(b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the Project in substantially the manner contemplated by the Plans and Specifications;

(c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

(d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

(e) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or the Improvements, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

(f) to execute all applications and certificates in the name of the Borrower, which may be required by any other construction contract;

(g) to prosecute and defend all actions or proceedings in connection with the Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which the Borrower might do on its own behalf;

(h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## ARTICLE IX SPECIAL PROVISIONS

### **Section 9.1 Sale of Note and Secondary Market Transaction.**

**Section 9.1.1 Cooperation.** Subject to the restrictions of Section 2.5 and Section 2.6 of the Funding Loan Agreement, at the Funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in

the marketplace or by the Funding Lender or the Servicer in connection with one or more permitted sales or assignments of all or a portion of the Governmental Lender Note or participations therein or securitizations of single or multi-class securities (the “**Securities**”) secured by or evidencing ownership interests in all or a portion of the Governmental Lender Note (each such sale, assignment and/or securitization, a “**Secondary Market Transaction**”); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify the Borrower’s rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Property Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward-looking statements or lack of audit, and (iii), at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I’s and, if appropriate, Phase II’s), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the “Provided Information”), together, if customary, with appropriate verification of and/or consents (including, without limitation, auditor consents) to include or incorporate by reference the Provided Information in an offering document or otherwise provide the Provided Information to investors and potential investors or opinions of counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the Funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

**Section 9.1.2 Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement

memorandum (each, a “**Secondary Market Disclosure Document**”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

**Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents.** In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Property Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party). The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Property Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Property Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon a misrepresentation, misstatement, or omission or alleged misrepresentation, misstatement, or omission, relating to the use of the Provided Information in a Secondary Market Disclosure Document; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information Borrower provided to such parties.

**Section 9.1.4 Borrower Indemnity Regarding Filings.** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify the Funding Lender, the Governmental Lender, the Fiscal Agent, the underwriter group for any securities (the “**Underwriter Group**”) for any Liabilities to which Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Governmental



Lender, the Fiscal Agent, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.5**      **Indemnification Procedure.** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided however, that each indemnified party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel, investigation and defense if, in such indemnified party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower, and an indemnified party shall have the right to review and approve or disapprove any compromise or settlement by the Borrower, which approval shall not be unreasonably withheld, prior to the acceptance of any compromise or settlement by the Borrower.

**Section 9.1.6**      **Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter

with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a “notice”) shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower:

Douglas Gardens IV, Ltd.  
c/o McDowell Housing Partners, LLC  
777 Brickell Avenue, Suite 1300  
Miami, Florida 33131  
Attention: Chris Shear  
Telephone: (786) 257-2767  
Email: [cshear@mcdhousing.com](mailto:cshear@mcdhousing.com)

with a copy to:

Nelson Mullins Riley & Scarborough LLP  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attention: Roman J. Petra, Esq.  
Telephone: (407) 669-4247  
Email: [roman.petra@nelsonmullins.com](mailto:roman.petra@nelsonmullins.com)

If to the Governmental Lender:

Housing Finance Authority of Broward County,  
Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director  
Telephone: (954) 357-4900

with a copy to:

Broward County Attorney’s Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Telephone: (954) 357-5728

If to Funding Lender:

Citibank, N.A.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013  
Attention : Transaction and Asset Management  
Group  
Re: Douglas Gardens – Senior Health and Living;  
Deal ID#[\_\_\_\_\_]  
Facsimile: (212) 723-8209

with a copy to:

Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: Douglas Gardens – Senior Health and Living;  
Deal ID#[\_\_\_\_\_]  
Facsimile: (805) 557-0924

Prior to the Conversion Date,  
with a copy to:

Citibank, N.A.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013  
Attention: Account Specialist  
Re: Douglas Gardens – Senior Health and Living;  
Deal ID#[\_\_\_\_\_]  
Facsimile: (212) 723-8209

And a copy of any notices of default sent to:

Citibank, N.A.  
388 Greenwich Street, 17<sup>th</sup> Floor  
New York, New York 10013  
Attention: General Counsel’s Office  
Re: Douglas Gardens – Senior Health and Living;  
Deal ID#[\_\_\_\_\_]  
Facsimile: (646) 291-5754

If to Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Broward HFA Relationship Manager  
Facsimile: (904) 645-1930

If to Equity Investor:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]  
\_\_\_\_\_

with a copy to:

[\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]  
\_\_\_\_\_

Any party may change such party’s address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

[The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions (“Instructions”) given pursuant to this Borrower Loan Agreement and delivered using Electronic Means; provided, however, that Borrower, the Governmental Lender or and such other party giving such instruction (the “Sender”) shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions (“Authorized Officers”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Sender whenever a person is to be added or deleted from the listing. “Electronic Means” shall mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Sender elects to give the Fiscal Agent Instructions using Electronic Means and

the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Borrower, the Governmental Lender and any other Sender understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. Each Sender shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Sender and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Sender. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Borrower for use by the Borrower, the Governmental Lender and the other parties who may give instructions to the Fiscal Agent under the Funding Loan Agreement; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.]

**Section 10.2 Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

**Section 10.3 Survival.** This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal

representatives, successors and assigns of the Governmental Lender, the Fiscal Agent the Funding Lender and the Servicer.

**Section 10.4 Preferences.** The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender, the Fiscal Agent or the Servicer, or the Governmental Lender, the Fiscal Agent or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

**Section 10.5 Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

**Section 10.6 Offsets, Counterclaims and Defenses.** The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender, the Fiscal Agent, the Governmental Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of the Funding Lender's, the Governmental Lender's or the Fiscal Agent's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 10.7 Publicity.** The Funding Lender and the Servicer (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their Affiliates. All news

releases, publicity or advertising by the Borrower or Borrower Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender or the Servicer, as applicable.

**Section 10.8 Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 10.9 No Third Party Beneficiaries.** The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 10.10 Assignment.** The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, subject to the requirements of Article II of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, General Partner, Guarantors or any Borrower Affiliate, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

**Section 10.11 Governmental Lender, Funding Lender, Fiscal Agent and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this

Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Fiscal Agent, the Funding Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower, or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 10.12 Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 10.13 Term of the Borrower Loan Agreement.** This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.12, 5.15, 5.16, 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.14 hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.



**Section 10.14 Reimbursement of Expenses.** If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.14 shall be subordinate to its obligations to make payments under the Borrower Note.

**Section 10.15 Permitted Contests.** Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights or the Governmental Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to the Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless the Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of the Borrower's intent to so contest or object thereto, and unless (i) the Borrower has, in the Funding Lender's judgment, a reasonable basis for such contest, (ii) the Borrower pays when due any portion of the claim, demand, levy or assessment to which the Borrower does not object, (iii) the Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) the Borrower at all times prosecutes the contest with due diligence, and (vi) the Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, the amount so determined to be due and owing by the Borrower. In the event that the Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by the Borrower, in order to make such payment.

**Section 10.16 Funding Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by the Funding Lender. The Funding Lender's approval of any matter in connection

with the Project shall be for the sole purpose of protecting the security and rights of the Funding Lender. No such approval shall result in a waiver of any default of the Borrower. In no event shall the Funding Lender's approval be a representation of any kind with regard to the matter being approved.

**Section 10.17 Funding Lender Determination of Facts.** The Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

**Section 10.18 Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

**Section 10.19 Determinations by Lender.** Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**Section 10.20 Governing Law.** This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Section 10.21 Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the County. The state and federal courts and authorities with jurisdiction in the County shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

**Section 10.22 Successors and Assigns.** This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities.

**Section 10.23 Severability.** The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

**Section 10.24 Entire Agreement; Amendment and Waiver.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender’s or the Funding Lender’s obligation to make further Disbursements nor, in the event the Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the Funding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

**Section 10.25 Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 10.26 Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 10.27 Servicer.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 38 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless the Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

**Section 10.28 Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

**Section 10.29 Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES OTHER THAN THE GOVERNMENTAL LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY OTHER THAN THE GOVERNMENTAL LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 10.30 Time of the Essence. Time is of the essence with respect to this Borrower Loan Agreement.**

**Section 10.31 Modifications.** Modifications (if any) to this Borrower Loan Agreement ("**Modifications**") are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Security Instrument, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to Borrower or such transferee.

**Section 10.32 Reference Date.** This Borrower Loan Agreement is dated for reference purposes only as of the first day of December, 2022, and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

**Section 10.33 Americans with Disabilities Act.** The Borrower hereby certifies that it will comply with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and its implementing regulations and the American Disabilities Act Amendments Act (ADAAA) Pub. L. 10-325 and all subsequent amendments (the "ADA"). The Borrower will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the ADA. The Borrower will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Borrower, relating to this Borrower Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this Section.

## ARTICLE XI LIMITATIONS ON LIABILITY

**Section 11.1 Limitation on Liability.** Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Note.

**Section 11.2 Limitation on Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or prepayment price) of or interest on the

Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Any obligation or liability of the Governmental Lender created by or arising out of this Borrower Loan Agreement (including, without limitation, any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Governmental Lender or a charge upon its general credit, but shall be payable solely out of the moneys due and to become due under the Funding Loan Documents (and not from any moneys due or to become due to the Governmental Lender pursuant to the Unassigned Rights). Neither the issuance of the Funding Loan nor the delivery of this Borrower Loan Agreement shall, directly or indirectly or contingently, obligate the Governmental Lender to make any appropriation for payment of the Funding Loan. No agreements or provisions contained in this Borrower Loan Agreement, the Funding Loan Agreement, any other Funding Loan Document, nor any agreement, covenant or undertaking by the Governmental lender contained in any document executed by the Governmental Lender in connection with the Project or the issuance, sale and delivery of the Governmental Lender Note shall give rise to any pecuniary liability of the Governmental Lender or a charge against its general credit or taxing powers, or shall obligate the Governmental Lender financially in any way. Nothing in the Funding Loan or this Borrower Loan Agreement or the proceedings of the Governmental Lender authorizing the Funding Loan or in the Act or the Law or in any other related document shall be construed to authorize the Governmental Lender to create a debt of the Governmental Lender within the meaning of constitutional or statutory provision of the State. No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Governmental Lender in his or her individual capacity, and neither any employee or officer of the Governmental Lender nor any officer thereof executing the Governmental Lender Note shall be liable personally on the Governmental Lender Note or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Governmental Lender shall incur any personal liability with respect to any other action taken by him or her pursuant to this Borrower Loan Agreement, the Funding Loan Agreement, the Act or the law of the State. No breach of any pledge, obligation or agreement of the Governmental Lender hereunder may impose any pecuniary liability upon the Governmental Lender or any charge upon its general credit. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement and the Borrower Note, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment price) of and interest on the Funding Loan as the

same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment price) of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

THE FUNDING LOAN IS ORIGINATED PURSUANT TO THE LAW AND IN ACCORDANCE WITH THE COUNTY AUTHORIZATION, THE RESOLUTION AND THE ACT AND IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER, NOR ANY PERSON EXECUTING THE FUNDING LOAN, SHALL BE LIABLE PERSONALLY ON THE FUNDING LOAN OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THE FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF OR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT THE PRINCIPAL OF PREMIUM, IF ANY, OR INTEREST ON THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE OR OTHER COSTS INCIDENT THERETO. THE FUNDING LOAN AND GOVERNMENTAL LENDER NOTE ARE NOT DEBTS OF THE UNITED STATES OF AMERICA. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Funding Loan or for any claim based thereon or upon any obligation, covenant or agreement in this Borrower Loan Agreement contained, against any past, present or future member of the Governmental Lender, the County, its respective governing body, officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender, the County or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of any member of the Governmental Lender, its

governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Funding Loan, expressly waived and released as a condition of, and in consideration for, the execution of this Borrower Loan Agreement and the issuance of the Funding Loan. It is recognized that notwithstanding any other provision of this Borrower Loan Agreement, neither the Borrower, the Funding Lender nor the Fiscal Agent shall look to the members of the Governmental Lender or the County or its officers, program participants, attorneys, accountants, financial advisors, agents or staff, past, present or future, for damages suffered by the Borrower, the holders or such Fiscal Agent as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Borrower Loan Agreement, the Funding Loan, the Regulatory Agreement, any of the other Funding Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, nor for any other reason except for representations made by the Governmental Lender in any certificate of the Governmental Lender and the opinion of counsel to the Governmental Lender delivered on the date of origination of the Funding Loan. Although this Borrower Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Borrower Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 11.3 Waiver of Personal Liability.** No member, director, officer, agent, elected official or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

**Section 11.4 Limitation on Liability of Funding Lender's Officers, Employees, Etc.**

(a) The Borrower assumes all risks of the acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender, the Fiscal Agent and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent and the Funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the

Governmental Lender, the Fiscal Agent and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender, the Fiscal Agent or the Funding Lender, as applicable.

(b) None of the Governmental Lender, the Fiscal Agent the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project or the Project. The Borrower is not and shall not be an agent of the Governmental Lender, the Fiscal Agent and the Funding Lender for any purpose. Neither the Governmental Lender, the Fiscal Agent nor the Funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender, the Fiscal Agent and the Funding Lender 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 a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender, the Fiscal Agent and the Funding Lender. Approvals granted by the Governmental Lender, the Fiscal Agent and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender, the Fiscal Agent and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's, the Fiscal Agent's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.5 Delivery of Reports, Etc.** The delivery of reports, information and documents to the Governmental Lender, the Fiscal Agent and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's, the Fiscal Agent's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender, the Fiscal Agent and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender, the Fiscal Agent and the Funding Lender.



[The remainder of this page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**DOUGLAS GARDENS IV, LTD.**, a Florida limited partnership

By: MHP Douglas SLP, LLC, a Florida limited liability company, its Special Limited Partner

By: \_\_\_\_\_  
W. Patrick McDowell, Chief Executive Officer

GOVERNMENTAL LENDER:

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**, as the  
Governmental Lender

(SEAL)

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

ATTEST:

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

Agreed to and Acknowledged by:

FUNDING LENDER:

**CITIBANK, N.A.**, a national banking association

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

[\_\_\_\_\_]

Deal I.D. No. [\_\_\_\_\_]

Agreed to and Acknowledged by:

FISCAL AGENT:

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.**

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

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

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

**EXHIBIT A**  
**Modifications**

NONE

**EXHIBIT “C”**  
**FORM OF**  
**LAND USE RESTRICTION AGREEMENT**  
**[ATTACHED]**

**THIS INSTRUMENT PREPARED**

Draft #3 10/11/22

**BY AND RETURN TO:**

Junious D. Brown III, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308

LAND USE RESTRICTION AGREEMENT

Owner's  
Name and Address: DOUGLAS GARDENS IV, LTD.  
c/o McDowell Housing Partners, LLC  
777 Brickell Avenue, Suite 1300  
Miami, Florida 33131

Location of Property: 705 SW 88<sup>th</sup> Avenue  
Pembroke Pines, Florida 33025

Name of Project: Douglas Gardens – Senior Health and Living

Issuer's Name  
and Address: Housing Finance Authority of Broward County, Florida  
110 N.E. 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, Florida 33301

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement"), made and entered into as of December 1, 2022, by and among the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic created, organized and existing under the laws of the State of Florida, whose mailing address is listed above (the "Issuer"); THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, whose mailing address is 4655 Salisbury Road, Suite 300, Jacksonville, Florida 32256, as fiscal agent (the "Fiscal Agent"), pursuant to the Funding Loan Agreement dated as of December 1, 2022, among Citibank, N.A., a national banking association, as the Funding Lender ("Funding Lender"), the Issuer, and the Fiscal Agent (the "Funding Loan Agreement"), authorizing and securing the issuance of the Issuer's \$[77,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living) (the "Governmental Note"), and DOUGLAS GARDENS IV, LTD., a Florida limited partnership, and its successors and assigns, whose mailing address is listed above (the "Owner");



WITNESSETH:

**WHEREAS**, Owner, the owner of a leasehold interest in the Project (as such term is herein defined), intends to acquire and construct a multifamily residential rental project located within Broward County, Florida (the "County") to be occupied by Lower-Income Persons and Eligible Persons (as such terms are herein defined), all for the public purpose of assisting persons or families of low, moderate or middle income within the County to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Issuer has authorized the issuance and delivery of the Governmental Note in the original principal amount of \$[77,000,000] pursuant to the Funding Loan Agreement under which the Funding Lender will advance funds in the amount of \$[77,000,000] to or for the account of the Issuer (the "Funding Loan"), who will use such Funding Loan proceeds in order to make a loan to the Owner (the "Borrower Loan" and, together with the Funding Loan, the "Loans") pursuant to a Borrower Loan Agreement dated as of December 1, 2022 (the "Borrower Loan Agreement"), by and between the Issuer and the Owner, to finance the acquisition, construction and equipping of the Project (as hereinafter defined) and certain costs incurred in connection with the issuance of the Governmental Note, all under and in accordance with the Constitution and laws of the State of Florida (the "State"); and

**WHEREAS**, the Funding Loan Agreement and the Borrower Loan Agreement require, as a condition of making the Loans, the execution and delivery of this Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Issuer, the Fiscal Agent and the Owner have determined to enter into this Agreement to set forth certain terms and conditions relating to the operation of the Project, which is located on the real property in the County, as further described in Exhibit "A" hereto (the "Land"); and

**WHEREAS**, this Agreement shall be properly filed and recorded by the Owner within the official records of the County and shall constitute a restriction upon the use of the property subject to and in accordance with the terms contained herein.

**NOW THEREFORE**, in consideration of providing the financing by the Issuer to the Owner, acknowledging that compliance with this Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, the Owner covenants and agrees with the other parties hereto as follows:

Section 1.     Definitions and Interpretation.

(a)     The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement):

"Affiliated Party" of a person means a person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein or (iii) a related person within the meaning of Section 144(a) or 147(a) of the Code.

"Applicable Income Limit" means sixty percent (60%) of area median gross income (within the meaning of Section 142(d) of the Code) for Broward County, Florida, Standard Metropolitan Statistical Area, as determined by the Secretary of the United States Department of the Treasury in a manner consistent with determinations of lower income families and area median gross income under Section 8 of the Housing Act of 1937, as amended (or if such program is terminated, under such program as in effect immediately before such termination), including adjustments for family size.

