

# ITEM 1

**MINUTES**  
**REGULAR BOARD MEETING**  
**Wednesday, September 20, 2023**

A regular Board Meeting of the Housing Finance Authority (“HFA”) of Broward County was held on Wednesday, September 20, 2023, at 5:30 p.m., on 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 Andres Centeno. The meeting was conducted with a total of six (6) board members onsite. Other participants listed present participated in the meeting via phone conference.

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|--|--|
| <b><u>Board Member(s) Present</u></b>  |  |
| Scott Ehrlich, Chair – Colleen LaPlant, Vice Chair – Milette Manos, Secretary – Courtnee Biscardi, Member – Donna Jarrett-Mays, Member – Tina Teague, Member |  |
| <b><u>Board Member(s) Absent</u></b>   |  |
| Ruth T. Cyrus, Assistant Secretary – Jenni Morejon, Member   |  |
| <b><u>HFA Staff Present</u></b>  | <b><u>Teleconference Participants Present</u></b>  |
| Christine Barzey, Compliance Officer   | Junious Brown, Nabors, Giblin & Nickerson, P.A.    |
| Andres Centeno, Administrative Assistant   | Linda Dufresne, Dufresne CPA Services, P.A.        |
| Josie Kotsioris, Manager   | Helen Feinberg, RBC Capital Market                 |
| Ralph Stone, Director  | Brie Lemmerman, Southport Financial Services, Inc. |
| Deborah Zomermaand, Zomermaand Financial Advisory Services, LLC  | Andrew Michaelson, Artspace Project                |
|  |  |



|                                       |  |
|---------------------------------------|--|
| <b><u>County Attorney</u></b>         | Jolinda Herring, Bryant Miller Olive, P.A. |
| Annika Ashton, Deputy County Attorney | Tim Wranovix, Raymond James                |
| Claudia Capdesuner, Assistant County  |  |
|                                       |  |

**CONSENT AGENDA ITEMS (1 through 2)**

1. Approval of the August 16, 2023, Regular Meeting Minutes

MOTION TO APPROVE the Housing Finance Authority Regular Meeting Minutes on August 16, 2023.

Mr. Stone wanted it on record that although Ms. LaPlant was late to the August 16, 2023, meeting, she was present via telephone.

2. Executive Director’s (August Operational Report)

A. MOTION TO APPROVE the housing finance Authority Operational Report for August 31, 2023.

B. MOTION TO APPROVE the Consent Agenda Items 1 thru 2.

Ms. Biscardi stated that given that she was not present at the previous meeting, she would abstain from voting.

Ms. Ashton clarified that she was still required to vote on items.

Motion was made by Ms. LaPlant and seconded by Ms. Teague to approve Consent Agenda Items 1 through 2 of the September 20, 2023, meeting. The motion carried unanimously.

3. Sailboat Bend (LURA Amendment – Defeasance)

Ms. Zomermaand stated the HFA funded this transaction in 2006 and that the developer is now redeeming the bonds. All the bond documents will no longer be in place. Also, the Land Use Restriction will remain in place which will allow for the first amendment and have the Satisfaction of Mortgage. She stated that this is a refinance and not a transfer of ownership.

Motion was made by Ms. Manos and seconded by Ms. Teague to adopt a resolution approving the First Amendment to the Land Use Restriction Agreement between the HFA and Sailboat Bend Limited Partnership and a Satisfaction of Mortgage in connection with the redemption of the \$5,500,000 Variable Rate Demand Multifamily Housing Revenue Bond, Series 2006. The motion was carried unanimously.

Following the motion, Ms. LaPlant wanted it on record, in accordance with Section 112.3143, Florida Statutes, she would abstain from voting on Item 4 (Pembroke Tower II), due to a conflict of interest.

#### 4. Pembroke Tower II

Ms. Zomermaand reminded the Board that this transaction closed in 2021 and that the HFA issued \$6,000,300 of bonds. The developer is now requesting an additional \$6.2 million which was induced. She also stated that the developer received \$4.3 million from Florida Housing. This item is to approve the resolution for the second bond issue. No further discussion on this item.

Motion was made by Ms. Manos and seconded by Ms. Teague to adopt a resolution authorizing the issuance of a multifamily housing revenue note to finance a multifamily housing project known as Pembroke Tower II, in an amount not to exceed \$6,200,000, approving the form of and authorizing the execution and delivery of the documents attached to the Resolution, and authorizing the proper officers of the HFA to do all things necessary in connection with the issuance of the note. The motion was carried unanimously.

#### 5. Fiscal Year 2024 Budget of the Housing Finance Authority

Ms. Kotsioris stated that the Fiscal Year (FY) 2024 is similar to last year's and clarified that there was an amendment to the budget. The final budget was labeled "Final FY 2023 Budget".

Motion was made by Ms. Biscardi and seconded by Ms. LaPlant to approve the HFA Budget for Fiscal Year 2024. The motion was carried unanimously.

Ms. Manos asked what the abbreviation MOU stands for.

It was clarified by the Board that it is an abbreviation for Memorandum of Understanding.

Ms. Biscardi asked if there was a decrease of participants with the Mortgage Credit Certificate (MCC) lender program and if this is a new program.

Mr. Stone stated this program has been available for approximately a decade and is sensitive to interest rates and market rates, which can account for the decrease in participation.

6. Financial Reports Monthly Overview – Ms. Linda Dufresne.

Ms. Dufresne stated that the balance sheet continues to get stronger due to increase in revenue and under budget expenses. She also stated that all financial indicators remain strong. No Further discussion on this item.

Motion was made by Ms. Jarrett-Mays and seconded by Ms. Teague to approve the HFA's monthly financial report for the month ending August 31, 2023.