"Borrower Loan" means the loan made by the Issuer to the Owner in connection with the issuance and delivery of the Governmental Note, as such Borrower Loan is evidenced by the Borrower Note and further described in the Borrower Loan Agreement.

"Borrower Loan Agreement" means that certain Borrower Loan Agreement entered into between the Owner and the Issuer dated as of December 1, 2022, as amended or supplemented from time to time.

"Borrower Note" means that certain \$[77,000,000] Multifamily Note executed by the Owner in favor of the Issuer, and endorsed to the Fiscal Agent for the benefit of the Funding Lender, to evidence the Owner's obligation to repay the Borrower Loan.

"Certificate of Continuing Program Compliance" means the certificate required to be delivered by the Owner to the Issuer [and the Fiscal Agent] pursuant to Section 4(e) of this Agreement.

"Closing Date" means the delivery date of the Governmental Note.

"Code" means the Internal Revenue Code of 1986, as amended, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations or temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

"Compliance Agent" shall mean initially, the Issuer, and thereafter such other organization subsequently designated by the Issuer to serve as Compliance Agent for the Project.

"County" means Broward County, Florida.

"Current Annual Family Income" is determined in accordance with Section 8 of the Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), and includes wages and salaries, overtime pay, commissions, fees, tips and bonuses and other forms of compensation for personal services, net income from operation of a business or a profession, interest, dividends and other net income of any kind from real or personal property, periodic payments from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits or similar types of

periodic receipts, payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay, welfare assistance, periodic and determinable allowances such as alimony and child support and regular pay, special pay and allowances of a member of the Armed Forces, and other forms of income described in the Income Certification (as promulgated by the Issuer from time to time in accordance with the Housing Act) but does not include earnings of children under 18, payments received for care of foster children or adults, lump sum insurance payments, inheritances, capital gains and settlements for personal or property losses, amounts received specifically for, or in reimbursement of, the cost of medical expenses, income of a live-in aide, certain student financial assistance, special pay to a member of the Armed Forces who is exposed to hostile fire, amounts received under certain training programs and other social service programs, temporary, nonrecurring or sporadic income or other forms of income that the Income Certification specifies may be excluded.

"Elderly Persons" means persons 62 years of age or older; however, this definition does not prohibit housing from being deemed "housing for the elderly" as defined herein. "Housing for the elderly" means any nonprofit housing community that is financed by a mortgage loan made or insured by the United States Department of Housing and Urban Development ("HUD") under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), or s. 236 of the National Housing Act, as amended, and that is subject to income limitations established by HUD, or any program funded by the Rural Development Agency of the United States Department of Agriculture ("USRDA") and subject to income limitations established by the USRDA. A project which qualifies for exemption under the Florida Fair Housing Act as "housing for older persons" as defined by Section 760.29(4), Florida Statutes, shall qualify as housing for the elderly for purposes of this Agreement.

"Eligible Persons" means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap or sex, who are either Lower-Income Persons or whose Current Annual Family Income does not exceed one hundred fifty percent (150%) of the area median gross income (within the meaning of Section 142(d) of the Code) for Broward County, Florida, Standard Metropolitan Statistical Area, subject to family size adjustment, as indicated in the latest published Decile Distributions of Family Income by Standard Metropolitan Statistical Areas and Non-Metropolitan Counties prepared and published from time to time by HUD, or such other reliable compilation of income statistics as the Issuer may determine to employ, as adjusted by the Issuer according to the most recent Consumer Price Index statistics; provided that persons of 65 years of age or older shall be defined as "Eligible Persons" regardless of their income.

"Funding Lender" means the owner of the Governmental Note, which shall be Citibank, N.A., a national banking association.

"Funding Loan Agreement" means the Funding Loan Agreement, dated as of December 1, 2022, among the Issuer, the Fiscal Agent and the Funding Lender relating to the issuance of the Governmental Note, as amended or supplemented from time to time.

"Governmental Note" means the \$[77,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living), dated December \_\_, 2022, made by the Issuer in favor of the Funding Lender.

"HUD" means the United States Department of Housing and Urban Development or any successor agency.

"Income Certification" means the certification required to be obtained from each Lower-Income Tenant by the Owner pursuant to Section 4(a) hereof.

"Investor Limited Partner" means [CREA Corporate Fund 83, LP, a \_\_\_\_\_ limited partnership], the investor limited partner of the Owner and its successors and assigns as permitted herein.

"Issuer's Compliance Fee" means a compliance monitoring fee in an annual amount (without proration for any partial year) equal to \$25.00 per rental unit in the Project (or such other amount as is implemented by the Issuer) to be paid by or on behalf of the Owner to the Issuer, if, but only if, at any time during the Qualified Project Period or for such longer period if the set-aside requirements required by the Code, Chapter 159, Part IV, Florida Statutes or other Issuer requirements remain in force, the Governmental Note is no longer outstanding. Such fee will be due in a lump sum payment on the date the Governmental Note is paid in full. The fee will be calculated for the period commencing on the date the Governmental Note is paid in full and ending on the last date of the Qualified Project Period, or such longer period if the set-aside required by the Code, Chapter 159, Part IV, Florida Statutes or other Issuer requirements remain in force after the Governmental Note is no longer outstanding.

"Land" shall have the meaning given that term in the Recitals of this Agreement.

"Loan Documents" means, collectively, all documents referred to as "Funding Loan Documents" and "Borrower Loan Documents" in the Borrower Loan Agreement, and any and all other documents executed in connection with the issuance of the Governmental Note and the making of the Borrower Loan to the Owner by the Issuer.

"Lower-Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Lower-Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a dwelling unit shall not fail to be treated as a dwelling unit that is occupied by Lower-Income Persons merely because such dwelling unit is occupied (a) by an individual who is a student and (i) receiving assistance under Title IV of the Social Security Act, (ii) was previously under the care and placement responsibility of the State agency program responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State or local laws, or (b) entirely by full-time students if such students are (i) single parents and their children

and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (ii) married and file a joint return.

"Mortgage" means the first lien Multifamily Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing with respect to the Owner's leasehold interest in the Land and the Project, given by the Owner in favor of the Issuer and assigned by the Issuer to the Fiscal Agent for the benefit of the Funding Lender, securing the repayment of the Borrower Note given in connection with the issuance and delivery of the Governmental Note, as such Mortgage may be amended from time to time.

"Project" means the acquisition, construction and equipping of a multifamily residential rental housing project known as Douglas Gardens – Senior Health and Living, located on the Land and financed with proceeds of the Borrower Loan pursuant to the Borrower Loan Agreement. The Project consists of 410 units and will be occupied by Lower-Income Persons, Elderly Persons and Eligible Persons.

"Qualified Project Period" means the period beginning on the first (1<sup>st</sup>) day on which ten percent (10%) of the residential units in the Project are first occupied or the delivery date of the Governmental Note, whichever is later, and ending on the latest of (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied, or (b) the first (1<sup>st</sup>) day on which no tax-exempt private activity bond (as that term is defined in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

"Regulations" means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

"State" means the State of Florida.

"Tax Counsel" means any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the exclusion from gross income of interest on bonds for federal income tax purposes issued by states and political subdivisions selected by the Issuer.

(b) Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

(c) The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees that:

- (a) The Owner will acquire, construct, equip, own and operate the Project for the purpose of providing a "qualified residential rental project" as such phrase is used in Sections 142(a)(7) and 142(d)(1) of the Code, (2) the Owner shall own the entire Project for federal tax purposes, and (3) the Project shall be owned, managed and operated as multifamily residential rental property, comprised of a building or structure or several buildings or structures containing similarly constructed units, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103-8(b)(4) and 1.103-8(a)(3) of the Regulations, and in accordance with such requirements as may be imposed thereby on the Project from time to time.
- (b) Each residential unit in the Project shall be contained in one or more buildings or structures located on the Land and shall be similarly designed, furnished and constructed (except as to number of bedrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range or microwave oven, refrigerator and sink, all of which are separate and distinct from the other units.
- (c) None of the units in the Project will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.
- (d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to (1) Lower-Income Persons, (2) Elderly Persons, or (3) Eligible Persons. Lower-Income Persons, Elderly Persons and Eligible Persons who are residents of the Project will have equal access to and enjoyment of all common facilities of the Project at all times. The Owner will not discriminate against children of any age when renting the units in the Project.
- (e) The Land primarily consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Project primarily comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities financed with proceeds of the Governmental Note (such as swimming

pools, recreational facilities, parking areas and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance or security personnel) are functionally related and subordinate to the Project and are commensurate with its size and intended use.

- (f) The Owner or an Affiliated Party of the Owner shall not occupy any of the units in the Project; provided, however, that the Owner or an Affiliated Party of the Owner may occupy a unit in a building or structure in the Project that contains five or more units if the Owner or an Affiliated Party of the Owner is a resident manager or other necessary employee (e.g., maintenance and security personnel). No more than two units in the Project shall be occupied by resident managers or maintenance or security personnel.
- (g) None of the proceeds of the Governmental Note (including investment earnings) may be used to provide a skybox or any other private luxury box, an airplane, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises or a facility used primarily for gambling.
- (h) On (i) the Closing Date for an acquisition/rehabilitation in which at least fifty percent (50%) of the residential units in the Project are occupied on such Closing Date, or (ii) the first day on which fifty percent (50%) of the residential units in the Project are first occupied for (a) new construction, and/or (b) an acquisition/rehabilitation in which less than fifty percent (50%) of the residential units in the Project are occupied on the Closing Date, the Owner shall submit to the Issuer and the Fiscal Agent a signed certificate for purposes of the calculation of the commencement and termination of the Qualified Project Period. Such certificate shall set forth the dates on which the Project achieved ten percent (10%) occupancy and fifty percent (50%) occupancy. In the event Owner does not submit the above-described certificate as required in this Section 2(h), Issuer shall utilize information provided to it by or on behalf of the Owner in satisfaction of the monthly data reporting requirements for purposes of calculating the commencement and termination of the Qualified Project Period;

The requirements of this Section 2 shall remain in effect during the term of this Agreement (as defined in Section 13 below).

Section 3. Lower-Income Persons and Eligible Persons. The Owner hereby represents, warrants and covenants as follows:

- (a) At all times during the Qualified Project Period, not less than forty percent (40%) of the residential units in the Project shall be occupied (or held available for occupancy) on a continuous basis by persons or families who at the time of their initial occupancy of such units are Lower-Income Persons. This occupancy requirement is referred to herein as the "Lower-Income Requirement."

- (b) At all times during the term of this Agreement (as defined in Section 13 below), at least sixty percent (60%) of the completed units in the Project shall be rented to or be available for rent by Eligible Persons.
- (c) For purposes of paragraphs (a) and (b) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person (or Eligible Person). However, a Lower-Income Person whose income as of the most recent Income Certification (as described in Section 4(a) below) exceeds one hundred forty percent (140%) of the Applicable Income Limit shall not continue to be treated as a Lower-Income Person if after delivery of such Income Certification, but before the delivery of the next Income Certification, any residential unit in the Project of comparable or smaller size is occupied by a new resident who is not a Lower-Income Person. In addition, a unit that was occupied by a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person (or Eligible Person) only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person (or Eligible Person).

Section 4. Reporting Requirements; Payment of Issuer's Compliance Fee and Late Reporting Fee; Maintenance.

- (a) The Owner shall obtain and maintain on file an Income Certification from each Lower-Income Person and Eligible Person dated immediately prior to the initial occupancy of such tenant in the Project in the form and containing such information as may be required by Section 142(d) of the Code, as the same may be from time to time amended by the Issuer on the advice of Tax Counsel in the exercise of its opinion that any such amendment is necessary, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 142(d) of the Code. Photocopies of each such Income Certification and any verifications of such income, to the extent requested by the Issuer, shall be submitted to the Issuer (i) within 10 days following the end of the calendar month during which the tenant first occupies a unit in the Project, (ii) within 10 days following the end of the calendar month thereafter in which the lease is renewed or extended, and (iii) as reasonably requested by the Issuer or the Fiscal Agent, which may be as often as may be necessary, in the opinion of Tax Counsel, to comply with the provisions of Section 142(d) of the Code. To the extent permitted by the Issuer, such submissions may be made electronically.



- (b) The Owner shall file with the Issuer, on the tenth (10<sup>th</sup>) business day of each month, copies of the Income Certifications specified in Section 4(a) hereof obtained by the Owner during the previous month.
- (c) At all times during the term of this Agreement, the Owner will obtain and maintain on file from each Lower-Income Person residing in the Project the information demonstrating each tenant's income eligibility.
- (d) The Owner shall maintain complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Lower-Income Persons and Eligible Persons residing in the Project, and shall permit, upon five (5) business days' notice to the Owner, any duly authorized representative of the Issuer or the Fiscal Agent to inspect the books and records of the Owner pertaining to the incomes of and rentals charged to all tenants residing in the Project.
- (e) The Owner shall prepare and submit at the beginning of the Qualified Project Period, and on the tenth (10<sup>th</sup>) day of each month thereafter, to the Issuer, rent rolls and a Certificate of Continuing Program Compliance in the form and content approved by the Issuer, executed by the Owner stating (i) the percentage of residential units that were occupied by Lower-Income Persons and Eligible Persons as of the 20th day of the previous month, (ii) that at all times during the previous month 60% of the residential units, were occupied (or held available for occupancy) by Eligible Persons (as determined in accordance with Section 3 of this Agreement), (iii) that at all times during the previous month at least 40% of the residential units were occupied (or held available for occupancy) by Lower-Income Persons (as determined in accordance with Section 3 of this Agreement), and (iv) that no default has occurred under this Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Owner has taken or proposes to take to correct such default.
- (f) During the Qualified Project Period, the Owner shall submit to the Secretary of the Treasury (the "Secretary") (at such time and in such manner as the Secretary shall prescribe) an annual certification required by Section 142(d)(7) of the Code. As of the date of this Agreement, the Owner shall make such certification to the Secretary annually by completing and submitting IRS Form 8703 by March 31 after the close of the calendar year for which the certification is made. The Owner shall be responsible for making such certification at such other time or in such other manner as the Secretary may prescribe from time to time.
- (g) In the event the Issuer transfers responsibility for compliance monitoring to the Fiscal Agent or a newly designated Compliance Agent under Section 23 hereof, the Issuer may direct the Owner to provide and the Owner shall provide to the Fiscal Agent or the newly designated Compliance Agent copies of all of the reports, documents and certificates required under this Section. The Owner shall

pay all reasonable fees and expenses of the Fiscal Agent or the newly designated Compliance Agent in connection with such responsibilities. Upon the designation of the Fiscal Agent or the Compliance Agent as the compliance monitor under this Agreement, all references herein to the Issuer as the recipient of reports and filings shall be deemed to be the Fiscal Agent and/or the Compliance Agent, as applicable.

- (h) The Owner shall immediately notify the Fiscal Agent and the Issuer of any change in the management of the Project.
- (i) If at any time during the term of this Agreement the Governmental Note is no longer outstanding (as provided in the Funding Loan Agreement), the Owner shall pay the Issuer's Compliance Fee.
- (j) The Owner will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected as part of the Project, in good condition and repair (normal wear and tear excepted), will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Project or any part thereof. In order to ensure the Owner's compliance with this covenant, the Issuer or its representatives are hereby authorized to enter upon and inspect the Project at any time during normal business hours upon reasonable notice and subject to the rights of tenants. Notwithstanding the foregoing, the Issuer has no affirmative duty to make such inspection.
- (k) The Owner will construct and operate the Project so that it conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990.
- (l) The Owner hereby agrees to pay a late fee in the amount of \$100 per day (including weekends) for each day that the Owner fails to timely submit (in the sole, reasonable opinion of the Issuer) any of the information, Income Certifications, rent rolls, Certificates of Continuing Program Compliance, reports, documents and/or certificates (collectively, the "Compliance Reporting Information") required by this Section 4, as may be amended from time to time (the "Late Reporting Fee"). The Owner acknowledges and hereby agrees that, notwithstanding anything in this Agreement to the contrary, a Late Reporting Fee shall apply to and be payable in connection with each separate instance in which any of the Compliance Reporting Information (including individual components thereof) is not timely submitted pursuant to this Section 4, as may be amended from time to time.

Section 5. Indemnification. The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, the County and the Fiscal Agent and their respective

officers, directors, officials, employees and agents from and against any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Agreement, the Funding Loan, the Project or the sale of the Governmental Note to finance the Funding Loan or the making of the Borrower Loan to finance the Project, any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Project or the sale of the Governmental Note to finance the Project, and all costs, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Owner shall not be required to indemnify any person for damages caused by the negligence or willful misconduct of such person or for losses relating to principal and interest. In the event that any action or proceeding is brought against the Issuer, the County the Fiscal Agent or any of their respective officers, directors, officials, employees or agents, with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party (which notice shall be given in a timely manner so as not to impair Owner's rights to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably acceptable to the indemnified party and the payment of all expenses. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, but, unless such separate counsel is employed with the approval and consent of the Owner, or because of a conflict of interest between the Owner and the indemnified party, the Owner shall not be required to pay the fees and expenses of such separate counsel. The Owner agrees to execute any additional documents deemed necessary by the Issuer, the County or the Fiscal Agent to evidence the indemnification provided for in this Section 5. At the request of the Issuer or County, Owner agrees, in addition to the above indemnification, to pay the reasonable costs and expenses of the County Attorney of Broward County in connection with the action or proceeding giving rise to the indemnification.

While the Owner has possession of the Project, the Owner also shall pay and discharge and shall indemnify and hold harmless the Issuer and the Fiscal Agent from (a) any lien or charge upon payments by the Owner to the Issuer and the Fiscal Agent hereunder, and (b) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges other than income and other similar taxes in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges other than income and other similar taxes, are sought to be imposed, the Issuer or the Fiscal Agent shall give prompt notice to the Owner and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

In addition thereto, the Owner will pay upon demand all of the reasonable fees and expenses paid or incurred by the Fiscal Agent and/or the Issuer in enforcing the provisions hereof.

Section 6. Reliance. The Issuer and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the owners from time to time of the Governmental Note, the County, Tax Counsel and the other parties to transactions involving the issuance, sale or remarketing of the Governmental Note and their respective counsel. In performing their duties and obligations hereunder, the Issuer and the Fiscal Agent

may rely upon statements and certificates of the Owner, Lower-Income Persons and Eligible Persons reasonably believed by the Owner, its agents and employees to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In addition, the Issuer and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Issuer or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel. In performing its duties and obligations hereunder, the Owner may rely upon certificates of Lower-Income Persons and Eligible Persons reasonably believed to be genuine and to have been executed by the proper person or persons.

Section 7. Fair Housing Laws. The Owner will comply with all fair housing laws, rules, regulations or orders applicable to the Project and shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, except as permitted herein with respect to occupancy by Elderly Persons. All advertising and promotional material used in connection with the Project shall contain the phrase "Equal Housing Opportunity."

Section 8. Tenant Lists. All tenants lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Project, and shall be maintained, as required by the Issuer or the Funding Lender from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer, the Funding Lender or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the Issuer, the Funding Lender or Fiscal Agent after written request therefor will be a default hereunder.

Section 9. Tenant Lease Restrictions. All tenant leases shall contain clauses, among others, wherein each individual lessee:

- (a) Certifies the accuracy of the statements made in the Income Certification;
- (b) Agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of such lessee's tenancy; that such lessee will comply promptly with all requests for information with respect thereto from the Owner, the Fiscal Agent, the Funding Lender or the Issuer, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and
- (c) Agrees not to sublease to any person or family who does not execute and deliver an Income Certification.

Section 10. Sale, Assignment, Conveyance or other Disposition of Project or Interest in Owner. Except with respect to transfer of interests within the Owner, as permitted under the

terms and conditions of the Owner's Amended and Restated Agreement of Limited Partnership, dated as of December 1, 2022 (as may be further amended, the "Partnership Agreement"), the Owner shall not sell, assign, convey or transfer any material portion of the Land, fixtures or improvements constituting a part of the Land or Project, or any material portion of the personal property constituting a portion of the Project during the term of this Agreement without (i) the prior written consent of the Issuer, which consent shall not be unreasonably withheld, (ii) the Fiscal Agent and the Issuer having received an opinion of Tax Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, conveyance, transfer, or assignment will not result, under then-existing law, in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes, and (iii) upon receipt by the Issuer of a fee from the Owner upon transfer of ownership in excess of fifty percent (50%) interest in the Project or the Owner (which fee shall be refunded by the Issuer to the Owner in the event the Issuer does not approve the transfer of the Project to the proposed purchaser or assignee thereof, or in the event such transfer is not consummated) in the amount of (a) ten percent (10%) of the amount of the Governmental Note outstanding on the date of the written transfer request if up to ten percent (10%) of the units in the Project are rented; (b) two percent (2%) of the amount of the Governmental Note outstanding on the date of the written transfer if eleven percent (11%) to sixty percent (60%) of the units in the Project are rented; (c) one percent (1%) of the amount of the Governmental Note outstanding on the date of the written transfer if over sixty percent (60%) of the units in the Project are rented; or (d) one-half percent (.05%) of the amount of the Governmental Note outstanding on the date of the written transfer after one (1) year from the date of completion of construction of the Project, regardless of occupancy (the "Transfer Fee"). Provided that the above conditions have been satisfied, the Issuer will provide to the Owner and the purchaser or transferee on request its written consent to any transfer in accordance with this Section an estoppel certificate. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Agreement. Nothing contained in this Section 10 shall affect any provision of the Mortgage or any other document or instrument to which the Owner is a party which requires the Owner to obtain the consent of the holder of the Borrower Note or any other person as a precondition to sale, transfer or other disposition of the Project. The Transfer Fee will apply if a material portion of the Project financed with proceeds from the Borrower Loan is sold during the term hereof and such material portion of such Project consisted of personal property or equipment, the proceeds from the sale thereof may be used by the Owner to purchase property of similar function to be used in connection with the Project, otherwise, the proceeds from such sale shall be applied in accordance with the Mortgage. If such material portion of such Project consists of real property and improvements, the purchaser thereof must execute and deliver to the Owner and the Fiscal Agent a document in form and substance reasonably satisfactory to the Issuer and the Funding Lender pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this Agreement. Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this Section 10; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such

transfer, the Owner or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Except as permitted under the terms and conditions of the Partnership Agreement, the Owner shall not sell or otherwise transfer the Project in whole, nor shall there be substituted a new general partner of the Owner or a change in the controlling ownership of the general partner of the Owner, or other merger, transfer or consolidation of the Owner, unless (a) the Owner has received the prior written consent of the Issuer (which shall respond within a reasonable period of time and shall not unreasonably withhold such consent), (b) the fees and expenses of the Issuer and its professionals have been paid, including the Transfer Fee, (c) the Owner shall not be in default hereunder, (d) it is reasonably expected that continued operation of the Project will comply with the requirements of this Agreement, (e) the subsequent purchaser or assignee shall execute any document reasonably requested by the Issuer and, for so long as the Borrower Loan is outstanding, the Funding Lender, with respect to assuming the obligations of the Owner under this Agreement, (f) the Funding Lender, if the Borrower Loan is outstanding, and the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, (g) the purchaser or assignee shall have satisfied such other conditions as may be reasonable under the circumstances, (h) the purchaser or assignee shall have first executed a document in recordable form addressed to the Issuer, the Funding Lender, if the Borrower Loan is outstanding, and the Fiscal Agent to the effect that such purchaser or assignee will comply with the terms and conditions of this Agreement, the Borrower Loan Agreement and the other Loan Documents, (i) the Fiscal Agent, the Funding Lender, if the Borrower Loan is outstanding, and the Issuer shall receive an opinion of counsel reasonably acceptable to the Issuer to the effect that the purchaser's or assignee's obligations under this Agreement, the Borrower Loan Agreement and other Loan Documents relating to the Governmental Note are enforceable against such purchaser or assignee in accordance with their terms, and (j) the Fiscal Agent, the Funding Lender, if the Borrower Loan is outstanding, and the Issuer shall have received an opinion of Tax Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, transfer, disposition or assignment will not result, under then-existing law, in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section shall be ineffective to relieve the Owner of its obligations under this Agreement or the Borrower Loan Agreement. In the event that the purchaser or assignee shall assume the obligations of the Owner under the Borrower Loan, the Borrower Loan Agreement and this Agreement, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations hereunder and under the Borrower Loan Agreement arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this Section

10; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by this Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by this Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Project which is made expressly subject and subordinate hereto and, to the extent still outstanding, to the Mortgage, or (v) subject to the provisions of the Mortgage, any transfer of limited partnership interests in the Owner or in the entities which are partners in the Owner.

Section 11. Negative Covenants. During the term of this Agreement, the Owner shall not:

- (a) Except pursuant to the provisions of this Agreement, the Borrower Loan Agreement and the other Loan Documents, or except upon a sale or transfer of the Project in accordance with the terms of this Agreement, the Borrower Loan Agreement and the Mortgage, encumber any of the mortgaged property, including the grant of commercial leases (other than for vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Project and granted in connection with the day to day operation of an apartment complex), or permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Project;
- (b) Demolish any part of the Project necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Project; or
- (c) Permit the use of the dwelling accommodations of the Project for any purpose except rental residences in compliance with Section 142(d) of the Code.

Section 12. Covenants to Run with the Land. This Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding upon the Owner's assigns and successors and all subsequent owners of the Land (whether fee simple or leasehold) or the Project or any interest therein; provided, however, that upon the termination of this

Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section 13 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying the Land or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Land or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Land or the Project.

Section 13. Term. This Agreement shall remain in full force and effect until the expiration of the Qualified Project Period; provided, however, that this Agreement shall automatically terminate in the event of involuntary noncompliance with the provisions of this Agreement caused by fire or other casualty, seizure, requisition, foreclosure or transfer by deed in lieu of foreclosure, change in a federal law or an action of a federal agency that prevents the Issuer from enforcing the provisions hereof, or condemnation or a similar event (as determined by Tax Counsel), but only if within a reasonable period thereafter (i) the Governmental Note is retired in full or (ii) the proceeds received as a result of such event are used to finance a project that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event (as determined by Tax Counsel), such termination will cease to be in effect if, at any time during the remainder of the Qualified Project Period following such event, the Owner or an Affiliated Party to the Owner, obtains an ownership interest in the Project for federal tax purposes.

Upon the termination of the Qualified Project Period, and the satisfaction by the Owner of all obligations under this Agreement, the Issuer, the Fiscal Agent and the Owner shall, upon the written request of the Owner, and at Owner's sole expense, execute and record a Notice of Termination of Land Use Restriction Agreement, the form of which is attached hereto as Exhibit B (the "Notice of Termination"). Pursuant to Resolution No. 2022-\_\_\_, adopted by the Issuer on October 19, 2022, the Chair and Vice Chair of the Issuer have each been authorized to execute and deliver the Notice of Termination.

Section 14. Correction of Noncompliance. The failure of the Owner to comply with any of the provisions of this Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of 60 days following the date that the Owner, or with respect to the requirements of Sections 2 or 3 hereof, any of the parties hereto, learned of such failure or should have learned of such failure by the exercise of reasonable diligence (which 60-day period may be extended if (i) such failure cannot reasonably be corrected within such 60-day period, (ii) diligent action to correct such failure commences within such 60-day period, (iii) such action is diligently pursued until such failure is corrected, and (iv) with respect to a failure to comply with any of the requirements of Sections 2 or 3 hereof, the Owner delivers to the Issuer and the Fiscal Agent an opinion of Tax Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes). After the Fiscal Agent learns of such failure, the Fiscal Agent shall attempt with reasonable diligence to notify the Owner and the Issuer of such failure by telephonic and written communication. Notwithstanding anything to the contrary herein, the



Investor Limited Partner shall have the right, but not the obligation, to cure a default hereunder within the applicable cure period.

Section 15. Modification of Tax Covenants. Notwithstanding the provisions of Section 22(b) hereof, to the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of Tax Counsel addressed to the Issuer, the Owner and the Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Project different than those imposed by the Regulations or the Code and stated herein, and the Owner's failure to comply with such different requirements would produce a material and substantial risk that interest on the Governmental Note will become subject to federal income taxation, then this Agreement shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Tax Counsel to effectuate the intent of this Section 15.

Section 16. Burden and Benefit. The Issuer, the Fiscal Agent and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Fiscal Agent, the Issuer and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Lower-Income Persons and Eligible Persons, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Governmental Note was issued. The Owner hereby expressly acknowledges that this Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note issued by the Issuer to finance the Borrower Loan and covenants and agrees that in connection with the acquisition, construction, ownership and operation of the Project, it shall, and shall require any subsequent purchaser of the Project to, fully comply with all terms and conditions of this Agreement.

Section 17. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project.

Section 18. Application of Insurance and Condemnation Proceeds. Subject to the provisions of the Borrower Loan Agreement and the other Loan Documents, if during the Qualified Project Period, the Project is damaged or destroyed or if all or a portion of the Land or Project is taken through eminent domain proceedings, or under the threat thereof, proceeds from insurance on the Project or any condemnation awards pertaining to such eminent domain proceedings shall be applied as provided in the Mortgage.

Section 19. Remedies; Enforceability. The benefits of this Agreement shall inure to, and may be enforced by, respectively, the Issuer and the Fiscal Agent and its successors, the holder of the Governmental Note and their successors and assigns to the extent permitted by the Funding Loan Agreement, and solely as to Sections 2, 3 and 7 of this Agreement, the Lower-Income Persons and Eligible Persons and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to Section 3 of this Agreement for the

period set forth in Section 13 hereof, whether or not the Borrower Loan may be paid in full, and whether or not the Governmental Note is outstanding. If a material violation of any of the provisions hereof occurs and is not cured within the period provided by Section 14 hereof, any or all of such parties may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to compel specific performance hereunder, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default. The remedies of the beneficiaries of this Agreement other than the Issuer and the Fiscal Agent shall be limited to those described in the preceding sentence. In addition to such other remedies as may be provided for herein, if a violation of any of the provisions hereof occurs which is not corrected during the period provided in Section 14 hereof, the Issuer shall have the right (but not the obligation), and is specifically authorized by the Owner, to terminate the manager and appoint a new manager of the Project to operate the Project in accordance with this Agreement and the Borrower Loan Agreement, which new manager shall be acceptable to the Funding Lender, in Funding Lender's reasonable discretion, and take all actions necessary, in the reasonable judgment of the Issuer, to cure any default by the Owner hereunder, and such new manager assuming such management hereunder shall be paid by or on behalf of the Owner, from the rents, revenues, profits and income from the Project, a management fee not to exceed the prevailing management fee paid to managers of similar housing projects in the area of Broward County, Florida. Subject to Section 13 hereof, the provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times. All rights and remedies provided in this Agreement are cumulative, non-exclusive and in addition to any and all rights and remedies that the parties and beneficiaries hereof may otherwise have.

The Owner hereby agrees that the appointment of a new manager may be necessary to serve the public purpose for which the Governmental Note was issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note following a violation of the provisions of this Agreement which is not cured within the period provided in Section 14 hereof. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a new manager to operate the Project following a violation by the Owner of the provisions of this Agreement which is not cured as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of a new manager in accordance with the terms hereof. The Owner further agrees that the Issuer shall have the right to require the Owner to remove any manager or managing agent whose actions or inactions present a material risk of a breach of the agreements of the Owner herein, including, without limitation, a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Governmental Note and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent.

Section 20. Filing. Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public deed records of Broward County, Florida, and in such manner and in such other places as the Issuer or the Fiscal Agent may reasonably request, and shall pay all fees and charges incurred in connection therewith.

Section 21. Governing Law. This Agreement shall be governed by the laws of the State. The venue for any proceeding hereunder shall be a court of appropriate jurisdiction in Broward County, Florida.

Section 22. Amendments.

- (a) The Owner shall not assign its interest hereunder, except by writing and in accordance with the provisions of Section 10 hereof.
- (b) This Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records for Broward County, Florida. Anything to the contrary notwithstanding, the parties hereby agree to amend this Agreement to the extent required in the opinion of Tax Counsel, in order for interest on the Governmental Note to remain exempt from federal income taxation under Section 103 of the Code. The Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Project to comply, with the requirements of Section 142(d) of the Code and to enter into modifications and amendments to this Agreement to the extent required by federal law, by any amendment to the Code or by any Regulation promulgated thereunder, in each case so that interest on the Governmental Note remains exempt from federal income taxes. Any such amendment, revision or termination shall be effected only in accordance with the Funding Loan Agreement.

Section 23. Fiscal Agent or Compliance Agent to Monitor Compliance Upon Request of Issuer. If the Issuer requests in writing that the Fiscal Agent (and the Fiscal Agent agrees in writing to such request) or Compliance Agent assume the role of compliance monitoring, the Fiscal Agent or Compliance Agent, as the case may be, shall receive and examine all other reports, certifications and other documents required to be delivered to the Issuer or the Fiscal Agent or Compliance Agent hereunder and shall notify the Issuer promptly of non-compliance with this Agreement. In such event the Fiscal Agent or Compliance Agent shall include in its monthly statement described above a statement as to whether it has received the rent rolls and whether any of the information in any such documents received by the Fiscal Agent or Compliance Agent indicates the Owner has failed to comply with any of the requirements contained in this Agreement. The Fiscal Agent or Compliance Agent shall be authorized to charge reasonable fees and expenses to the Owner if it assumes such role.

Section 24. Notice. All notices and other communications required or permitted under this Agreement must be in writing and shall be deemed to have been duly given (i) when

delivered, if sent by registered or certified mail (return receipt requested), (ii) when delivered, if delivered personally, (iii) when transmitted, if sent by facsimile if a confirmation of transmission is produced by the sending machine (and a copy of each facsimile promptly shall be sent by first class United States mail, postage fully prepaid), (iv) when delivered, if sent by overnight mail or overnight courier, or (v) on the date delivery is refused, as indicated on the return receipt or the delivery records of the delivery service, as applicable, in each case to the parties at the addresses listed in the first paragraph of this Agreement. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Owner to the others, shall also be given to the Fiscal Agent and the Investor Limited Partner. Copies of all notices sent pursuant to this Agreement shall be sent in accordance with Section 12.1 of the Funding Loan Agreement.