**7. INFORMATIONAL ITEMS – Building Maintenance Update**

Chairman Ehrlich asked if there were any upcoming ribbon cuttings.

Mr. Stone stated that the HFA was caught up with all the groundbreakings however, there were some upcoming closing deals.

Chairman Ehrlich asked if there were any updates on Board Member Daniel D. Reynolds.

Ms. Kotsioris stated that she received an email with Mr. Reynolds resignation and that she has notified the appropriate for his replacement.

Mr. Stone suggested presenting Mr. Reynolds with a plaque for his tenure with HFA Board.

**8. MATTERS OF HFA MEMBERS**

Mr. Stone stated that the elevator replacement would begin that Monday, September 25, 2023, and that it would take few months to complete. He also mentioned that the cost was being covered by grants and not with HFA funds. He also stated that except for one air conditioning unit, all the units will be replaced.

Mr. Stone stated the Board of County Commissioners approved the FY 2024 budget which includes \$20 million GAP financing. He also stated that with a \$20 million budget it would be possible to absorb the full bond allocation.

Ms. Manos suggested adding a description to the HFA website since several search engines have an incorrect description.

**9. MATTERS FROM THE FLOOR**

None.

**10. NEXT BOARD MEETING**

October 18, 2023

**11. ADJOURNMENT**

Chairman Ehrlich, hearing no further questions or discussion adjourned the meeting at 5:54 p.m.

# **ITEM 2**

**MEMORANDUM**

**Date:** October 18, 2023  
**To:** Housing Finance Authority Board Members  
**Through:** Ralph Stone, Executive Director  
**From:** Josie Kotsioris, Manager  
**Subject:** September Operational Report

**INVESTMENT COMMITTEE**

The Housing Finance Authority (HFA) Investment Committee (IC) was held on September 20, 2023, 4:45 p.m., at 110 N.E. 3rd Street, 3<sup>rd</sup> Floor, Suite 201, Fort Lauderdale, Florida. (Attachment 1).

The next IC meetings 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).

**SINGLE-FAMILY**

Information listed below is the foreclosure/delinquency (180+days) and/or bankruptcy status report received from CitiMortgage for the month ending September 2023.

*Bankruptcy – September 2023*

| 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) – September 2023*

| 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          | \$70,523.46 |  |                      | 2                    | \$0                         | \$70,523.46                 |



*Delinquencies (180+ days) – comparison between September 2022 to September 2023*

| Comparison Year        | Delinquencies | 1st Mortgage balance | 2nd Mortgage balance | Total      |
|------------------------|---------------|----------------------|----------------------|------------|
| September - 2022       | 2             | \$0                  | \$70,523*            | \$70,523   |
| September - 2023       | 2             | \$0                  | \$70,523**           | \$70,523   |
| <b>Difference(+/-)</b> | <b>0</b>      | <b>\$0</b>           | <b>\$0</b>           | <b>\$0</b> |

Note: \* FY22 contain 2 delinquencies, 2 are second mortgages.

\*\* FY23 contain 2 delinquencies, 2 are second mortgages.

**MULTIFAMILY HOUSING BOND TRANSACTIONS**

2023 Multifamily Housing Transactions update (*Attachment 2*).

**MORTGAGE CREDIT CERTIFICATE (MCC) PROGRAM**

The 2023 MCC Program started on January 15, 2023. To date there are Thirteen (13) lenders participating in the program. (See table below)

The 2023 MCC Program started on January 15, 2023.

| <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                          |                           |                      |                         |
| Americas Mortgage Professionals                       |                           |                      |                         |
| Bank of America                                       | 2                         |                      | 1                       |
| Columbus Capital Lending                              |                           |                      |                         |
| Everett Financial, Inc (Supreme Lending)              |                           |                      |                         |
| Fairway Independent Mortgage Corporation              |                           |                      |                         |
| Gold Star Mortgage Financial Group                    | 1                         | 1                    |                         |
| Loan Depot, LLC                                       | 2                         | 1                    | 1                       |
| Paramount Residential Mortgage Group                  | 1                         |                      | 1                       |
| Point Mortgage Corp.                                  |                           |                      |                         |
| The Mortgage Firm                                     |                           |                      |                         |
| <b>Totals</b>   | <b>6</b>                  | <b>2</b>             | <b>3</b>                |
| <b><i>Income to date (Y2022/23):</i></b> <b>\$350</b> |                           |                      |                         |

## **MULTI-FAMILY COMPLIANCE MONITORING**

Multifamily compliance monitoring; reporting for period July 21, 2023, through August 20, 2023.

### **Monthly Compliance**

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

### **Occupancy Report**

The HFA Rental Occupancy Report for the period of July 21, 2023 through August 20, 2023, is included (*Attachment 3*).

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

There were no reviews or inspections completed during the reporting period of July 21, 2023 through August 20, 2023.