Section 25. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 26. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 27. Release of Fiscal Agent. Notwithstanding anything in this Agreement to the contrary, on and after the date the Governmental Note is no longer outstanding under the Funding Loan Agreement, the Fiscal Agent shall be released as a party to this Agreement and discharged from any duties or obligations hereunder, and all provisions throughout this Agreement related to the duties of, or notice to or from, the Fiscal Agent shall be of no further force and effect. If any approval or consent of the Fiscal Agent is required, such approval or consent shall be obtained from the Issuer; however, multiple notices need not be provided. Notwithstanding the foregoing, any such references shall remain in effect when needed to construe land use restriction obligations under this Agreement or to provide definitions. The Fiscal Agent's rights to indemnification provided for in the Funding Loan Agreement, the Borrower Loan Agreement and this Agreement shall survive such release and discharge.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

**IN WITNESS WHEREOF**, the Issuer, the Fiscal Agent, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**ISSUER:**

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

[SEAL]

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

ATTEST:

\_\_\_\_\_  
Scott Ehrlich, Secretary

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, by DANIEL D. REYNOLDS and SCOTT EHRLICH, Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic, on behalf of said Authority. They are (*check one*)  personally known to me or  have produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**FISCAL AGENT:**

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent

WITNESSES:

\_\_\_\_\_  
Print: \_\_\_\_\_

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

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

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

\_\_\_\_\_  
Print: \_\_\_\_\_

Address: 4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, and Trust Officer of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., this \_\_\_\_ day of \_\_\_\_\_, 2022, on behalf of said bank. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**OWNER:**

DOUGLAS GARDENS IV, LTD., a Florida limited partnership

WITNESSES:

\_\_\_\_\_  
Print: \_\_\_\_\_

By: MHP Douglas SLP, LLC, a Florida limited liability company, its Special Limited Partner

\_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
W. Patrick McDowell, Chief Executive Officer

Address: 777 Brickell Avenue, Suite 1300  
Miami, Florida 33131

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, by W. PATRICK MCDOWELL, as Chief Executive Officer of MHP Douglas SLP, LLC, a Florida limited liability company, the Special Limited Partner of Douglas Gardens IV, Ltd., a Florida limited partnership, on behalf of the limited liability company and limited partnership. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**(Douglas Gardens – Senior Health and Living)**

A PORTION OF TRACT "A", PATHWAYS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 152, ON PAGE 15 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT "A", THENCE ALONG THE BOUNDARY OF SAID TRACT "A" THE FOLLOWING THREE COURSES (1) SOUTH 02°08'42" EAST ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 1059.27 FEET, (2) SOUTH 87°45'29" WEST ALONG THE SOUTH LINE OF SAID TRACT "A", A DISTANCE OF 827.09 FEET,

(3) NORTH 02°08'42" WEST ALONG A WESTERLY LINE OF SAID TRACT "A", A DISTANCE OF 499.74 FEET; THENCE NORTH 87°45'29" EAST, A DISTANCE OF 182.28 FEET TO AN INTERSECTION WITH A LINE BEING EAST OF AND PARALLEL WITH SAID WESTERLY LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 65.86 FEET TO AN INTERSECTION WITH A LINE BEING 494.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACT "A"; THENCE NORTH 87°47'13" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH A LINE BEING 232.28 FEET EAST OF AND PARALLEL WITH SAID WESTERLY LINE; THENCE SOUTH 02°08'42" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 40.00 FEET TO AN INTERSECTION WITH A LINE BEING 534.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE; THENCE NORTH 87°47'13" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 337.00 FEET TO AN INTERSECTION WITH A LINE BEING

257.81 FEET WEST OF AND PARALLEL WITH SAID EAST LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF

395.00 FEET TO AN INTERSECTION WITH A LINE BEING 139.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE; THENCE SOUTH 87°47'13" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 347.00 FEET TO AN INTERSECTION WITH A LINE BEING 604.81 FEET WEST OF AND PARALLEL WITH SAID EAST LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 139.00 FEET TO AN INTERSECTION WITH SAID NORTH LINE; THENCE NORTH 87°47'13" EAST ALONG SAID NORTH LINE, A DISTANCE OF 604.81 FEET TO THE POINT OF BEGINNING.



SAID LANDS LYING IN THE CITY OF PEMBROKE PINES, BROWARD COUNTY,  
FLORIDA CONTAINING 617,799 SQUARE FEET (14.182 ACRES) MORE OR LESS.

**EXHIBIT "B"**

**FORM OF  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

This NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT (the "Termination") is executed as of \_\_\_\_\_, 20\_\_\_\_, with an effective date of \_\_\_\_\_, 20\_\_\_\_, by the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Authority"), THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as fiscal agent (the "Fiscal Agent"), and \_\_\_\_\_, a Florida \_\_\_\_\_ (the "Current Owner").

1. That certain Land Use Restriction Agreement dated as of December 1, 2022 and recorded \_\_\_\_\_, 2022, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Broward County, Florida (the "Land Use Restriction Agreement").

2. The Qualified Project Period, as defined in the Land Use Restriction Agreement, ended on \_\_\_\_\_, and the Authority has authorized the execution and delivery of this Termination.

3. By execution of this Termination, the Land Use Restriction Agreement will be terminated.

4. All payments of any amounts due under the Land Use Restriction Agreement are fully paid and all obligations thereunder have been met. There is currently no default under the Land Use Restriction Agreement.

IN WITNESS WHEREOF, the Authority, the Fiscal Agent and the Current Owner hereby agree to terminate the Land Use Restriction Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**CURRENT OWNER:**

WITNESSES:

Print: \_\_\_\_\_

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

Print: \_\_\_\_\_

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment

Name (typed, printed or stamped): \_\_\_\_\_

Title or Rank: \_\_\_\_\_

Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**THE AUTHORITY:**

WITNESSES:

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

WITNESSES:

[SEAL]

\_\_\_\_\_  
Print: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Print: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was executed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic, on behalf of said Authority. They are (*check one*)  personally known to me or  have produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**FISCAL AGENT:**

WITNESSES:

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_, as a \_\_\_\_\_ of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, on behalf of said bank. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**EXHIBIT “D”**  
**FORM OF**  
**ASSIGNMENT OF LOAN DOCUMENTS**  
**[ATTACHED]**

This instrument was prepared with the assistance of an attorney licensed in Florida, and after recording should be returned to:

Citibank, N.A.  
Transaction and Asset Management Group/Post Closing  
Citi Community Capital  
3800 Citibank Center  
Tampa, FL 33610  
Re: Douglas Gardens Deal ID No. [#]

**ASSIGNMENT OF MORTGAGE  
AND LOAN DOCUMENTS**

KNOW ALL PERSONS BY THESE PRESENTS:

The **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**, a public body corporate and politic created, organized and existing under the laws of the State of Florida (“**Assignor**”), pursuant to that certain Funding Loan Agreement, dated as of the date hereof (“**Funding Loan Agreement**”), by and among **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, as Fiscal Agent (“**Assignee**”), Assignor and **CITIBANK, N.A.**, a national banking association (“**Funding Lender**”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign to Assignee, for the benefit of Funding Lender, without recourse, all of Assignor’s right, title and interest in and to, subject to the Unassigned Rights (as defined in the Funding Loan Agreement), the instruments (“**Assigned Instruments**”) described on Schedule 1 attached hereto.

TOGETHER with the Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon, TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor’s true and lawful attorney, irrevocable in law or in equity, in the Assignor’s name, place and stead, but at Assignee’s cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

**Overriding Limitations.** In no event shall Assignor:

(i) prosecute its action to a lien on the Project, as defined in that certain Borrower Loan Agreement by and between Douglas Gardens IV, Ltd., a Florida limited partnership (“**Borrower**”), and Assignor (the “**Borrower Loan Agreement**”); or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Borrower under any applicable liquidation,

insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by Assignee or Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by Borrower under the Borrower Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan.

**Definitions.** All capitalized terms that are used and are not defined herein shall have the respective meanings ascribed to them in the Borrower Loan Agreement. In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Dated as of the 1st day of December, 2022 (the foregoing date is for reference purposes only and this Assignment shall not be effective until the Closing Date, as defined in the Borrower Loan Agreement).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Assignment of Mortgage and Loan Documents or caused this Assignment of Mortgage and Loan Documents to be duly executed and delivered by its authorized representative as of the date first set forth above.

WITNESSES:

Print: \_\_\_\_\_

Print: \_\_\_\_\_

**ASSIGNOR:**

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA,**  
a public body corporate and politic created,  
organized and existing under the laws of the State  
of Florida

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

Name: Daniel D. Reynolds

Title: Chair

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, on behalf of the authority. Said person is personally known to me or has produced \_\_\_\_\_ as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**SCHEDULE 1  
TO  
ASSIGNMENT OF MORTGAGE  
AND LOAN DOCUMENTS**

**ASSIGNEE:**

Citibank, N.A.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Deal ID # [#]

**ASSIGNED INSTRUMENTS:**

1. Multifamily Note by Douglas Gardens IV, Ltd., a Florida limited partnership (“**Borrower**”), to Assignor, dated as of the Closing Date, in the original principal amount of up to \$[77,000,000].
  
2. Multifamily Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed by Borrower for the benefit of Assignor securing the principal amount of up to \$[77,000,000], which is being recorded immediately prior hereto in the Recorder’s Office of Broward County, Florida, and encumbers the Borrower’s subsubleasehold interest in the real property (and improvements thereon) that is more particularly described on **Exhibit A**.

**EXHIBIT A**

**LEGAL DESCRIPTION**

A PORTION OF TRACT "A", PATHWAYS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 152, ON PAGE 15 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT "A", THENCE ALONG THE BOUNDARY OF SAID TRACT "A" THE FOLLOWING THREE COURSES (1) SOUTH 02°08'42" EAST ALONG THE EAST LINE OF SAID TRACT "A", A DISTANCE OF 1059.27 FEET, (2) SOUTH 87°45'29" WEST ALONG THE SOUTH LINE OF SAID TRACT "A", A DISTANCE OF 827.09 FEET, (3) NORTH 02°08'42" WEST ALONG A WESTERLY LINE OF SAID TRACT "A", A DISTANCE OF 499.74 FEET; THENCE NORTH 87°45'29" EAST, A DISTANCE OF 182.28 FEET TO AN INTERSECTION WITH A LINE BEING EAST OF AND PARALLEL WITH SAID WESTERLY LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 65.86 FEET TO AN INTERSECTION WITH A LINE BEING 494.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACT "A"; THENCE NORTH 87°47'13" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH A LINE BEING 232.28 FEET EAST OF AND PARALLEL WITH SAID WESTERLY LINE; THENCE SOUTH 02°08'42" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 40.00 FEET TO AN INTERSECTION WITH A LINE BEING 534.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE; THENCE NORTH 87°47'13" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 337.00 FEET TO AN INTERSECTION WITH A LINE BEING 257.81 FEET WEST OF AND PARALLEL WITH SAID EAST LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 395.00 FEET TO AN INTERSECTION WITH A LINE BEING 139.00 FEET SOUTH OF AND PARALLEL WITH SAID NORTH LINE; THENCE SOUTH 87°47'13" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 347.00 FEET TO AN INTERSECTION WITH A LINE BEING 604.81 FEET WEST OF AND PARALLEL WITH SAID EAST LINE; THENCE NORTH 02°08'42" WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 139.00 FEET TO AN INTERSECTION WITH SAID NORTH LINE; THENCE NORTH 87°47'13" EAST ALONG SAID NORTH LINE, A DISTANCE OF 604.81 FEET TO THE POINT OF BEGINNING.

SAID LANDS LYING IN THE CITY OF PEMBROKE PINES, BROWARD COUNTY, FLORIDA CONTAINING 617,799 SQUARE FEET (14.182 ACRES) MORE OR LESS.

**EXHIBIT “E”**  
**FORM OF**  
**PLACEMENT AGENT AGREEMENT**  
**[ATTACHED]**

## **PLACEMENT AGENT AGREEMENT**

**THIS PLACEMENT AGENT AGREEMENT** dated as of December 1, 2022 (herein, the “Agreement”), is by and between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic organized under Part IV of Chapter 159, Florida Statutes, as amended and supplemented (together with its permitted successors and assigns, the “Issuer”), and RAYMOND JAMES & ASSOCIATES, INC. and RBC CAPITAL MARKETS, LLC, as Placement Agents (herein, collectively, the “Agents”), in connection with the issuance of the Note (as defined below) and consented to by DOUGLAS GARDENS IV, LTD., a Florida limited partnership (together with its successors and permitted assigns, the “Borrower”) with respect to the Note.

### **A. Background.**

The Issuer proposes to issue its Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living), in one or more series, in the aggregate principal amount of \$[77,000,000] (the “Note”) to provide financing to the Borrower for the acquisition, construction and equipping of a 410-unit multifamily residential rental development in Broward County, Florida (the “County”) known as Douglas Gardens – Senior Health and Living (the “Development”).

The Note will initially be acquired directly by Citibank, N.A., a national banking association (the “Funding Lender”) pursuant to the requirements of the Issuer’s administrative code and policies (herein, collectively the “Issuer’s Requirements”).

Upon satisfaction of certain conditions subsequent and in compliance with the Issuer’s Requirements, future investment banking services may be required in connection with the Note (herein, the “Future Services”).

### **B. Role of Agents.**

In connection with the initial issuance of the Note, the Agents have performed, at the request of and on behalf of the Issuer, the following services on or before the closing of the Note:

1. Assisted in the determination of the readiness to proceed of the Note issuance with regard to the granting of private activity allocation to the financing which is to be issued on a tax-exempt basis.
2. Created a distribution list for the financing participants and financing timetable and coordinated the processing of the transaction.
3. Continuously consulted with the financing participants to ensure that the timetable was being met, and scheduled and hosted conference calls.

4. Consulted with the Issuer's staff regarding policy issues that arose in connection with the financing.

On a limited basis, reviewed and commented on the financing documents to ensure that the Issuer's Requirements were reflected therein and to improve the structure of the transaction.

Assisted in the coordination of all aspects of the financing as it relates to the Issuer or the County.

The foregoing is hereby collectively referred to as the "Agents' Services".

**C. Limitations of Agents' Role; No Liability.** The Issuer and Borrower acknowledge and agree that: (i) the Agents' Services contemplated by this Agreement are an arm's length, commercial transaction between the Issuer and the Agents in which the Agents are not acting as a municipal advisor, financial advisor or fiduciary to the Borrower or Issuer; (ii) the Agents have not assumed any advisory or fiduciary responsibility to the Borrower or Issuer with respect to the services contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Agents have provided other services or are currently providing other services to the Borrower or Issuer on other matters); (iii) the only obligations the Agents have to the Issuer or Borrower with respect to the services contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer and Borrower have consulted their respective legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Notwithstanding the Agents' Services described above, the Agents have not done any of the following nor do they assume any responsibility or liability for such actions:

1. Advised the Funding Lender on the financial feasibility of the Development.
2. Prepared or disseminated any offering materials.
3. Investigated or determined the credit worthiness or accreditation of the Funding Lender. In that regard the Issuer will receive an accredited investor letter.
4. Provided any advice regarding obtaining a rating or credit enhancement for the transaction.
5. Taken any action in connection with the issuance of the Note to effect a financial transaction as contemplated by the USA Patriot Act.

It should be noted that the Issuer has retained the services of a registered financial advisor in connection with the issuance of the Note. The Agents are not acting as a financial advisor for the Issuer or Borrower for purposes of Rule G-23 of the Municipal Securities Rulemaking Board, nor acting as a municipal advisor to either the Issuer or the Borrower.

Neither of the Agents shall be responsible or liable for any negligence or willful misconduct of the other Agent.

**D. Fees for Agents' Services.**

Simultaneously with the closing of the Note, the Borrower will pay the Agents for the Agents' Services rendered a fee equal to \$35,000, plus reasonable, documented out-of-pocket expenses.

**E. Future Services of Agents.**

In the event the Borrower and the Issuer determine that there will be Future Services relating to the Note, the Agents will act, on behalf of the Issuer, as placement agent, remarketing agent or underwriter, as the structure so dictates. The fees and expenses associated with any future engagement will be (i) determined at such time that the details of such engagement and scope of service are identified, and (ii) subject to the approval of the Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

To the extent the Agents are (i) unable to perform any of the Future Services, or (ii) no longer on the Issuer's underwriting team, the Issuer may, in its sole discretion, and upon written notice to the Borrower and the Agents, assign Future Services to an entity on its then-current underwriting team.

**F. Governing Law; Multiple Counterparts.**

This Agreement shall be governed by Florida Law and may be signed in multiple counterparts.

**G. Amendments; Modifications.**

This Agreement may not be amended or modified except by written agreement signed by all parties hereto.

[SIGNATURE PAGE TO FOLLOW]



**SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

**RAYMOND JAMES & ASSOCIATES, INC.**

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

**RBC CAPITAL MARKETS, LLC**

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

**DOUGLAS GARDENS IV, LTD.,** a Florida limited partnership

By: MHP Douglas SLP, LLC, a Florida limited liability company, its Special Limited Partner

By: \_\_\_\_\_  
W. Patrick McDowell, Chief Executive Officer

**EXHIBIT “F”**  
**FORM OF**  
**FISCAL AGENT FEE AGREEMENT**  
**[ATTACHED]**

FISCAL AGENT FEE AGREEMENT

Between

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

DATED AS OF December 1, 2022

PROVIDING FOR

A FEE SCHEDULE FOR SERVICES RENDERED BY THE FISCAL AGENT FOR

[\$77,000,000]

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2022  
(DOUGLAS GARDENS – SENIOR HEALTH AND LIVING)

## **FISCAL AGENT FEE AGREEMENT**

This FISCAL AGENT FEE AGREEMENT (the "Agreement") dated as of December 1, 2022, by and between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Issuer"), a public body corporate and politic created under the laws of the State of Florida, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, having a corporate trust office in Jacksonville, Florida and duly qualified to exercise trust powers under the laws of the State of Florida, as fiscal agent (the "Fiscal Agent").

### **WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Issuer and the Fiscal Agent agree as follows:

### **ARTICLE I PREAMBLE**

1.1 The Fiscal Agent submitted certain proposals to serve as trustee or in a similar capacity for all financings of the Issuer during calendar year 2022, including the Issuer's \$[77,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series 2022 (Douglas Gardens – Senior Health and Living) (the "Note"). All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Funding Loan Agreement (as hereinafter defined).

1.2 Said proposals contain a description of the types of services to be provided, a schedule of fees for the various services to be provided and a brief discussion of the Fiscal Agent's corporate qualifications and capabilities.

1.3 The Fiscal Agent is willing to provide the services described in its proposals and in the loan documents pertaining to the Note at the rates set forth in said proposals, and the Issuer is willing to accept the services of the Fiscal Agent set forth in the Fiscal Agent's proposals at the rates provided therein. The Issuer and the Fiscal Agent desire to enter into this Agreement to establish the terms of said proposals for the services of the Fiscal Agent with respect to the Note.

### **ARTICLE II SCOPE OF SERVICES AND FEES**

The Fiscal Agent hereby accepts all of the duties, responsibilities and obligations imposed on it as Fiscal Agent under the terms of the Funding Loan Agreement dated as of December 1, 2022, among the Issuer, the Fiscal Agent and Citibank, N.A., a national banking association (the "Funding Loan Agreement") and hereby confirms the accuracy of all of the representations and warranties, if any, of the Fiscal Agent contained therein. The terms of this Agreement attached hereto as Exhibit "A" are accepted and adopted by reference by the parties to this Agreement. Such terms include the services to be provided by the Fiscal Agent and the fees and costs to be charged by the Fiscal Agent for such services. The fees and charges set forth in Exhibit "A" include all expenses incurred by the Fiscal Agent in connection with the execution and delivery and closing of the Note. Exhibit "A" comprises one (1) page.

**ARTICLE III  
OTHER PROVISIONS**

This Agreement shall continue in full force and effect and be binding on both the Issuer and the Fiscal Agent for so long as the Funding Loan Agreement is in effect.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO  
FISCAL AGENT FEE AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement as of the date first above written.

**ISSUER:**

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Daniel D. Reynolds, Chair

ATTEST:

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

**COUNTERPART SIGNATURE PAGE TO  
FISCAL AGENT FEE AGREEMENT**

**(Douglas Gardens – Senior Health and Living)**

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement as of the date first above written.

**FISCAL AGENT:**

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Fiscal Agent

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

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

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

## **EXHIBIT “A”**

### **Services to be provided by Fiscal Agent:**

The Fiscal Agent shall provide all services required of the Fiscal Agent as set forth in (i) the Funding Loan Agreement, and (ii) all other documents executed in connection with the Note to which the Fiscal Agent is a party.

### **Fees and Expenses of Fiscal Agent:**

The fees and expenses of the Fiscal Agent shall be all such fees and expenses of the Fiscal Agent set forth in the Funding Loan Agreement and all other documents executed in connection with the Note, and shall be paid by the Borrower (as defined in the Funding Loan Agreement) at the times and in the manner set forth in the Funding Loan Agreement and the Borrower Loan Agreement (as defined in the Funding Loan Agreement).



**EXHIBIT “G”**

**TERM SHEET**

**[ATTACHED]**



**TERM SHEET**

**Multifamily Rental Developments with Rent Restrictions  
New Construction and/or Substantial Rehabilitation and/or Term Mortgages  
Tax-Exempt “Back-to-Back” Loan Structure**

**Douglas Gardens – Senior Health and Living**

**October 11, 2022**

NOTE: This Term Sheet constitutes a brief summary of certain, but not all transaction terms and conditions for discussion purposes only. The summary that follows is subject to credit approval and does not constitute an offer or commitment.

**In connection with this Term Sheet, CITI will be acting solely as a principal and not as your agent, advisor or fiduciary. CITI has not assumed a fiduciary responsibility with respect to this Term Sheet, and nothing in this transaction or in any prior relationship between you and CITI will be deemed to create an advisory, fiduciary or agency relationship between us in respect of this Term Sheet. You should consider carefully whether you would like to engage an independent advisor to represent or otherwise advise you in connection with this Term Sheet, if you have not already done so.**

**PRELIMINARY LOAN TERMS**

**Transaction**

**Summary:**

CITIBANK, N.A. (“CITI”) proposes to arrange a tax exempt construction/permanent loan to the Housing Finance Authority of Broward County (the “Governmental Lender”), where “construction” means: new construction (ground up), moderate rehabilitation or substantial rehabilitation. The proceeds of the Loan to Governmental Lender shall fund an interim construction loan converting into a permanent mortgage loan (“Tax-exempt Loan”) by Governmental Lender to the Borrower for the Property described below. If required by Governmental Lender, a fiscal agent (“Fiscal Agent”) will be appointed and will be responsible for following the terms of the Tax-exempt Loan documents and administering funds held under the Construction Funding Agreement.

The Tax-exempt Loan will have two distinct phases: (1) Construction Phase - an initial phase during which funds will be advanced to Governmental Lender on a “draw-down” basis during the Construction Phase and loaned to Borrower (directly or through a Fiscal Agent, at Governmental Lender’s discretion). Payments on the Tax-exempt Loan during the Construction Phase will be interest only, unless otherwise noted; and (2) Permanent Phase - a subsequent phase when, upon completion of construction and achievement of stabilized operations, no additional funds will be available to Borrower. Payments during the Permanent Phase will include principal reduction payments as well as interest, unless otherwise noted below.

For purposes of this Term Sheet, the term “Construction Phase” means the period from the Closing Date through the day prior to the Conversion Date and the term “Permanent Phase” means the period from the Conversion Date (inclusive) through the maturity date (or earlier termination) of the Project’s permanent financing.

**Property:**

A to-be-constructed multifamily project containing 410 units located in Pembroke Pines, FL. The property is commonly referred to as “Douglas Gardens – Senior Health and Living” (“Property”).

- Set-Asides:** 19 units are reserved for individuals or families whose income is no greater than 30% of Area Median Income (“AMI”); 371 units are reserved for individuals or families whose income is no greater than 60% of Area Median Income 10 units are reserved for individuals or families whose income is no greater than 100% of AMI; and 10 units are unrestricted at market.
- Applicant (Sponsor):** McDowell Housing Partners.
- Borrower:** Douglas Gardens IV, LTD. Borrower entity, its constituent entities and its operating or partnership agreement must be acceptable to CITI in all respects.
- LIHTC Investor/  
Syndicator:** The Low Income Housing Tax Credit (“LIHTC”) Investor/Syndicator, the upper tier investor(s) and the terms and conditions of the partnership or operating agreement must be acceptable to CITI in all respects including, particularly, the timing and conditions to funding capital contributions. The timing of the funding of capital contributions into the Transaction must follow a schedule that will allow for a minimum of 50% of the Equity being contributed by completion of construction.
- Guarantor(s):** From the Closing Date until Conversion to the Permanent Phase, the Guarantor(s) will be MHP Developers, LLC, Douglas Gardens Senior Housing, Inc., and/or other individual(s) or corporate entity acceptable to CITI in all respects. The Guarantor(s) post-Conversion will be Douglas Gardens Senior Housing, Inc. and/or other individual(s) or corporate entity acceptable to CITI in all respects. MHP Developers LLC will covenant that if Douglas Gardens Senior Housing Inc. does not have a minimum of \$2,500,000 in liquidity by Conversion, it will remain in the transaction as an additional perm-guarantor. The Guarantor(s)’ financial condition(s) must be acceptable to CITI in all respects.
- Subordinate Debt:** The sources of subordinate debt and the subordinate loan documents must be acceptable to CITI in all respects. All subordinate debt must fund prior to Loan funding unless CITI approves other arrangements. Subordinate Debt will be subject to CITI’s Subordination Agreement which in addition to other provisions, requires that Subordinate Debt only be paid from 75% of available cash flow as defined in the Loan Documents.
- Loan Security:** First lien on leasehold estate and any improvements, UCC filings for fixtures; assignment of all leases and rents; and, a first priority collateral assignment of all contracts, management agreements, and other agreements and all permits relating to the Property. Ground leases must be subordinate to CITI’s lien position unless the fee interest is owned by a government agency to ensure long-term affordability. All income and rent restrictions will be subordinate to the CITI security instrument.
- It is CITI’s understanding that Borrower will enter into a sub-sub-ground lease with Florida Pathway’s Inc. (an affiliate of Miami Jewish Health Systems), which has entered into a sub-ground lease with the State of Florida Department of Health and Rehabilitative Services, which has entered into a ground lease with the State of Florida Board of Trustees of the Internal Improvement Trust Fund, which owns the fee simple interest in the land. This Term Sheet is contingent, among other things, upon review and approval by CITI, at CITI’s sole discretion, of the structure/terms of the ground lease, sub-ground lease and sub-sub-ground lease.
- Construction Phase  
Recourse Guarantees:** Prior to conversion of the Loans to the Permanent Phase (described below) and during the Construction Phase (described below), the Loans will be fully recourse to the Borrower and to the Guarantor(s) and Completion and Repayment Guarantees are required from the Borrower and the Guarantor(s).

**Guarantees,  
Permanent Phase:** None, except for industry standard carve outs (“Carve Outs”). Carve Outs include guarantees against fraud, misrepresentation, bankruptcy and environmental issues.

**Indemnity for  
Loss of Tax Exclusion** In connection with having the Tax-Exempt Loan structured as a drawdown loan, the Guarantor will be required to indemnify CITI and Governmental Lender for any losses resulting from any of the undrawn amounts of the Tax-Exempt Loan being deemed taxable.

**Environmental  
Indemnity:** Borrower and Guarantor(s) will be liable for CITI’s standard environmental indemnity.

**Closing:** Closing is subject to full satisfaction of CITI’s standard due diligence, underwriting and credit approval processes, and the execution and delivery of all required loan documents, delivery of opinions, payment of fees and other customary requirements.

**Closing Date (est.):** Fourth Quarter 2022.

### **CONSTRUCTION PHASE**

**Construction Phase  
Phase Loan Amount:** An amount currently estimated to be \$77,000,000, but in any event, the Tax-Exempt Construction Phase Loan Amount shall not exceed 80% of costs covered through the Construction Phase.

**Term:** 36 months, plus two as-of-right 6-month extension(s). Fees for the extension(s) are indicated below under “Fees & Expenses”.

**Construction Phase  
Interest Rate:** Variable rate equal to 1-Month Term SOFR as published by the CME Group<sup>1</sup> (which shall have a floor of 0.40%) plus a spread of 1.85% (“Construction Phase Interest Rate”). Rate adjusts monthly. Currently, 1-Month Term SOFR is trading at approximately 3.29%, thus the current indicative rate is 5.14%. This rate does not include Governmental Lender, Fiscal Agent, or miscellaneous third-party fees. The rate will be committed at the time of closing of the Construction Phase financing. Pricing is based on current market conditions and is subject to change.

**Construction Phase  
Interest Day Count:** Actual/360.

**Interest Reserve:** Calculated at the Construction Phase Interest Rate noted above, plus a cushion acceptable to CITI at time of final credit approval. Currently, CITI is underwriting with a cushion of 1.25%. The Interest Reserve will be sized based on an analysis of the projected draw schedule for the Loans from the closing of the Construction Phase financing through Conversion.

**Availability:** Tax-Exempt Loan proceeds will be advanced to Borrower on a “draw down” basis upon receipt of a written request from Borrower, supported by documentation acceptable to CITI. Borrower will be required to submit a loan budget worksheet with each draw request tracking all Property sources and uses of funds. Draw requests limited to one per month.

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<sup>1</sup> <https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html>

**Tax-exempt Loan in Balance:**

The Tax-exempt Loan must remain “in balance” during the Construction Phase. “In balance” means that (1) the funds available during the Construction Phase (from the Tax-exempt Loan and all other debt and equity sources) are sufficient to complete the construction or rehabilitation of the Property and all other expenses reasonably expected to be necessary to achieve the conditions for conversion of the Tax-exempt Loan to the Permanent Phase; and (2) the sources available at Conversion are sufficient to pay down the Construction Phase Loan Amount to the Permanent Phase Loan Amount, along with any other funding requirements for Conversion.

**Amortization:**

None. Payments on the Tax-exempt Loan during the Construction Phase will be interest only.

**Prepayment and Yield Maintenance:**

Voluntary prepayment of Tax-exempt Loan principal amounts during the Construction Phase, including those as a result of a Borrower default, may be made without prepayment fee or penalty unless the Construction Phase Loan Amount is reduced to less than ninety percent (90%) of the Permanent Phase Loan Amount (as defined below).

If the prepayment reduces the Tax-exempt Loan amount to an amount less than ninety percent (90%) of the Permanent Phase Loan Amount, the Borrower shall pay the greater of: (i) 1% of the amount of the Tax-exempt Loan prepaid below 90% of the Permanent Phase Loan Amount; or (ii) CITI’s standard yield maintenance amount on the amount of the Tax-exempt Loan prepaid below 90% of the Permanent Phase Loan Amount.

In the event that a Tax-exempt Loan prepayment resulting from a Tax-exempt Loan resizing, as determined by CITI in its sole discretion, reduces the Tax-exempt Loan amount to an amount less than the Permanent Phase Loan Amount, the Borrower shall pay the greater of: (i) 1% of the amount of the Tax-exempt Loan prepaid below 90% of the Permanent Phase Loan Amount; or (ii) CITI’s standard yield maintenance amount on the amount of the Tax-exempt Loan prepaid below 90% of the Permanent Phase Loan Amount.

Notwithstanding any of the above, in the event the amount of such prepayment would cause the Tax-exempt Loan amount to fall below 50% of the Permanent Phase Loan Amount, the Borrower shall be required to repay the Tax-exempt Loan in full plus the greater of: (i) 1% of the amount of the Tax-exempt Loan repaid below 90% of the Permanent Phase Loan Amount; or (ii) CITI’s standard yield maintenance amount on the amount of the Tax-exempt Loan repaid below 90% of the Permanent Phase Loan Amount.

If Borrower prepays Tax-exempt Loan principal amounts through the application of insurance proceeds or a condemnation award, no prepayment fee shall be payable to CITI.

**Budget and Contingencies:**

The budget for the Construction Phase, including all budget line items, is subject to CITI approval. The budget shall include a hard cost contingency of no less than 5% of budgeted hard costs for new construction projects and no less than 10% of budgeted hard costs for rehabilitation projects. The budget shall include a soft cost contingency of no less than 5% of budgeted soft costs, excluding 1) soft costs incurred prior to or in connection with closing; 2) interest reserve and bank fees; 3) capitalized operating reserve deposits and other costs that may be due in connection with Conversion for which specific sources are identified; and 4) developer fees.

**General Contractor and Bonding Requirements:**

The general contractor and the construction contract must be acceptable to CITI. CITI will require payment and performance bonds equal to 100% of the construction contract amount. Surety issuing bonds must have an A.M. Best rating of “A/VIII” or better and must be acceptable to CITI in all other respects. In lieu of bonds, CITI will accept a letter of credit (“LC”) equal to 10% of the hard cost budget. LC provider must be rated “BBB” or better.

**Retainage:**

Construction contract will provide for a minimum retainage of 10% of each construction pay application until “substantial completion” (as defined in the Loan documents), unless there are other requirements under State law or unless other arrangements have been approved by CITI. Retainage percentage amounts can be revised, upon review and approval by CITI, at CITI’s sole discretion, but only down to a minimum of 10% until 50% completion and then 0% retention withheld thereafter. No release of retainage is permitted for achieving 50% completion. All retained amounts will be released upon final, lien-free completion of construction, as approved by CITI.

**PERMANENT PHASE**

**Permanent Phase**

**Loan Amount:**

An amount currently estimated to be in the maximum amount of \$53,000,000 or such other loan amount supported by CITI’s underwriting of the Property at the time of Conversion in accordance with CITI’s underwriting requirements including those listed below.

**Maturity Date:**

Anticipated nominal maturity date of 34 years following the Closing Date, subject to any Governmental Lender restrictions.

**Mandatory Prepayment / Term:**

At the end of the 19<sup>th</sup> year following the Closing Date, mandatory prepayment of the Tax-exempt Loan will be required in full.

**Amortization:**

40 years.

**Lock-out Period:**

From the Conversion Date until the 10<sup>th</sup> anniversary of the Conversion Date.

**Yield Maintenance Period:**

From the Closing Date until 6 months prior to the Mandatory Prepayment.

**Permanent Phase**

**Interest Rate:**

Fixed rate equal to the sum of the 19 year LIBOR Swap Index (which shall have a floor of 0.75%) plus a spread of 2.10% (“Permanent Phase Interest Rate”). Currently, the 19 year LIBOR Swap Index is 3.77%, thus the current indicative rate is 5.87%. This rate does not include Governmental Lender, Fiscal Agent, or miscellaneous third party fees. The rate will be committed at the time of closing of the Construction Phase financing when Borrower has satisfied all conditions required by CITI. Pricing is based on current market conditions and is subject to change. If LIBOR swap rates are unavailable at the time of rate lock, a successor index will be chosen by CITI.

If the Conversion to the Permanent Phase does not occur on or before month 36 following Closing, 0.05% will be added to the above quoted rate for each as-of-right 6-month period past the initial 36 month period in which Conversion occurs.

**Permanent Phase**

**Interest Day Count:**

Actual/360.

**Conversion to Permanent**

**Phase Requirements:** Conversion requirements include completion of construction and 90% physical occupancy of Project for three consecutive calendar months. CITI will review the Property’s net operating income to determine the maximum Permanent Phase Loan Amount based on the Debt Service Coverage and Loan-to-Value noted below.

**Debt Service Coverage:** A minimum of 1.15 to 1.00.

**Loan-to-Value:** 90% of market value, based on restricted rents and inclusive of value of permanent below market financing (if applicable), assuming project rents on 80% or more of the units are discounted to a level at least 10% below market. Otherwise, 85%.

**Other Conversion**

**Requirements:** As may be required by Governmental Lender and/or permanent Governmental Note Holder.

**Replacement Reserve:** Upon Conversion, Borrower will be required to fund a Replacement Reserve for each of the first five years following Conversion in a minimum amount of \$250/unit/year for new construction projects or, for renovation projects, in an amount determined by a Physical Needs Assessment acceptable to CITI, but in a minimum amount of \$300/unit/year. For each successive five-year period thereafter until Note maturity, the Replacement Reserve level will be determined by a new Physical Needs Assessment acceptable to CITI.

**Repair/Escrow Immediate**

**Physical Needs:** CITI may require immediate repairs following delivery of the post construction final PNA. All immediate repairs shall be funded at a rate of 150% of the estimated cost established by the PNA and reviewed and approved by CITI. Any amount remaining in the Repair Escrow after all repairs have been completed may be deposited into the Replacement Reserve or returned to Borrower, at Borrower’s election.

**Taxes and Insurance:** Commencing upon Conversion, real estate taxes and insurance premiums must be escrowed with the Loan servicer (“Servicer”) on a monthly prorated basis in an amount sufficient to enable the Servicer to pay (at least 30 days before due) all taxes, assessments, insurance premiums or other similar charges affecting the Property.

**OTHER**

**Appraisal, Environmental,**

**Plan/Cost Reviews:** Appraisal and Plan/Cost Review reports will be commissioned and reviewed by CITI. CITI may rely upon environmental reports commissioned by Borrower if report is current (within 12 months) and CITI has been provided evidence of acceptable E&O insurance coverage carried by Borrower’s environmental consultant and a reliance letter in form acceptable to CITI. Otherwise, CITI will commission its own environmental report. Appraisal, environmental and plan/cost reviews must be acceptable to CITI in all respects. CITI reserves the right to either co-engage any vendor providing the foregoing services and/or to share the reports with a LIHTC Investor/Syndicator.