## **ATTACHMENT 2**

**2023 MULTIFAMILY HOUSING BOND TRANSACTIONS – OCTOBER UPDATE**

| <b><u>HFA RANKING</u></b>            | <b>1</b>   | <b>2</b>  | <b>3</b>  |
|--------------------------------------|--|---|---|
| <b><u>PROJECT NAME</u></b>           | <b><u>CLOSED – 12/21/2022</u></b><br><b><u>The Gallery at FATVillage</u></b>   | <b><u>Tequesta Reserve, LLC</u></b><br><b><u>a/k/a Griffin Gardens II</u></b>   | <b><u>CLOSED - 08/30/2023</u></b><br><b><u>Pinnacle 441 Phase 2</u></b>   |
| <b><u>PROJECT LOCATION</u></b>       | 600 N. Andrews Avenue<br>Fort Lauderdale, FL 33311   | 4881 Griffin Rd.,<br>Davie, FL 33314  | 6028 Johnson St.<br>Hollywood, FL 33024   |
| <b><u>DEVELOPER</u></b>              | Related FATVillage, LLC  | Building Better Communities, Inc.   | Pinnacle Communities, 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>• RBC</li> <li>• BMO</li> <li>• First Housing</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/\$62,000,000</li> <li>• \$55,700,000</li> </ul>   | <ul style="list-style-type: none"> <li>• \$21,000,000</li> <li>• \$25,000,000</li> <li>•</li> <li>•</li> </ul>                                  |
| <b><u>TEFRA &amp; Inducement</u></b> | <ul style="list-style-type: none"> <li>• TEFRA/Inducement Amt.</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/\$62,000,000</li> <li>• March 24, 2021/January 19, 2022</li> <li>• March 22, 2022/Nov. 8, 2022</li> <li>• April 20, 2022/August 17, 2022/<br/>Nov. 16, 2022/August 16, 2023<br/>(September 20, 2022/December 6,<br/>2022/ September 19, 2023</li> </ul> | <ul style="list-style-type: none"> <li>• \$25,000,000</li> <li>• August 16, 2023</li> <li>• September 12, 2023</li> <li>•</li> <li>•</li> </ul> |
| <b><u>ALLOCATION</u></b>             | <ul style="list-style-type: none"> <li>• Allocation Approved by HFA</li> </ul>   | HFA - \$35,900,000/\$42,850,000/<br>\$62,000,000<br>County General Funds  | County General Funds  |
| <b><u>TRANSACTION STATUS</u></b>     | <b><i>See Note #1</i></b>  | <b><i>See Note #2</i></b>   | <b><i>See Note #3</i></b>   |

| <b><u>HFA RANKING</u></b>            | <b>4</b>  | <b>5</b>  | <b>6</b>   |
|--------------------------------------|---|---|--|
| <b><u>PROJECT NAME</u></b>           | <b><u>CLOSED - 09/29/2023</u></b><br><b><u>Federation Plaza</u></b>   | <b><u>Tallman Pines – Phase I</u></b>   | <b><u>Provident Place a/k/a Golden Acres Senior Apartments</u></b>   |
| <b><u>PROJECT LOCATION</u></b>       | 3081 Taft Street<br>Hollywood, FL 33021   | 601 NE 38 <sup>th</sup> Ct.,<br>Deerfield Beach   | NW 18 <sup>th</sup> Dr., NE of the intersection of NW 18 <sup>th</sup> Dr. & NW 12 <sup>th</sup> Dr.,<br>Pompano Beach, FL   |
| <b><u>DEVELOPER</u></b>              | Related Affordable, LLC   | Tallman Pines Villas, Ltd.  | AMBAR3, LLC& HAPB<br>Supporting Housing Opportunities, Inc.  |
| <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>• Raymond James</li> <li>• BMO</li> <li>• Seltzer</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/Final</i></li> </ul>  | <ul style="list-style-type: none"> <li>• \$37,000,000</li> <li>• \$38,500,000</li> <li>• \$32,140,000</li> </ul>  | <ul style="list-style-type: none"> <li>• \$13,200,000</li> <li>• \$18,000,000</li> <li>•</li> </ul>  |
| <b><u>TEFRA &amp; Inducement</u></b> | <ul style="list-style-type: none"> <li>• <i>TEFRA/Inducement Amt.</i></li> <li>•</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>• August 17, 2022</li> <li>• May 24, 2022/June 20, 2023</li> <li>• September 20, 2022/June 21, 2023</li> <li>• August 22, 2023</li> <li>• August 22, 2023</li> </ul> | <ul style="list-style-type: none"> <li>• \$20,000,000</li> <li>•</li> <li>• June 21, 2023/August 16, 2023</li> <li>• September 12, 2023</li> <li>• October 18, 2023 (Pending)</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<br>County General Funds   | County General Funds   |
| <b><u>TRANSACTION STATUS</u></b>     | <b><i>See Note #4</i></b>   | <b><i>See Note #5</i></b>   | <b><i>See Note #6</i></b>  |