**Property Tax**

**Abatements, Incentives:** All documentation related to any tax abatement or tax incentives must be acceptable to CITI in all respects.

**Developer Fee:** Any developer fee paid prior to conversion to the Permanent Phase shall be pre-approved by CITI in its sole discretion.

## **FEES & EXPENSES**

<b>Application Fee:</b>	\$25,000, which amount shall be non-refundable (except as set forth in the “Exclusivity” section of the Preliminary Application, if applicable) and due and payable upon acceptance of a Loan Application. This fee is applicable toward third party reports, loan underwriting and processing (in the minimum amount of \$5,000), and CITI’s initial legal fees. Applicant is responsible for the payment of all reasonable costs incurred in connection with the underwriting, processing and/or closing of the Loans (including CITI legal fees).
<b>Origination Fee:</b>	A non-refundable Origination Fee equal to 0.50% of the Construction Phase Loan Amount (“ <u>Origination Fee</u> ”) shall be earned in full by CITI upon the closing of the Loans, and is due and payable at that time.
<b>CITI Legal Fees (est):</b>	<p>Estimated fees of CITI’s counsel for the initial closing are to be determined and assume no significant negotiation over CITI’s form documents. A portion of the Application Fee will be applied to initial CITI counsel fees. Applicant agrees to make a supplemental deposit to cover CITI’s counsel fees once the drafting of legal documentation commences, if requested.</p> <p>Fees of CITI’s counsel for work associated with conversion of the Loans to the Permanent Phase are estimated to be to be determined.</p>
<b>Course of Construction Inspections (est):</b>	\$TBD/monthly report.
<b>Construction Term Extension Fee:</b>	See “Permanent Phase Interest Rate” section.
<b>Conversion Fee and Expenses:</b>	A Conversion fee equal to \$10,000 will be charged by CITI. Other expenses, including insurance review, site inspection and loan servicer set-up fees are estimated to be \$7,500.
<b>Rate Lock:</b>	No earlier than 5 business days prior to Closing. Rate lock must occur on or before one hundred fifty (150) days following the date of the Preliminary Application.
<b>Other Costs:</b>	Applicant is responsible for costs of survey, title insurance policy, hazard insurance policy, tax escrow fee and all other normal and customary loan closing expenses.
<b>Term Sheet Expiration Date:</b>	October 25, 2022, unless attached to a signed Preliminary Application letter received by CITI on or before October 25, 2022 along with the Application Fee, in which case 150 days following the date of the Preliminary Application.



The provision of information in this Term Sheet is not based on your individual circumstances and should not be relied upon as an assessment of suitability for you of a particular product or transaction. Even if CITI possesses information as to your objectives in relation to any transaction, series of transactions or trading strategy, this will not be deemed sufficient for any assessment of suitability for you of any transaction, series of transactions or trading strategy.

This Term Sheet is provided for information purposes and is intended for your use only. Except in those jurisdictions where it is impermissible to make such a statement, CITI hereby informs you that this Term Sheet should not be considered as a solicitation or offer to sell or purchase any securities or other financial products. This Term Sheet does not constitute investment advice and does not purport to identify all risks or material considerations which should be considered when undertaking a transaction. CITI makes no recommendation as to the suitability of any of the products or transactions mentioned. Any trading or investment decisions you take are in reliance on your own analysis and judgment and/or that of your advisors and not in reliance on us.

CITI often acts as (i) a market maker; (ii) an issuer of financial instruments and other products; and (iii) trades as principal in many different financial instruments and other products, and can be expected to perform or seek to perform investment banking and other services for the issuer of such financial instruments or other products. The author of this Term Sheet may have discussed the information contained herein with others within or outside CITI and the author and/or such other Citi personnel may have already acted on the basis of this information (including by trading for CITI's proprietary accounts or communicating the information contained herein to other customers of CITI). CITI, CITI's personnel (including those with whom the author may have consulted in the preparation of this Term Sheet), and other customers of CITI may be long or short the financial instruments or other products referred to in this Term Sheet, may have acquired such positions at prices and market conditions that are no longer available, and may have interests different from or adverse to your interests.

CITI is required to obtain, verify and record certain information that identifies each entity that enters into a formal business relationship with CITI. CITI will ask for your complete name, street address, and taxpayer ID number. CITI may also request corporate formation documents, or other forms of identification, to verify information provided.

Although Citibank, N.A. (together with its subsidiaries and branches worldwide, "Citibank") is an affiliate of CITI, you should be aware that none of the financial instruments or other products mentioned in this term sheet (unless expressly stated otherwise) are (i) insured by the Federal Deposit Insurance Corporation or any other governmental authority, or (ii) deposits or other obligations of, or guaranteed by, Citibank or any other insured depository institution.

## Housing Finance Authority of Broward County

### *Dufresne CPA Services, PA – Overview of the September 2022 Financial Reports*

The following are items considered to be of note regarding the financial reports for the month of September 2022:

- Balance sheets (Attachments 1 and 2) changes relate primarily to individual cash and investment account activity, including payments to BOCC and cash received on investments. The Due from Artspace asset loan receivable and corresponding liabilities labeled Artspace – Due to BOCC were removed in fiscal 2021 from the HFA financial statements because the loan was forgiven by action of the BOCC in fiscal year 2021. During the time that the balances were reported on the HFA financial statements prior to the forgiveness of the loan by the BOCC, the transactions reported on the HFA financial statements netted to zero both on the balance sheet and the income statement.
- Balance sheet presentation reformatted to include a breakdown of the amounts on deposit in the Indemnification Fund.
- Audit adjustments posted to reverse accruals for items properly reported on audited financial statements and/or end of year closing entries for fiscal 2021.
- Profit and Loss (Attachments 3, 4, and 5) – Total income is less than prior year, and as compared to budget, primarily as a result of the change in market value of investment portfolio. Income items directly related to operations such as bond authority fees and application fees exceed budget and prior year as a result of developer applications and other activities that generate fees. Expenses are less than budget.

### Cash vs Accrual Basis for P&L Budget to Actual comparison (Attachment 5)

On a monthly basis the process to prepare the financial statements includes:

- a. Budgetary column – Cumulative 1/12 of the budgeted revenues and expenses are reported
- b. Actual column – Significant known revenue and expense items are accrued
  - a. Authority fees receivable are adjusted to correct accrual basis balance
  - b. Cumulative 1/12 of budgeted Personnel and Other Expenses due to BOCC are adjusted to correct accrual basis balance
  - c. Expenses for all invoices submitted to the HFA prior to month end are paid and recorded in the financial statements.
  - d. Bank and account management fees that are reported on the monthly bank statements are recorded as expense in the applicable month.

### Index to Attachments

- Attachment 1, Page 2: Balance Sheet (Flux Report – September 2022 comparison to August 2022)
- Attachment 2, Page 3: Balance Sheet (Flux Report – September 2022 comparison to September 2021)
- Attachment 3, Page 4: P&L (Flux Report – September 2022 comparison to August 2022)
- Attachment 4, Page 5: P&L (Flux Report – September 2022 comparison to September 2021)
- Attachment 5, Page 6: P&L (Flux Report – Budget to Actual)
- Attachment 6, Page 7: Aged Receivables Report as of September 30, 2022
- Attachment 7, Page 8-9: Wells Fargo Bank Reconciliation Report – Operating at September 30, 2022
- Attachment 8, Page 10: Cumulative Net Change in Investment Value as of September 30, 2022

**Attachment 1**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Balance Sheet (Flux Report)**  
**9/30/2022**

	Sep-22	Aug-22	\$ Difference	% Difference	*Explanation
<b>Assets</b>					
Cash-Wells Fargo	\$ 1,346,721	\$ 1,307,690	39,031	3%	
Cash-LOC	6,440	6,427	13	0.2%	
Indemnification Fund -BNY					
Good Faith Deposits	\$ 300,000				
Indemnification Deposits	500,000				
Interest	26,351				
	826,351	825,100	1,251	0.2%	
Cash-BNY Mellon Custody Account	2,287,436	1,209,309	1,078,127	89%	5
Total Cash	4,466,948	3,348,526			
Investments-BNY Mellon Custody Account	9,213,052	10,449,795	(1,236,743)	-12%	4,5
Note Receivable-DPA	210,000	200,000	10,000	5%	
Authority Fees Receivable	-	42,424	(42,424)	-100%	1
Interest Receivable	16,322	75,671	(59,349)	-78%	1
Notes Receivable-CDC	158,195	159,167	(972)	-1%	
Notes Receivable - Mt. Olive	141,156	146,156	(5,000)	-3%	
HFA Mortgage Receivables	7,358	7,403	(45)	-1%	
Whole Loan Mortgages Receivable	253,526	254,411	(885)	-0.3%	
Allowance for Doubtful Whole Loan Mortgages	(102,104)	(102,104)	-	NA	
Loan Receivable - SE FL CDF	473,983	473,983	-	NA	
Utility Deposit	1,925	1,925	-	NA	
HFA Land	621,704	621,704	-	NA	
HFA Buildings	1,036,000	1,036,000	-	NA	
Equipment	90,258	90,258	-	NA	
Capital Assets BOCC (Tagged)	127,474	127,474	-	NA	
Accumulated Depreciation -BOCC	(127,474)	(127,474)	-	NA	
Accumulated Depreciation, HFA	(789,559)	(763,659)	(25,900)	3%	
Total Assets	15,798,763	16,059,659			
<b>Deferred Outflows</b>					
Deferred outflows related to pension	149,338	251,761	(102,423)	-41%	6
Total Assets and Deferred outflows	\$ 15,948,102	\$ 16,311,421			
<b>Liabilities</b>					
Accounts Payable	\$ 12,581	\$ 6,304	6,277	100%	2,3
Accrued Sick/Vacation, ST	39,000	48,000	(9,000)	-19%	6
Due to BOCC - Exp reimb	206,860	134,813	72,047	53%	1
Good Faith Deposits	300,000	300,000	-	NA	
Net Pension Liability - Pension	136,813	314,443	(177,630)	-56%	6
Net Pension Liability - HIS	182,602	140,799	41,803	30%	6
Accrued Sick/Vacation, LT	77,000	45,000	32,000	71%	6
Total Liabilities	954,856	989,359			
<b>Deferred Inflows</b>					
Deferred inflows related to pension	315,521	64,637	250,884	388%	6
<b>Equity</b>					
Beginning of year	15,854,087	16,147,268			
Prior Period Adjustment	(4,640)	(36,802)	32,162	-87%	6
Current Year Earnings	(1,171,722)	(853,041)			
Total Equity	14,677,725	15,257,425			
Total Liabilities, Deferred Inflows and Equity	\$ 15,948,102	\$ 16,311,421			

**\*Criteria to determine if explanations are required:**

Cash and investment fluctuation explanations are provided for >=\$100,000 variance

Remaining items explanations are provided for >=10% and >=\$5,000 variance

NA No change as compared to prior month

- 1 Timing of receipts/payments and accruals based on budget
- 2 Deposits reversed
- 3 Current year expenses accrued
- 4 Gain/Loss related to current market conditions and changes in the composition of the investment portfolio
- 5 Investment sales/paydowns in Investments-BNY used to buy treasury in Cash-BNY
- 6 Audit adjustments

**Attachment 2**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**

**Balance Sheet (Flux Report)**  
**9/30/2022**

	Sep-22	Sep-21	\$ Difference	% Difference	*Explanation
<b>Assets</b>					
Cash-Wells Fargo	\$ 1,346,721	\$ 427,489	919,232	215%	<b>3,5</b>
Cash-LOC	6,440	6,395	45	1%	
Indemnification Fund -BNY					
Good Faith Deposits	\$ 300,000				
Indemnification Deposits	500,000				
Interest	26,351				
	826,351	703,954	122,397	17%	<b>10</b>
Cash-BNY Mellon Custody Account	2,287,436	2,467,979	(180,543)	-7%	<b>2,5</b>
Total Cash	4,466,948	3,605,817			
Investments-BNY Mellon Custody Account	9,213,052	10,395,487	(1,182,435)	-11%	<b>2,8</b>
Note Receivable-DPA	210,000	240,000	(30,000)	-13%	<b>4</b>
Authority Fees Receivable	-	47,700	(47,700)	-100%	<b>1</b>
Audit Fees Receivable	-	24,000	(24,000)	-100%	<b>1</b>
Interest Receivable	16,322	20,319	(3,997)	-20%	
Notes Receivable-CDC	158,195	169,861	(11,666)	-7%	
Notes Receivable-Mt. Olive	141,156	166,156	(25,000)	-15%	<b>4</b>
HFA Mortgage Receivables	7,358	7,881	(523)	-7%	
Whole Loan Mortgages Receivable	253,526	420,902	(167,376)	-40%	<b>7,9</b>
Allowance for Doubtful Whole Loan Mortgages	(102,104)	(102,104)	-		NA
Loan Receivable - SE FL CDF	473,983	1,000,000	(526,017)	-53%	<b>4</b>
Utility Deposit	1,925	1,925	-		NA
HFA Land	621,704	621,704	-		NA
HFA Buildings	1,036,000	1,036,000	-		NA
Equipment	90,258	90,258	-		NA
Capital Assets BOCC (Tagged)	127,474	127,474	-		NA
Accumulated Depreciation -BOCC	(127,474)	(127,474)	-		NA
Accumulated Depreciation, HFA	(789,559)	(763,659)	(25,900)	3%	
Total Assets	15,798,763	16,982,246			
<b>Deferred Outflows</b>					
Deferred outflows related to pension	149,338	251,761	(102,423)	-41%	<b>9</b>
Total Assets and Deferred outflows	\$ 15,948,102	\$ 17,234,007			
<b>Liabilities</b>					
Accounts Payable	\$ 12,581	\$ 19,512	(6,931)	-36%	<b>1</b>
Accrued Sick/Vacation, ST	39,000	48,000	(9,000)	-19%	<b>9</b>
Due to BOCC - Exp reimb	206,860	194,278	12,582	6%	
Good Faith Deposits	300,000	220,000	80,000	36%	<b>10</b>
Net Pension Liability	-	455,242	(455,242)	-100%	<b>6,9</b>
Net Pension Liability - Pension	136,813	-	136,813	100%	<b>6,9</b>
Net Pension Liability - HIS	182,602	-	182,602	100%	<b>6,9</b>
Accrued Sick/Vacation, LT	77,000	45,000	32,000	71%	<b>9</b>
Total Liabilities	954,856	982,032			
<b>Deferred Inflows</b>					
Deferred inflows related to pension	315,521	64,637	250,884	388%	<b>9</b>
<b>Equity</b>					
Beginning of year	15,854,087	16,310,249			
Prior Period Adjustment	(4,640)	40,070	(44,710)	-112%	<b>9</b>
Current Year Earnings	(1,171,722)	(162,981)			
Total Equity	14,677,725	16,187,338			
Total Liabilities, Deferred Inflows and Equity	\$ 15,948,102	\$ 17,234,007			

**\*Criteria to determine if explanations are required:**

Cash and investment fluctuation explanations are provided for >=\$100,000 variance

Remaining items explanations are provided for >=10% and >=\$5,000 variance

NA No change as compared to prior year

- 1 Timing of receipts/payments and accruals based on budget
- 2 Investment sales/paydowns in Investments-BNY used to buy treasury in Cash-BNY
- 3 Closing fees for new bond issues deposited to WF Checking FY 2022
- 4 Payments received on notes receivable after September 2021
- 5 Loans to SE FL Community Development Fund made in installments from BNY-Custody Cash and partially repaid to Cash-Wells Fargo
- 6 Net Pension Liability split into Pension and HIS for FY 2022
- 7 Changes in Whole Loan Mortgage values as reported by Centar
- 8 Gain/Loss related to current market conditions and changes in the composition of the investment portfolio
- 9 Audit adjustments
- 10 Receipts of good faith deposits in FY 2022

**Attachment 3**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report)**  
**9/30/2022**

	<u>Sep-22</u>	<u>Aug-22</u>	<u>\$ Difference</u>	<u>% Difference to Prior Month</u>	<u>*Explanation</u>
<b>Income</b>					
Bond Authority Fees	\$ 562,180	\$ 530,997	31,183	6%	
Inducement Fees	7,500	7,500	-	0%	
Compliance Monitoring Fees	500	500	-	0%	
Application, TEFRA and Closing Fees	245,419	245,419	-	0%	
MCC and Lender Program Income	8,204	7,954	250	3%	
Interest Income, Mortgages	519	477	42	9%	
Interest Income, BNY Mellon	228,510	202,197	26,313	13%	<b>1</b>
Interest Income, LOC	45	32	13	41%	
Net Change in Investment Value	<b>(1,210,978)</b>	<b>(967,841)</b>	<b>(243,137)</b>	25%	<b>2</b>
Interest Income, SFCDF Loan	15,273	14,163	1,110	8%	
Rent Income	121,044	121,044	-	0%	
Total Income	<u><u>\$ (21,784)</u></u>	<u><u>\$ 162,442</u></u>			
<b>Expenses</b>					
Personnel Services, Broward Co	\$ 634,495	\$ 584,636	49,859	9%	
Other Expenses, Broward County	200,811	183,264	17,547	10%	<b>1</b>
Professional Fees	151,950	132,340	19,610	15%	<b>1</b>
Bank Management Fees	3,867	3,092	775	25%	
Advertising/Marketing	1,433	1,433	-	0%	
Dues and Membership Fees	4,620	3,620	1,000	28%	
Conference and Travel Expense	18,026	18,026	-	0%	
Building/Land Maintenance	66,166	56,297	9,869	18%	<b>1</b>
Utilities	27,073	24,173	2,900	12%	
Capital Outlay Expense	41,497	8,602	32,895	382%	<b>1</b>
Total Expenses	<u><u>\$ 1,149,938</u></u>	<u><u>\$ 1,015,483</u></u>			
Net Profit/(Loss)	<b>\$ (1,171,722)</b>	<b>\$ (853,041)</b>	<b>(318,681)</b>	37%	<b>1,2</b>