| <b><u>HFA RANKING</u></b>  | <b>7</b>   | <b>8</b>  | <b>9</b>   |
|--|--|---|--|
| <b><u>PROJECT NAME</u></b>   | <b><u>Sistrunk Apartments</u></b>  | <b><u>The Palms at Deerfield Townhomes</u></b>  | <b><u>Pembroke Tower II</u></b>  |
| <b><u>PROJECT LOCATION</u></b>   | 1204 NW 6 <sup>th</sup> Street and 1619 NW 6 <sup>th</sup> Street, Ft. Lauderdale                | 407 – 431 NW 1 <sup>st</sup> Terrace, Deerfield Beach, FL 33441   | Part of 2201 N. University Drive, Pembroke Pines, FL   |
| <b><u>DEVELOPER</u></b>  | Sistrunk Apartments Developer, LLC   | SHAG Palms of Deerfield Townhomes Developer, LLC & Deerfield Beach Family Empowerment Inc.  | Southport Development, Inc.  |
| <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>• Ameri National</li> </ul> | <ul style="list-style-type: none"> <li>• Raymond James</li> <li>• NGN</li> <li>• Seltzer</li> </ul>   | <ul style="list-style-type: none"> <li>• Raymond James</li> <li>• Nabors Giblin Seltzer</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>• \$18,000,000</li> <li>•</li> <li>•</li> </ul>           | <ul style="list-style-type: none"> <li>• \$16,000,000</li> <li>• \$19,000,000</li> <li>•</li> </ul>   | <ul style="list-style-type: none"> <li>• \$6,200,000</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>• \$19,000,000</li> <li>• May 17, 2023</li> <li>• June 15, 2023</li> <li>• October 18, 2023 (Pending)</li> </ul> | <ul style="list-style-type: none"> <li>• \$6,200,000</li> <li>• August 16, 2023</li> <li>• September 14, 2023</li> <li>• September 20, 2023</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 #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>Aveline</u></b>   | <b><u>Residences at Sunset Place</u></b>  | <b><u>Lauderhill Point Apartments</u></b>   |
| <b><u>PROJECT LOCATION</u></b>   | 31 N. Dixie Highway<br>Pompano Beach, FL  | W. Commercial Blvd., just west of NW<br>82 <sup>nd</sup> Ave., Lauderhill, FL                                 | 3146 NW 19 <sup>th</sup> St., Ft. Lauderdale, FL<br>33311   |
| <b><u>DEVELOPER</u></b>  | Cornerstone Group Partners, LLC   |   | Lauderhill 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>• Raymond James</li> <li>• Nabors Giblin</li> <li>• Seltzer</li> </ul> | <ul style="list-style-type: none"> <li>• RBC</li> <li>• BMO</li> <li>• First Housing</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>• \$20,000,000</li> </ul>                      | <ul style="list-style-type: none"> <li>• \$35,000,000</li> </ul>  | <ul style="list-style-type: none"> <li>• \$37,500,000</li> <li>• \$40,000,000</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> </ul>                                   | <ul style="list-style-type: none"> <li>• \$35,000,000</li> <li>• August 16, 2023</li> </ul>                   | <ul style="list-style-type: none"> <li>• \$40,000,000</li> <li>• June 21, 2023</li> <li>• September 12, 2023</li> <li>• October 18, 2023 (Pending)</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>   | <i>See Note #12</i>   |

| <b><u>HFA RANKING</u></b>  | <b>13</b>   | <b>14</b>   | <b>15</b>           |
|--|---|---|---------------------|
| <b><u>PROJECT NAME</u></b>   | <b><u>Pine Island Park</u></b>  | <b><u>Driftwood Terrace</u></b>   |                     |
| <b><u>PROJECT LOCATION</u></b>   | On south side of NW 44 <sup>th</sup> St., about 400 ft. east of NW 92nd Way, Sunrise  | 7300 Davie Road Extension, Hollywood, FL 33024  |                     |
| <b><u>DEVELOPER</u></b>  | Centennial Management Corp.   | Newstar Development, 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>• 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>• <i>\$24,000,000</i></li> </ul>               | <ul style="list-style-type: none"> <li>• <i>\$16,000,000</i></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> </ul>                                   |   |                     |
| <b><u>ALLOCATION</u></b>   |   |   |                     |
| <ul style="list-style-type: none"> <li>• <i>Allocation Approved by HFA</i></li> </ul>  |   |   |                     |
| <b><u>TRANSACTION STATUS</u></b>   | <i>See Note #13</i>   | <i>See Note #14</i>   | <i>See Note #15</i> |



**Note #1: - CLOSED DECEMBER 2022**

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 was 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 increased to \$42,850,000. On October 6, 2022, a request was received to increase the bond amount to \$62,000,000 which will allow for 272 total units. The request was subsequently revised to 263 units. A new TEFRA hearing was held on November 8, 2022. The building type is apartments with elevator access. The transaction has closed.

**Note #2:**

Application to fund Griffin Gardens II (now known as Tequesta Reserve LLC) 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 was originally \$21,000,000 with a revision to \$25,000,000 submitted to the HFA on June 1, 2023. The building type is elevator. The transaction is expected to close in 2023.

**Note #3: - CLOSED AUGUST 2023**

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 has closed.

**Note #4: - CLOSED SEPTEMBER 2023**

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 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 closed on September 29, 2023.

**Note #5:**

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 with a requested revision to \$18,000,000 submitted to the HFA in March 2023. The building type is walk-up. The transaction is expected to close in 2024.

**Note #6:**

Application to fund Golden Acres Senior Apartments, now known as Provident Place, 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 was \$14,750,000 with a requested revision to \$20,000,000 submitted to the

HFA in April 2023 and a second revision to \$22,000,000 submitted in July 2023. The building type is walk-up apartments. The transaction is expected to close in the fourth quarter 2023.

**Note #7:**

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 in 2024.

**Note #8:**

Application to fund The Palms of Deerfield Townhomes in the 2022 allocation cycle was submitted to the HFA on December 20, 2022. The financing is expected to fund the acquisition and rehabilitation of 56 units of affordable housing in Deerfield Beach. The requested bond amount was \$16,500,000 with a requested revision to \$19,000,000 submitted to the HFA on March 20, 2023. The building type is 5 story elevator apartments. The transaction is expected to close in the fourth quarter of 2023.

**Note #9: **CLOSED DECEMBER 2021****

Pembroke Tower II closed into escrow in December 2021. Due to an increase in construction costs the Applicant is requesting an additional \$6,200,000 of Private Activity Bond Allocation. The transaction is expected to close in the fourth quarter of 2023.

**Note #10:**

Application to fund Aveline in the 2023 allocation cycle was submitted to the HFA on April 4, 2023. The financing is expected to fund the new construction of 108 units of affordable housing in Pompano Beach. The requested bond amount is \$20,000,000. The building type is garden apartments. The transaction is expected to close in 2025.

**Note #11:**

Application to fund Residences at Sunset Place in the 2023 allocation cycle is pending. The financing is expected to fund the new construction of 144 units of affordable housing in Lauderhill. The requested bond amount is \$20,000,000. The building type is mid-rise apartments. The transaction is expected to close in the fourth quarter of 2023.

**Note #12:**

Application to fund Lauderhill Point Apartments in the 2023 allocation cycle was submitted to the HFA on May 11, 2023 (Revised on June 13, 2023). The financing is expected to fund the acquisition and rehabilitation of 176 units of affordable housing in Ft. Lauderdale. The requested bond amount was \$40,000,000. The building type is walk up. The transaction is expected to close in the fourth quarter 2023.

**Note #13:**

Application to fund Pine Island Park in the 2023 allocation cycle was submitted to the HFA on May 31, 2023. The financing is expected to fund the new construction of 120 units of affordable housing in Sunrise. The requested bond amount is \$24,000,000. The building type is elevator. The transaction is expected to close in the first quarter of 2025. *Note this application is on the HFA waitlist pending applications submitted in conjunction with County Gap financing.*

**Note #14:**

Application to fund Driftwood Terrace in the 2023 allocation cycle was submitted to the HFA on June 14, 2023. The financing is expected to fund the acquisition and rehabilitation of 90 units of affordable housing in Hollywood. The requested bond amount is \$16,000,000. The building type is elevator. The transaction is expected to close in the first quarter of 2025. *Note this application is on the HFA waitlist pending applications submitted in conjunction with County Gap financing.*

## **ATTACHMENT 3**

***MULTI-FAMILY COMPLIANCE MONITORING***  
**(Reporting Period July 21, 2023 to August 20, 2023)**

**Monthly Compliance:**

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

**Occupancy Report**

The HFA Rental Occupancy Report for the period of July 21, 2023, to August 20, 2023, is included (Attachment 1).

**Electronic Filing and Archiving System**

Due to the bonds reports being submitted online an electronic filing and archiving system was created. To date, the bond reports up to March 30, 2023, have been archived electronically. This is an ongoing process.

**Annual Management Reviews and Inspections**

There were no reviews or inspections completed during the reporting period of July 21, 2023, to August 20, 2023.

**Mortgage Credit Certificate Program (MCC)**

The 2023 MCC Program started on January 15, 2023. To date there are thirteen (13) lenders participating in the program. (See table below)

| <b>Lenders</b>                           | <b>Commitments</b> | <b>MCCs Issued</b> | <b>Cancelled Commitments</b> |
|--|--------------------|--------------------|------------------------------|
| Academy Mortgage Corp.                   |                    |                    |                              |
| Americas Mortgage Professionals          |                    |                    |                              |
| Bank of America                          | 2                  |                    | 1                            |
| CMG Mortgage, Inc.                       |                    |                    |                              |
| Columbus Capital Lending                 |                    |                    |                              |
| Everett Financial (Supreme Lending       |                    |                    |                              |
| Fairway Independent Mortgage Corporation |                    |                    |                              |
| Florida State Mortgage Group, Inc.       |                    |                    |                              |
| Gold Star Mortgage Financial Group       | 1                  | 1                  |                              |
| Loan Depot                               | 2                  | 1                  | 1                            |
| Paramount Residential Mortgage Group     | 1                  |                    | 1                            |
| Point Mortgage Corp.                     |                    |                    |                              |
| The Mortgage Firm, Inc.                  |                    |                    |                              |
| <b>Totals</b>                            | <b>6</b>           | <b>2</b>           | <b>3</b>                     |