\*Explanations provided for >=10% and >= \$5,000 variance

**1** Timing of receipts/payments and accruals based on budget

**2** Gain/Loss related to current market conditions and changes in the composition of the investment portfolio

<p><b>"%Difference to Prior Month" Column Legend</b></p> <p><b>100%</b> - Actual % change or no amount reported in one of the two columns</p> <p><b>0%</b> - Current month amount is equal to prior month amount</p>
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**Attachment 4**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report)**  
**9/30/2022**

	Sep-22	Sep-21	\$ Difference	% Difference to Prior Year	*Explanation
<b>Income</b>					
Bond Authority Fees	\$ 562,180	\$ 527,060	35,120	7%	
Inducement Fees	7,500	4,500	3,000	67%	
Compliance Monitoring Fees	500	12,000	(11,500)	-96%	4
Application, TEFRA and Closing Fees	245,419	147,250	98,169	67%	3
MCC and Lender Program Income	8,204	36,356	(28,152)	-77%	4
Interest Income, Mortgages	519	997	(478)	-48%	
Interest Income, BNY Mellon	228,510	418,691	(190,181)	-45%	1,7
Net Change in Investment Value	(1,210,978)	(355,855)	(855,123)	240%	1,2
Interest Income, FHLB LOC	45	-	45	100%	
Interest Income, SFCDF Loan	15,273	11,895	3,378	28%	
Rent Income	121,044	121,044	-	0%	
Total Income	<u>\$ (21,784)</u>	<u>\$ 923,938</u>			
<b>Expenses</b>					
Personnel Services, Broward Co	\$ 634,495	\$ 618,415	16,080	3%	
Other Expenses, Broward County	200,811	153,827	46,984	31%	2
Professional Fees	151,950	187,479	(35,529)	-19%	2
Bank Management Fees	3,867	4,275	(408)	-10%	
Advertising/Marketing	1,433	1,846	(413)	-22%	
Dues and Membership Fees	4,620	3,395	1,225	36%	
Conference and Travel Expense	18,026	10,000	8,026	80%	5
Building/Land Maintenance	66,166	62,947	3,219	5%	
Utilities	27,073	21,983	5,090	23%	5
Capital Outlay Expense	41,497	22,752	18,745	82%	6
Total Expenses	<u>\$ 1,149,938</u>	<u>\$ 1,086,919</u>			
Net Profit/(Loss)	<u>\$ (1,171,722)</u>	<u>\$ (162,981)</u>	(1,008,742)	619%	1,5

\*Explanations provided for >=10% and >= \$5,000 variance

- 1 Gain/Loss related to current market conditions and changes in the composition of the investment portfolio
- 2 Timing of receipts/payments and accruals based on budget
- 3 More new bond issues in current year
- 4 Less fees collected in current year
- 5 Rising costs due to inflation
- 6 Planned and expected capital outlay costs in current year
- 7 Changes in Whole Loan Mortgage values as reported by Cenlar

**"%Difference to Prior Year" Column Legend**

**100% - Actual % change or no amount reported in one of the two columns**

**0% - Current year amount is equal to prior year amount**

**Attachment 5**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report) Budget to Actual**  
**Year to Date As of September 2022**

	Selected Period	Budget for Selected Period	\$ Difference	% Difference to budget	*Explanation	Total Annual Budget Amount
<b>Income</b>						
Bond Authority Fees	\$ 562,180	\$ 533,884	(28,296)	-5%		\$ 533,884
Bond redemption & other income	-	203,852	203,852	100%	1	203,852
Application, TEFRA and Closing Fees	245,419	-	(245,419)	NA		-
MCC and Lender Program Income	8,204	17,500	9,296	53%	1	17,500
Interest Income, Mortgages	519	-	(519)	NA		-
Interest Income, BNY Mellon	228,510	326,000	97,490	30%	2	326,000
Net Change in Investment Value	(1,210,978)	-	1,210,978	NA		-
Interest Income, FHLB LOC	45	-	(45)	NA		-
Interest Income, SFCDF Loan	15,273	-	(15,273)	NA		-
Rent Income	121,044	121,044	-	0%		121,044
<b>Total Income</b>	<b>\$ (21,784)</b>	<b>\$ 1,202,280</b>				<b>\$ 1,202,280</b>
<b>Expenses</b>						
Personnel Services, Broward Co	\$ 634,495	\$ 598,310	(36,185)	-6%		\$ 598,310
Other Expenses, Broward County	200,811	210,570	9,759	5%		210,570
Professional Fees	151,950	198,000	46,050	23%	1	198,000
Bank Management Fees	3,867	5,600	1,733	31%		5,600
Advertising/Marketing	1,433	5,000	3,567	71%		5,000
Dues and Membership Fees	4,620	6,500	1,880	29%		6,500
Conference and Travel Expense	18,026	25,000	6,974	28%	1	25,000
Postage/FedEx	-	200	200	100%		200
Building/Land Maintenance	66,166	81,000	14,834	18%	1	81,000
Utilities	27,073	22,100	(4,973)	-23%		22,100
Capital Outlay Expense	41,497	50,000	8,503	17%	1	50,000
<b>Total Expenses</b>	<b>\$ 1,149,938</b>	<b>\$ 1,202,280</b>				<b>\$ 1,202,280</b>
<b>Net Profit/(Loss)</b>	<b>\$ (1,171,722)</b>	<b>\$ 0</b>				<b>\$ 0</b>

Budgeted Expenses - Actual Expenses =	\$ 52,342	Under Budget
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\* Explanations provided for >=10% and >= \$5,000 variance

- 1 Timing of receipts/payments and accruals based on budget
- 2 Changes in Whole Loan Mortgage values as reported by Cenlar

NA - No Budget amount

100% - Actual is zero

**Attachment 6**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**

**Aged Receivables**  
**9/30/2022**

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<b>Authority fee receivable</b>	<b>Total Due</b>	<b>0 - 30</b>	<b>31 - 60</b>	<b>61 - 90</b>	<b>90+</b>
<b>Total Authority Fee Receivable</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

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# 2877 Broward Housing Finance Authority

110 NE Third Street #300  
Fort Lauderdale, FL 33301

Attachment 7

## Reconciliation Report

10/4/2022  
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Page 1

ID#	Date	Memo/Payee	Deposit	Withdrawal
<b>Checking Account: 1-1000 Cash-Wells Fargo</b>				
<b>Date of Bank Statement: 9/30/2022</b>				
<b>Last Reconciled: 8/31/2022</b>				
<b>Last Reconciled Balance: \$1,370,394.70</b>				
<b>Cleared Checks</b>				
5312	8/12/2022	Holmes Lawn Services		\$335.00
5315	8/22/2022	All Power Generators Corp		\$1,057.50
5316	8/22/2022	TECO Peoples Gas		\$47.89
5317	8/22/2022	Zomermaand Financial Advisor		\$6,100.00
5320	8/22/2022	Sadowski Education Effort		\$5,000.00
5321	8/31/2022	Krystal Kleer		\$360.00
5322	8/31/2022	Broward County Board of Coun		\$47,875.87
5323	8/31/2022	National Fire Protection, LLC		\$1,928.48
GJ001055	9/1/2022	WF:UtilityDebit		\$305.13
GJ001056	9/6/2022	WF: Reversal of erroneous de		\$6,303.97
GJ001059	9/16/2022	WF:UtilityDebit		\$93.40
GJ001062	9/29/2022	WF:UtilityDebits		\$2,500.53
Total:			\$0.00	\$71,907.77

### Cleared Deposits

GJ001057	9/8/2022	WF:SE FL CDF Int deposit	\$1,110.53	
GJ001058	9/9/2022	WF:BrwdHsngSltn+2ndMtgP&I	\$1,059.06	
CR000205	9/23/2022	Payment; 2020 Federation Sun	\$29,141.90	
GJ001060	9/26/2022	WF:AuditFeesDue deposited	\$12,000.00	
GJ001061	9/28/2022	WF:AuditFeesDue deposited	\$6,000.00	
CR000206	9/29/2022	Payment; 2006 Palms of Deerfi	\$5,832.00	
CR000207	9/29/2022	Payment; 2018 Emerald Palms	\$31,836.75	
CR000208	9/29/2022	Payment; 2019 Regency Gard	\$6,796.59	
GJ001063	9/30/2022	"WF:MtOliveQtrlyPmt,MCC inc	\$5,250.00	
Total:			\$99,026.83	\$0.00

### Outstanding Checks

5325	9/15/2022	TECO Peoples Gas		\$51.88
5326	9/20/2022	Holmes Lawn Services		\$335.00
5327	9/20/2022	Dufresne CPA Services, PA		\$3,500.00
5328	9/20/2022	L&B Janitorial Services		\$4,686.10
5329	9/20/2022	Zomermaand Financial Advisor		\$6,100.00
5330	9/20/2022	Pederson Perimeter Security C		\$110.00
5331	9/20/2022	FL ALHFA		\$1,000.00
5332	9/20/2022	MaintenX		\$25,000.00
5324	9/29/2022			\$0.00
5333	9/30/2022	Dufresne CPA Services, PA		\$10,010.00
Total:			\$0.00	\$50,792.98

2877 Broward Housing Finance Authority

Attachment 7, cont.

Reconciliation Report

Page 2

10/4/2022  
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ID#	Date	Memo/Payee	Deposit	Withdrawal
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Checking Account: 1-1000 Cash-Wells Fargo  
 Date of Bank Statement: 9/30/2022  
 Last Reconciled: 8/31/2022  
 Last Reconciled Balance: \$1,370,394.70

Outstanding Checks

Reconciliation

AccountEdge Pro Balance on 9/30/2022:	\$1,346,720.78
Add: Outstanding Checks:	\$50,792.98
Subtotal:	\$1,397,513.76
Deduct: Outstanding Deposits:	\$0.00
Expected Balance on Statement:	\$1,397,513.76

**Attachment 8**  
**Cumulative Net Change in Investment Value**  
**Prior Year-to-Date Comparison to Current Year-to-Date**

	<u>9/30/2021</u>	<u>9/30/2022</u>
BNY Mellon Custody Acct	<u>\$ (355,855)</u>	<u>\$ (1,210,978)</u>
<b>Cumulative Net Change in Investment Value</b>		<u><u>\$ (855,123)</u></u>

**Housing Finance Authority of Broward County  
October 19, 2022 Board Meeting**

**Elections of New Officers of the HFA for Calendar Year 2023**

Staff is requesting the Board to elect a member for each of the following positions for calendar year 2023, effective January 2, 2023:

- Chair
- Vice-Chair
- Secretary
- Assistant Secretary

Current Officers are:

- |                       |   |                    |
|-----------------------|---|--------------------|
| • Chair               | - | Daniel D. Reynolds |
| • Vice-Chair          | - | John G. Primeau    |
| • Secretary           | - | Scott Ehrlich      |
| • Assistant Secretary | - | Colleen LaPlant    |

*Note: The next appointed Chair will also become the Chair for the HFA Investment Committee effective, January 2, 2023.*

**Housing Finance Authority of Broward County  
October 19, 2022 - Board Meeting**

**Item #8 – Conference and Meeting Dates for Calendar Year 2023**

The National Association of Local Housing Finance Agencies (NALHFA) Spring Educational Annual Conference is scheduled for May 3-6, 2023, at the Hilton Midtown in Tampa, Florida.

The Florida Association of Local Housing Finance Authorities (Florida ALHFA) Conference is scheduled for July 12-15, 2023, in Sarasota, Florida.

National Association of Bond Lawyers Workshop for HFA County Attorney's in Chicago, IL, October 2023.

In calendar year 2022, the Housing Finance Authority (HFA) Board met on the third Wednesday of each month. Staff is proposing the following HFA Board meeting dates for calendar year 2023:

- January 18, 2023
- February 15, 2023
- March 15, 2023
- April 19, 2023
- May 17, 2023
- June 21, 2023
- July 19, 2023 (**HFA Board Recess**)
- August 16, 2023
- September 20, 2023
- October 18, 2023
- November 15, 2023
- December 20, 2023

**Investment Committee Meeting for calendar year 2023**

The Investment Committee (IC) will meet annually. The IC policy allows the Committee to meet more than once per year only if they have action items to be approved or if otherwise desired. *Meetings may be called by the HFA Board Chair and/or Executive Director.*

**Housing Finance HFA of Broward County**  
**October 19, 2022 – Board Meeting**

**Multifamily Bonds - Action Item**

*Motion to Adopt an Inducement Resolution for a multifamily development known as The Gallery at FATVillage, declaring the HFA's official intent to issue multifamily mortgage revenue bonds or notes (the "Bonds"); approving the issuance of the Bonds subject to certain findings and conditions; authorizing the HFA to publish a notice and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (the "TEFRA Hearing"), subject to HFA's receipt of applicable fees; and providing an effective date.*

**Background**

1. On February 24, 2021, the HFA received a multifamily bond application from Related FATVillage, LLC (the "Developer") pertaining to a 195-unit new construction development, known as The Gallery at FATVillage (the "Development"). The Development will be located at 600 N. Andrews Avenue, Fort Lauderdale, FL 33311.
2. The owner is PRH Investments, LLC, a Florida Limited Liability Company (the "Owner").
3. The Development site will be subject to a long-term lease between the Owner and Broward County.
4. The Developer originally requested inducement of the Bonds in the amount of \$35,900,000, and paid the \$1,500 Inducement Fee, and \$500 Application Fee. The Bonds were induced on March 24, 2021.
5. At its January 19, 2022, meeting, the HFA approved an Inducement Resolution (incorporating authorization to publish notice of and hold the TEFRA Hearing) authorizing the issuance of Bonds in an amount not to exceed \$42,850,000 is attached.

**Present Situation**

1. On October 10, 2022, the HFA received correspondence requesting modifications to the development which will include four additional floors, 77 additional units and an increase in the Bond amount from \$42,850,000 to \$62,000,000. (Attachment I)
2. The Inducement Resolution (incorporating authorization to publish notice of and hold the TEFRA Hearing) authorizing the issuance of Bonds in an amount not to exceed \$62,000,000 is attached. (Attachment II)
3. As the Bond Inducement is administrative, the Inducement will not require Broward County Board of County Commissioners ("BOCC") action. The TEFRA Hearing and approval of the development will require ratification by the BOCC.
4. The Developer expects the transaction to close in December 2022.
5. The HFA's available multifamily carryforward is sufficient to fund all multifamily transactions anticipated to close in 2022.

**Recommendation**

Approve the Inducement Resolution:

1. Declaring the HFA's official intent to issue the Bonds,
2. Approving the issuance of the Bonds subject to certain findings and conditions,

3. Providing authorization for HFA staff and professionals to:
  - a. Publish all appropriate notices for the TEFRA Hearing,
  - b. Hold a TEFRA Hearing for a multifamily development known as The Gallery at FATVillage (subject to receipt of applicable fees), and
4. Providing an effective date.

**Attachments**

- I. Developer Correspondence – October 10, 2022
- II. HFA Inducement Resolution

# **ATTACHMENT 1**





Related FATVillage, LLC

October 10, 2022

Mr. Ralph Stone, Director  
Broward County Housing Finance & Community Redevelopment Division  
110 NE 3<sup>rd</sup> St, Suite 300  
Fort Lauderdale, Florida 33301

**Subject:        *The Gallery at FAT Village***  
***Modification to Development Plan***

Dear Ralph,

We have been working diligently on closing the financing and tax credit equity for this property. Unfortunately, we are not going to be able to finalize the lender approvals by the required closing date of October 31, 2022. Therefore, we respectfully request that the Commencement Date, per the ground lease and amendments, be extended to December 31, 2022.

In addition, our land use counsel, Robert Lochrie, indicated that we should be able increase the height and density at the property, which will substantially improve the deal. Based on the height and density of the neighboring properties, he is confident that the City of Fort Lauderdale would be able to grant this approval expeditiously. Therefore, we are requesting approval to modify our development plan as follows:

1. Increase the height of the building from 12 to 16 stories
2. Increase the height of the parking structure from 6 to 7 stories
3. Increase the parking count from 212 to approximately 275 parking spaces.
4. Increase the units count from 195 to approximately 272 units. The modifications to the unit mix are summarized in the following table

Original					Proposed				
	50%	120%	Mkt	Total		50%	120%	Mkt	Total
<b>Studios</b>	7	26	3	<b>36</b>	<b>Studios</b>	10	16	22	<b>48</b>
<b>1 Br/1 Ba</b>	21	60	22	<b>103</b>	<b>1 Br/1 Ba</b>	29	50	64	<b>143</b>
<b>2 Br/2 Ba</b>	11	25	20	<b>56</b>	<b>2 Br/2 Ba</b>	16	29	36	<b>81</b>
	<b>39</b>	<b>111</b>	<b>45</b>	<b>195</b>		<b>55</b>	<b>95</b>	<b>122</b>	<b>272</b>



Related FATVillage, LLC

In addition to the modifications to the development plan, we also request that we increase the bond allocation at the property from \$42,850,000 to \$62,000,000. This allocation would be divided into short-term and long-term bonds. Based on our current estimates, approximately \$58 million would be long-term, permanent bonds and \$4 million would be short-term bonds that will be paid off after construction completion.

We have communicated our intentions to the equity investor, Truist Bank, the construction lender, JP Morgan Chase, and the permanent lender Grandbridge/Freddie Mac. They have all been supportive and will provide updated commitments accordingly. In addition, this modification will require updated third-party reports, which we are prepared to order. Our plan is to close in escrow before December 31, 2022 and effectuate the ground lease commencement. We will finalize the full financial closing within six months of the escrow closing.

We are confident that the revised plan will add several benefits for Broward County and the City of Fort Lauderdale. The benefits include increasing the number of very low income (50% of AMI) units from 39 to 55 units, creating additional jobs, providing additional revenue to county through ground lease cash flow participation payments while having the developer equity contribution paid back sooner, generating additional real estate tax review for the city and county, and generating additional fees for the housing finance authority through the increased bond amount. All of this equates to a win-win scenario for all involved.