## **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 21<sup>st</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  
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 June | From Mgmt Low Income Units Occupied | % Occupied by Low Income | LURA Low Income Requirement | Certificate of Compliance rec'd July | Vacant Units |
| Banyan Bay   | 416                   | 368                                | 88.5                | 39%                                  | 150                                 | 40.8                     | 20%                         | 9/8/2023                             | 48           |
| Chaves Lakes   | 238                   | 238                                | 100.0               | 77%                                  | 181                                 | 76.1                     | 40%                         | 8/30/2023                            | 0            |
| Emerald Palms  | 318                   | 317                                | 99.7                | 85%                                  | 270                                 | 85.2                     | 40%                         | 9/11/2023                            | 1            |
| Federation Davie Apartments  | 80                    | 78                                 | 97.5                | 100%                                 | 78                                  | 100.0                    | 40%                         | 10/3/2023                            | 2            |
| Federation Sunrise Apartments  | 123                   | 122                                | 99.2                | 100%                                 | 122                                 | 100.0                    | 40%                         | 9/8/2023                             | 1            |
| Golden Villas  | 120                   | 119                                | 99.2                | 100%                                 | 119                                 | 100.0                    | 40%                         | 9/8/2023                             | 1            |
| Heron Pointe   | 200                   | 197                                | 98.5                | 100%                                 | 197                                 | 100.0                    | 40%                         | 8/29/2023                            | 3            |
| Landings at Coconut Creek  | 268                   | 254                                | 94.8                | 21%                                  | 54                                  | 21.3                     | 20%                         | 9/8/2023                             | 14           |
| Lauderhill Point (fka Driftwood Terr)  | 176                   | 165                                | 93.8                | 100%                                 | 165                                 | 100.0                    | 100%                        | 9/14/2023                            | 11           |
| Los Prados   | 444                   | 407                                | 91.7                | 28%                                  | 111                                 | 27.3                     | 20%                         | 8/31/2023                            | 37           |
| Mar Lago Village   | 216                   | 203                                | 94.0                | 42%                                  | 85                                  | 41.9                     | 40%                         | 9/8/2023                             | 13           |
| Marquis  | 100                   | 97                                 | 97.0                | 99%                                  | 95                                  | 97.9                     | 40%                         | 9/6/2023                             | 3            |
| Northwest Gardens V  | 200                   | 191                                | 95.5                | 100%                                 | 191                                 | 100.0                    | 40%                         | 10/4/2023                            | 9            |
| Palms of Deerfield   | 56                    | 54                                 | 96.4                | 100%                                 | 54                                  | 100.0                    | 100%                        | 9/11/2023                            | 2            |
| Pembroke Park  | 244                   | 242                                | 99.2                | 81%                                  | 195                                 | 80.6                     | 40%                         | 8/28/2023                            | 2            |
| Pinnacle Village   | 148                   | 147                                | 99.3                | 99%                                  | 146                                 | 99.3                     | 40%                         | 9/5/2023                             | 1            |
| Praxis of Deerfield Beach  | 224                   | 220                                | 98.2                | 100%                                 | 218                                 | 99.1                     | 100%                        | 9/12/2023                            | 4            |
| Prospect Park  | 125                   | 122                                | 97.6                | 100%                                 | 122                                 | 100.0                    | 40%                         | 9/8/2023                             | 3            |
| Regency Gardens  | 94                    | 93                                 | 98.9                | 100%                                 | 93                                  | 100.0                    | 40%                         | 8/28/2023                            | 1            |
| Residences at Crystal Lake   | 92                    | 91                                 | 98.9                | 100%                                 | 91                                  | 100.0                    | 40%                         | 9/5/2023                             | 1            |
| Sailboat Bend  | 37                    | 37                                 | 100.0               | 87%                                  | 32                                  | 86.5                     | 100%                        | 9/8/2023                             | 0            |
| Sanctuary Cove   | 292                   | 292                                | 100.0               | 98%                                  | 286                                 | 97.9                     | 40%                         | 9/8/2023                             | 0            |
| Stanley Terrace  | 96                    | 91                                 | 94.8                | 100%                                 | 91                                  | 100.0                    | 40%                         | 9/11/2023                            | 5            |
| Summerlake   | 108                   | 108                                | 100.0               | 99%                                  | 107                                 | 99.1                     | 40%                         | 9/19/2023                            | 0            |
| Woodsdale Oaks   | 172                   | 167                                | 97.1                | 100%                                 | 167                                 | 100.0                    | 70%                         | 9/14/2023                            | 5            |
| <b>Totals</b>  | <b>4,587</b>          | <b>4,420</b>                       |                     |                                      | <b>3,420</b>                        | <b>77.4%</b>             |                             |                                      | <b>167</b>   |
| <b>Total % rate of occupancy for all properties</b>  |                       | <b>96%</b>                         |                     |                                      |                                     |                          |                             |                                      |              |
| Lauderhill has 3 units being used for the office/maintenance while the office space/community center is being renovated. |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| <b>New Projects</b>  |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| Solaris - New Construction - Closed 12/22/2022   |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| The Gallery at FATVillage - New Construction - Closed 12/21/2022   |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| Douglas Garden - New Construction - Closed 2/15/2023   |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| St. Joseph Manor II - New Construction - Closed 3/21/2023  |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |
| Captive Cove III - New Construction - Closed 3/17/2023   |                       |                                    |                     |                                      |                                     |                          |                             |                                      |              |

# **ITEM 3**



**Housing Finance Authority of Broward County (“HFA”)  
October 18, 2023 – Board Meeting**

**Multifamily Bonds/Bonds - Action Item**

MOTION TO ACCEPT the draft Credit Underwriting Report for Provident Place Apartments.

MOTION TO ADOPT a Resolution providing authorization and/or approval: a) to issue the Housing Finance Authority’s Multifamily Housing Mortgage Revenue Bonds, Provident Place Apartments, Series 2023 (the “Bonds”) in an aggregate amount not to exceed \$22,000,000, for the purpose of financing the acquisition, construction and equipping of Provident Place Apartments located in Broward County, b) of the form, execution and delivery of the documents included within Exhibits A-H of the Resolution, c) to execute certain additional agreements in connection with the issuance of the Bonds, d) to waive the annual audit fee, e) take other actions required to issue and deliver the Bonds, and f) for the establishment of an effective date.

**Background**

1. On April 4, 2023, the HFA received a multifamily bond application from Ambar3, LLC (“Co-Developer”) regarding Provident Place Apartments to be owned by Golden Acres Senior Apartments, LLLP, a Florida Limited Partnership (the “Owner” or “Borrower”), pertaining to a 100-unit new construction development, known as Provident Place Apartments (the “Development”). The application requested that the HFA issue bonds to support the Development in the amount of \$20,000,000.
2. The Development is located at 1050 NW 18<sup>th</sup> Drive, Pompano Beach, FL.
3. On July 31, 2023, the HFA received a revised application, requesting that the maximum bond amount be increased to \$22,000,000.
4. At its August 16, 2023, meeting the Board adopted Resolution No. 2023-014 (the “Inducement Resolution”) declaring its official intent to issue bonds in an amount not to exceed \$22,000,000, (ii) authorizing the issuance of the Bonds in an amount not to exceed \$22,000,000, subject to certain findings and conditions, and (iii) authorizing the publishing of a TEFRA Hearing notice and holding a TEFRA Hearing as further defined and described within the Inducement Resolution.
5. On September 12, 2023, the HFA held the TEFRA Hearing for the Development.
6. Authority acknowledgement of the draft Credit Underwriting Report (“CUR”) is informational, and revisions may be required in conjunction with the issuance and delivery of the Bonds. Revisions to the CUR will be made pursuant to Section 17 of the Resolution (Exhibit 2).
7. 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 audit is no longer required per County Ordinance, the Borrower requested a waiver of the HFA’s Audit Fees. This waiver only pertains to

the audit of funds held with the Trustee/Fiscal Agent. Borrower's request is addressed within the HFA Resolution (Exhibit 2).

2. The closing for the financing of this Project is presently scheduled for the fourth quarter of 2023.

### **Recommendation**

**Motion to Adopt** a Resolution including authorization and/or approval:

- a) to issue the Housing Finance Authority's Multifamily Housing Mortgage Revenue Bonds, Provident Place Apartments, Series 2023 (the "Bonds") in an aggregate amount not to exceed \$22,000,000, for the purpose of financing the acquisition, construction and equipping of Provident Place Apartments located in Broward County,
- b) of the form, execution and delivery of the documents included within Exhibits A-H of the Resolution,
- c) to execute certain additional agreements in connection with the issuance of the Bonds, and to execute such agreements as may be necessary for such subordinate financing,
- d) to waive the annual audit fee,
- e) take other actions required to issue and deliver the Bonds, and
- f) for the establishment of an effective date.

### **EXHIBITS**

1. Draft Credit Underwriting Report
2. HFA Resolution including form of:
  - A. Indenture of Trust
  - B. Loan Agreement
  - C. Land Use Restriction Agreement
  - D. Promissory Note
  - E. Assignment of Leasehold Multifamily Mortgage, Assignment of Rents and Leased, Security Agreement and Fixture Filing
  - F. Trustee Fee Agreement
  - G. Term Sheet
  - H. Placement Agent Agreement

# **ATTACHMENT 1**

# **Housing Finance Authority of Broward County**

*Credit Underwriting Report*

## **Provident Place**

### **Multifamily Mortgage Revenue Bond Program**

**Section A      Report Summary**

**Section B      Supporting Information and Schedules**

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*Prepared by*

***Seltzer Management Group, Inc.***

*Draft Report*

*August 23, 2023*

PROVIDENT PLACE

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**Section A**  
**Report Summary**

**Recommendation**

Seltzer Management Group, Inc. ("SMG" or "Seltzer") recommends that the Housing Finance Authority of Broward County ("HFABC" or "Authority") provide Multifamily Mortgage Revenue Bonds ("MMRB") financing in the amount of \$21,000,000 for the construction period with a reduction to \$13,250,000 at conversion to the permanent period for Provident Place (the "Subject Development").

**DEVELOPMENT & SET ASIDES**

Development Name: Provident Place

Address: 1050 NW 18th Drive

City: Pompano Beach Zip Code: 33069 County: Broward County Size: Large

Development Category: New Construction Development Type: Garden Apts (1-3 Stories)

Construction Type: Masonry

Demographic Commitment:

Primary: Elderly: 55+ or 62+ for 100% of the Units

Unit Composition:

# of EU Units: 0 EU Units Are Restricted to AMI, or less. Total # of units with PBRA? 70

# of Link Units: 0 Are the Link Units Demographically Restricted? NO # of NHTF Units: 0

| Bed Rooms | Bath Rooms | Units | Square Feet | AMI% | Low HOME Rents | High HOME Rents | Gross HC Rent | Utility Allow. | Net Restricted Rents | PBRA Contr Rents | Applicant Rents | Appraiser Rents | CU Rents | Annual Rental Income |
|-----------|------------|-------|-------------|------|----------------|-----------------|---------------|----------------|----------------------|------------------|-----------------|-----------------|----------|----------------------|
| 1         | 1.0        | 2     | 774         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$24,144             |
| 1         | 1.0        | 4     | 668         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$48,288             |
| 1         | 1.0        | 9     | 689         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$108,648            |
| 1         | 1.0        | 35    | 689         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              | \$1,346          | \$1,346         | \$1,346         | \$1,346  | \$565,320            |
| 2         | 2.0        | 15    | 1,002       | 60%  |                |                 | \$1,296       | \$89           | \$1,207              |                  | \$1,207         | \$1,207         | \$1,207  | \$217,260            |
| 2         | 2.0        | 35    | 1,002       | 60%  |                |                 | \$1,296       | \$89           | \$1,207              | \$1,691          | \$1,691         | \$1,691         | \$1,691  | \$710,220            |
|           |            | 100   | 84,536      |      |                |                 |               |                |                      |                  |                 |                 |          | \$1,673,880          |

Buildings: Residential - 2 Non-Residential - 0

Parking: Parking Spaces - 154 Accessible Spaces - 6

Set Asides:

| Program | % of Units | # of Units | % AMI | Term (Years) |
|---------|------------|------------|-------|--------------|
| MMRB    | 40.0%      | 40         | 60%   | 15           |
| HC      | 100.0%     | 100        | 60%   | 30           |
| BC ARP  | 100.0%     | 100        | 60%   | 30           |

**MMRB CREDIT UNDERWRITING REPORT**

**SMG**

Absorption Rate: 33 units per month for 3.0 months.

Occupancy Rate at Stabilization: Physical Occupancy 99.00% Economic Occupancy 98.00%  
 Occupancy Comments \_\_\_\_\_

DDA: No QCT: Yes Multi-Phase Boost: N/A QAP Boost: N/A  
 Site Acreage: 4.36 Density: 22.9358 Flood Zone Designation: AH  
 Zoning: RM-12, Multifamily Residence Flood Insurance Required?: Yes