If you have any questions or require any additional information, please let me know. Thank you very much for your consideration.

A handwritten signature in blue ink, appearing to read "T. Del Pozzo".

Tony Del Pozzo  
Senior Vice President  
Tony@relatedgroup.com  
305-533-0049

## **ATTACHMENT 2**

**RESOLUTION NO. 2022-\_\_\_\_**

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 p.m. on October 19, 2022, 110 Northeast Third Street, Suite 300, Fort Lauderdale, Florida.

Present: \_\_\_\_\_  
\_\_\_\_\_

Absent: \_\_\_\_\_  
\_\_\_\_\_

Thereupon, the following resolution was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE "AUTHORITY") DECLARING ITS OFFICIAL INTENT TO ISSUE MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS OR NOTES (THE "BONDS") OF THE AUTHORITY TO FINANCE ALL OR A PORTION OF THE COST OF THE CONSTRUCTION AND EQUIPPING OF CERTAIN MULTIFAMILY HOUSING FACILITIES (THE GALLERY AT FATVILLAGE) LOCATED WITHIN BROWARD COUNTY, FLORIDA, AND OTHER RELATED PURPOSES; APPROVING THE ISSUANCE OF THE BONDS, SUBJECT TO CERTAIN FURTHER FINDINGS AND CONDITIONS; AUTHORIZING THE AUTHORITY TO PUBLISH NOTICE OF AND HOLD A PUBLIC HEARING PURSUANT TO THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA); AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.**

**WHEREAS**, the Housing Finance Authority of Broward County, Florida (the "Authority") is empowered under the laws of the State of Florida, including the Florida Housing Finance Authority Law, Florida Statutes, Sections 159.601 through 159.623, as amended (the "Act") and Ordinance 79-41 enacted by the Board of County Commissioners of Broward County,

Florida (the "Board") on June 20, 1979 (the "Ordinance"), as amended, to issue multi-family housing revenue bonds;

**WHEREAS**, the Authority is authorized under the Act to issue its revenue bonds for the purpose of paying the cost of a "qualifying housing development" within the meaning of the Act which includes the construction and equipping of multifamily housing developments;

**WHEREAS**, the Authority previously adopted Resolution No. 2022-003 on January 19, 2022 to authorize its intent to issue multifamily housing revenue bonds or notes in the maximum principal amount of not to exceed \$42,850,000 and to authorize a TEFRA Hearing;

**WHEREAS**, on October 10, 2022, the Authority has been requested by Related FATVillage, LLC, or an entity related to such corporation (the "Developer") to declare its official intent with respect to the issuance of its multifamily housing revenue bonds or notes in one or more series pursuant to the Act, in the increased expected maximum principal amount of \$62,000,000 (the "Bonds"), to finance the cost of the construction and equipping of a multifamily housing project, known as "The Gallery at FATVillage," consisting of approximately 272 units located in Fort Lauderdale, Florida and to be owned by Related FATVillage, LLC, its assigns or a related party (collectively, the "Project"); and

**WHEREAS**, such declaration is required pursuant to certain federal income tax regulations in order for the Developer to be able to reimburse itself from proceeds of the Bonds for capital expenditures it may make with respect to the Project prior to the issuance of the Bonds.

**NOW THEREFORE, BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA:**

**SECTION 1. Declaration of Findings.** The Authority hereby finds, determines and declares the matters hereinabove set forth.

**SECTION 2. Intent to Issue.** The Authority hereby declares its official intent to issue, pursuant to the Act, multifamily housing revenue bonds or notes, in one or more series, of the Authority in the expected maximum principal amount of \$62,000,000. The Authority retains the right to determine, in its sole discretion, whether sufficient bond allocation is available for the purpose of tax-exempt financing for the Project. The issuance of the Bonds is further subject to the conditions set forth in Section 3, Section 4 and Section 5 below.

**SECTION 3. Prior Conditions.** Prior to the issuance of the Bonds, the Developer and the Authority must satisfy all requirements of the Act with respect to the issuance of the Bonds, including, but not limited to, the approval of the Project as a “qualifying housing development” under the Act, and all other requirements in order for the interest on the Bonds, when and if issued, to be excluded from the gross income of the owners thereof for federal income tax purposes.

**SECTION 4. Public Hearing Authorized.** The staff of the Authority is authorized to publish the notice of the Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing (as defined below) in *The Sun Sentinel* and to conduct the public hearing required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) prior to the issuance of the Bonds (the “TEFRA Hearing”).

**SECTION 5. County Approval.** Additionally, prior to the issuance of the Bonds, the Bonds must be approved by the Board, in accordance with and for purposes of Section 147(f) of the Code.

**SECTION 6. Declaration of Official Intent.** This Resolution constitutes official intent under Treasury Regulations Section 1.150-2 and any amendments thereto, for reimbursement from bond proceeds of temporary advances made by the Developer for purposes of the Project prior to the issuance of the Bonds.

**SECTION 7. Scope of Approval.** It is expressly stated and agreed that the adoption of this Resolution is not a guaranty, express or implied, that the Authority shall approve the closing and issue the Bonds, or any portion thereof, for the Project. The Developer shall hold the Authority and its past, present and future members, officers, staff, attorneys, financial advisors and employees harmless from any liability or claim based upon the refusal or failure of the Authority to close the transaction and issue the Bonds or any other cause of action arising from the adoption of this Resolution, the processing of the financing for the Project, or the issuance of (or decision not to issue) the Bonds.

**SECTION 8. Repeal.** Any prior resolutions in conflict herewith are hereby repealed.

**SECTION 9. Resolution Effective.** This Resolution shall take effect immediately upon its passage.

[Remainder of page intentionally left blank]

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_,

the foregoing Resolution was adopted by the following votes:

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

Approved on October 13, 2022 as to form and legal  
sufficiency by:

Bryant Miller Olive P.A., Bond Counsel



STATE OF FLORIDA            )  
  )ss:  
COUNTY OF BROWARD        )

I, Scott Erlich, Secretary of the Housing Finance Authority of Broward County, Florida, DO HEREBY CERTIFY that the foregoing is an accurate copy of the Resolution of the Housing Finance Authority adopted at a meeting held on October 19, 2022, as set forth in the official minutes of the Housing Finance Authority, related to approval of certain actions to be taken in connection with the proposed issuance of Multifamily Housing Mortgage Revenue Bonds, Series 2022 (The Gallery at FATVillage) of the Housing Finance Authority.

I DO HEREBY FURTHER CERTIFY that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

WITNESS my hand and the corporate seal of said Housing Finance Authority, this \_\_\_\_\_ day of October, 2022.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Scott Erlich, Secretary

(SEAL)

**Housing Finance HFA of Broward County  
October 19, 2022 – Board Meeting**

**Multifamily Bonds - Action Item**

*MOTION TO ADOPT a Resolution declaring the Housing Finance Authority's ("HFA") official intent to issue Bonds for a maximum principal amount of \$32,000,000; authorizing the HFA to publish notice of and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (TEFRA); and providing an effective date for this resolution.*

**Background**

1. On April 27, 2022, the HFA received a multifamily bond application from SHAG St. Joseph Developer, LLC & CHS St. Joseph Manor II Development, LLC (the "Developer") pertaining to a 150-unit new construction development, known as St. Joseph Manor II (the "Development"). The Development is located on NW 6th Ave., west of the intersection of NW 3rd Ave. and NW 12th St., Pompano Beach, FL. The application requested that the HFA issue Bonds to support the Development in an amount of \$27,000,000.
2. At its June 15, 2022, meeting the Board adopted Resolution No. 2022-010 declaring its official intent to issue Bonds in an amount not to exceed \$27,000,000, (ii) authorizing the issuance of Bonds in an amount not to exceed \$27,000,000, subject to certain findings and conditions, and (iii) authorizing the publishing of a TEFRA Hearing notice and holding a TEFRA Hearing ("Inducement Resolution").
3. At its September 21, 2022, meeting the Board adopted Resolution No. 2022-018 declaring its official intent to issue Bonds in an amount not to exceed \$30,000,000, (ii) authorizing the issuance of Bonds in an amount not to exceed \$30,000,000, subject to certain findings and conditions, and (iii) authorizing the publishing of a TEFRA Hearing notice and holding a TEFRA Hearing ("2<sup>nd</sup> Inducement Resolution").
4. To date the TEFRA Hearing has not been held.

**Present Situation**

1. The Developer submitted correspondence requesting that the maximum Bond amount be increased to \$32,000,000 (Attachment I).
2. Staff confirmed there was sufficient private activity bond allocation ("Allocation") to accommodate the request.
3. A Resolution allowing for the increase of the Allocation to an amount not to exceed \$32,000,000, authorizing the publishing of a TEFRA Hearing notice and holding a public TEFRA Hearing, and providing an effective date is attached. (Attachment II)
4. Working group calls have commenced and closing is anticipated in first quarter 2023.
5. As the request is administrative, the Resolution will not require Broward County Board of County Commissioners ("BOCC") action.
6. The TEFRA Hearing will require ratification by the BOCC.

## **Recommendation**

*MOTION TO ADOPT a Resolution:*

- 1. Declaring the Housing Finance Authority's ("HFA") official intent to issue Bonds for a maximum principal amount of \$32,000,000,*
- 2. Authorizing the HFA to publish notice of and hold a public hearing pursuant to the Tax Equity and Fiscal Responsibility Act (TEFRA); and*
- 3. Providing an effective date for this resolution.*

## **Attachments**

- I. Developer Correspondence – October 6, 2022
- II. HFA Resolution

# **ATTACHMENT 1**



# SMITH & HENZY

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## AFFORDABLE GROUP

October 6th, 2022

Mr. Ralph Stone  
Executive Director  
Broward County Housing Finance Authority  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, FL 33301

Dear Mr. Stone:

On June 15, 2022 St. Joseph Manor II, LLLP received official intent from the Housing Finance Authority with respect to the issuance of Bonds in the expected maximum principal amount of \$27,000,000. Due to certain projected increases in the costs associated with the construction of the project, on September 21<sup>st</sup>, an increase in the maximum principal amount of bonds to \$30 million was approved. At this time in an abundance of caution based on new construction cost information, we are requesting that the maximum principal amount of the bonds be increased to \$32MM. We have submitted a bond application highlighting the development team and financing information for this 150-unit development for senior citizens.

We look forward to working with the Broward County Housing Finance Authority, and please feel free to contact me if you have any questions.

Sincerely,

Darren Smith  
Authorized Representative  
St. Joseph Manor II, LLLP  
[dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)  
(561) 859-8520

## **ATTACHMENT 2**

Resolution No. 2022-\_\_\_\_\_

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 P.M. on October 19, 2022, at the offices of the Housing Finance Authority of Broward County, Florida, 110 Northeast Third Street, Suite 201, in the City of Fort Lauderdale, Florida.

Present: \_\_\_\_\_

Absent: \_\_\_\_\_

\* \* \* \* \*

Thereupon, the following resolution was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE “HOUSING FINANCE AUTHORITY”) DECLARING ITS OFFICIAL INTENT TO ISSUE MULTIFAMILY HOUSING REVENUE BONDS AND/OR NOTES (THE “BONDS”) OF THE HOUSING FINANCE AUTHORITY TO FINANCE ALL OR A PORTION OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN MULTIFAMILY HOUSING FACILITIES (ST. JOSEPH MANOR II) LOCATED WITHIN BROWARD COUNTY, FLORIDA, AND OTHER RELATED PURPOSES; AUTHORIZING THE HOUSING FINANCE AUTHORITY TO PUBLISH NOTICE OF AND HOLD A PUBLIC HEARING PURSUANT TO THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT (TEFRA); AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Housing Finance Authority of Broward County, Florida (the “Housing Finance Authority”), is empowered under (i) the laws of the State of Florida, including the Florida Housing Finance Authority law, Sections 159.601 through 159.623, Florida Statutes (the “Act”), and (ii) Ordinance 79-41 enacted by the Board of County Commissioners (the “Board”) of Broward County, Florida (the “County”) on June 20, 1979, as amended, to issue multifamily housing revenue bonds and/or notes;

**WHEREAS**, the Housing Finance Authority is authorized under the Act to issue its revenue bonds and/or notes for the purpose of paying the costs of a “qualifying housing development” within the meaning of the Act, which includes the acquisition, construction, and equipping of multifamily housing developments;

**WHEREAS**, the Housing Finance Authority has been requested by SHAG St. Joseph Developer, LLC, CHS St. Joseph Manor II Development, LLC and St. Joseph Manor II, LLLP, or an entity related to such limited liability companies and/or limited liability limited partnership (collectively, the “Developer”), to declare its official intent with respect to the issuance of its multifamily housing revenue bonds and/or notes in one or more series pursuant to the Act, in the expected maximum principal amount of \$32,000,000 (the “Bonds”), to finance the costs of the acquisition, construction, and equipping of a multifamily housing project known as “St. Joseph Manor II,” consisting of approximately 150 units, located in Pompano Beach, Florida, and to be owned by an entity to be determined, its assigns or a related party (collectively, the “Project”);

**WHEREAS**, such declaration is required pursuant to certain federal income tax regulations in order for the Developer to be able to reimburse itself from proceeds of the Bonds for capital expenditures it may make with respect to the Project prior to the issuance of the Bonds;

**WHEREAS**, on June 15, 2022, pursuant to Resolution No. 2022-010, the Housing Finance Authority declared its official intent with respect to the issuance of Bonds in the expected maximum principal amount of \$27,000,000, to finance the costs of the acquisition, construction, and equipping of the Project;



**WHEREAS**, on August 26, 2022, due to certain projected increases in the costs associated with the construction of the Project (the “Construction Costs”), the Developer submitted a request to the Housing Finance Authority to increase the maximum principal amount of Bonds to \$30,000,000;

**WHEREAS**, on September 21, 2022, pursuant to Resolution No. 2022-018, the Housing Finance Authority declared its official intent with respect to the issuance of Bonds in the expected maximum principal amount of \$30,000,000, to finance the costs of the acquisition, construction, and equipping of the Project; and

**WHEREAS**, on October 6, 2022, due to continued projected increases in the Construction Costs, the Developer submitted an additional request to the Housing Finance Authority to increase the maximum principal amount of Bonds to \$32,000,000.

**NOW, THEREFORE, BE IT RESOLVED** by the Housing Finance Authority, as follows:

SECTION 1. Declaration of Findings. The Housing Finance Authority hereby finds, determines and declares the matters hereinabove set forth.

SECTION 2. Intent to Issue. The Housing Finance Authority hereby declares its official intent to issue, pursuant to the Act, multifamily housing revenue bonds and/or notes, in one or more series, of the Housing Finance Authority in the expected maximum principal amount of \$32,000,000. The Housing Finance Authority retains the right to determine, in its sole discretion, whether sufficient bond allocation is available for the purpose of the tax-exempt financing of the Project. The issuance of the Bonds is further subject to the conditions set forth in Section 3, Section 4 and Section 5 below.

SECTION 3. Prior Conditions. Prior to the issuance of the Bonds, the Developer and the Housing Finance Authority must satisfy all requirements of the Act with respect to the issuance of the Bonds, including, but not limited to, the approval of the Project as a “qualifying housing development” under the Act, and all other requirements in order for the interest on the Bonds, when and if issued, to be excluded from the gross income of the owners thereof for federal income tax purposes.

SECTION 4. Public Hearing Authorized. The staff of the Housing Finance Authority is authorized to publish the notice of the Tax Equity and Fiscal Responsibility Act (“TEFRA”) Hearing (as defined below) in *The Sun Sentinel*, and to conduct the public hearing required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), prior to the issuance of the Bonds (the “TEFRA Hearing”).

SECTION 5. County Approval. Additionally, prior to the issuance of the Bonds, the Bonds must be approved by the Board in accordance with, and for purposes of, Section 147(f) of the Code.

SECTION 6. Declaration of Official Intent. This Resolution constitutes official intent under Treasury Regulations Section 1.150-2 and any amendments thereto, for reimbursement from bond proceeds of temporary advances made by the Developer for purposes of the Project prior to the issuance of the Bonds.

SECTION 7. Scope of Approval. It is expressly stated and agreed that the adoption of this Resolution is not a guaranty, express or implied, that the Housing Finance Authority shall approve the closing and issue the Bonds, or any portion thereof, for the Project. By the presentation of this Resolution to the members of the Housing Finance Authority for consideration, the Developer agrees to hold the Housing Finance Authority

and its past, present and future members, officers, staff, attorneys, financial advisors and employees harmless from any liability or claim based upon the refusal or failure of the Housing Finance Authority to close the transaction and issue the Bonds, or any other cause of action arising from the adoption of this Resolution, the processing of the financing for the Project, or the issuance of (or decision not to issue) the Bonds.

SECTION 8. Resolution Effective. This Resolution shall take effect immediately upon its passage.

[Remainder of page intentionally left blank]

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, the foregoing Resolution was adopted by the following vote:

Ayes: \_\_\_\_\_

Noes: \_\_\_\_\_

Approved on October 12, 2022 as to form and legal sufficiency by:

Nabors, Giblin & Nickerson, P.A., Bond Counsel

STATE OF FLORIDA        )  
  ) SS:  
COUNTY OF BROWARD    )

I, Scott Ehrlich, Secretary of the Housing Finance Authority of Broward County, Florida, do hereby certify that the foregoing is an accurate copy of the resolution of the Housing Finance Authority adopted at a meeting held on October 19, 2022, as set forth in the official minutes of the Housing Finance Authority, relating to the multifamily housing revenue bonds and/or notes for the financing of St. Joseph Manor II.

**I DO HEREBY FURTHER CERTIFY** that said meeting was duly called and held in accordance with Chapter 286, Florida Statutes.

**WITNESS** my hand and the corporate seal of said Housing Finance Authority, this 19<sup>th</sup> day of October, 2022.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**

By: \_\_\_\_\_  
Scott Ehrlich, Secretary

[SEAL]