| DEVELOPMENT TEAM                      |   |             |
|---------------------------------------|---|-------------|
| Applicant/Borrower:                   | Golden Acres Senior Apartments, LLLP                      | % Ownership |
| General Partner                       | HAPB-Golden Acres Senior Apartments GP Corp. ("GP")       | 0.0099%     |
| Limited Partner                       | Raymond James Affordable Housing Investments, Inc. ("RJ") | 99.9900%    |
| Limited Partner                       |   |             |
| Special LP                            | TVC Provident, LLC ("SLP")                                | 0.0001%     |
| Construction Completion Guarantor(s): |   |             |
| CC Guarantor 1:                       | As determined by HFABC/First Mortgage Lender              |             |
| Operating Deficit Guarantor(s):       |   |             |
| OD Guarantor 1:                       | As determined by HFABC/First Mortgage Lender              |             |
| Bond Purchaser                        |   |             |
| Developer:                            | HAPB Supporting Housing Opportunities, Inc.               |             |
| Principal 1                           | Housing Authority of Pompano Beach                        |             |
| Co-Developer:                         | Ambar3, LLC   |             |
| Principal 1                           | TVC Ambar, Inc., (John Rood sole Shareholder)             |             |
| Principal 2                           | John Rood   |             |
| Principal 3                           | Elena Adames  |             |
| DEVELOPMENT TEAM (cont)               |   |             |
| General Contractor 1:                 | Delant Construction Company ("Delant")                    |             |
| Management Company:                   | Nelson and Associates, Inc.                               |             |
| Syndicator:                           | RJ  |             |
| Bond Issuer:                          | HFABC   |             |
| Architect:                            | Anillo Toledo Lopez, LLC                                  |             |
| Market Study Provider:                | Walter Duke + Partners ("Duke")                           |             |
| Appraiser:                            | Duke  |             |



| PERMANENT FINANCING INFORMATION           |              |                |             |  |  |  |
|---|--------------|----------------|-------------|--|--|--|
| Lien Position                             |              |                |             |  |  |  |
| Lender/Grantor                            | R4/HFABC     | Broward County | HAPB        |  |  |  |
| Amount                                    | \$13,250,000 | \$3,500,000    | \$3,000,000 |  |  |  |
| Underwritten Interest Rate                | 6.10%        | 0.00%          | 0.00%       |  |  |  |
| All In Interest Rate                      |              |                |             |  |  |  |
| Loan Term                                 | 16.0         | 30.0           | 0.0         |  |  |  |
| Amortization                              | 40.0         | N/A            | N/A         |  |  |  |
| Market Rate/Market Financing LTV          | 52.8%        | 66.7%          | 78.7%       |  |  |  |
| Loan to Cost - Cumulative                 | 38.6%        | 48.8%          | 57.6%       |  |  |  |
| Debt Service Coverage                     | 1.240        | 1.240          | 1.240       |  |  |  |
| Operating Deficit & Debt Service Reserves | \$355,808    |                |             |  |  |  |
| # of Months covered by the Reserves       | 6.7          |                |             |  |  |  |

|  |                   |
|--|-------------------|
| Deferred Developer Fee                           | \$1,629,498       |
| As-Is Land Value                                 | \$3,000,000       |
| Market Rent/Market Financing Stabilized Value    | \$25,100,000      |
| Projected Net Operating Income (NOI) - Year 1    | \$1,032,008       |
| Projected Net Operating Income (NOI) - 15 Year   | \$1,269,384       |
| Year 15 Pro Forma Income Escalation Rate         | 2.00%             |
| Year 15 Pro Forma Expense Escalation Rate        | 3.00%             |
| Bond Structure                                   | Private Placement |
| Housing Credit (HC) Syndication Price            | \$0.92            |
| HC Annual Allocation - Qualified in CUR          | \$1,448,386       |
| HC Annual Allocation - Equity Letter of Interest | \$1,405,655       |

| CONSTRUCTION/PERMANENT SOURCES: |                  |              |              |                |
|---------------------------------|------------------|--------------|--------------|----------------|
| Source                          | Lender           | Construction | Permanent    | Perm Loan/Unit |
| Local HFA Bonds                 | HFABC/TD Bank/R4 | \$21,000,000 | \$13,250,000 | \$132,500      |
| Local Government                | Broward County   | \$2,800,000  | \$3,500,000  | \$35,000       |
| Seller Financing                | HAPB             | \$3,000,000  | \$3,000,000  | \$30,000       |
| HC Equity                       | RJ               | \$3,237,482  | \$12,930,733 | \$129,307      |
| Deferred Developer Fee          | Developer        | \$3,916,941  | \$1,629,498  | \$16,295       |
| Operating Deficit               | RJ               | \$355,808    | \$0          | \$0            |
| <b>TOTAL</b>                    |                  | \$34,310,231 | \$34,310,231 | \$343,102      |

#### Financing Structure:

The Applicant submitted a Multifamily Housing Bond Program Application to the HFABC for a \$20,000,000 tax-exempt MMRB, which was subsequently increased to \$21,000,000. The tax-exempt bonds will be marketed by Raymond James through an initial private placement to T.D. Bank, N.A. ("TD Bank"). TD Bank will provide construction loan financing in the amount \$21,000,000, which will fund the construction period. Based on the representations of the Applicant, upon construction completion and stabilization, the construction loan will be paid down to an estimated amount of \$13,250,000 through the use of the various sources, including a permanent loan from R4 Capital Funding ("R4") and housing credit ("HC") equity.

#### Changes from the Application:

| COMPARISON CRITERIA   | YES | NO |
|---|-----|----|
| Does the level of experience of the current team equal or exceed that of the team described in the application?         | X   |    |
| Are all funding sources the same as shown in the Application?   |     | 1  |
| Are all local government recommendations/contributions still in place at the level described in the Application?        | X   |    |
| Is the Development feasible with all amenities/features listed in the Application?                                      | X   |    |
| Do the site plans/architectural drawings account for all amenities/features listed in the Application?                  | X   |    |
| Does the Applicant have site control at or above the level indicated in the Application?                                | X   |    |
| Does the Applicant have adequate zoning as indicated in the Application?  | X   |    |
| Has the Development been evaluated for feasibility using the total length of set-aside committed to in the Application? | X   |    |
| Have the Development costs remained equal to or less than those listed in the Application?                              |     | 2  |

|   |     |  |
|---|-----|--|
| Is the Development feasible using the set-asides committed to in the Application?   | X   |  |
| If the Development has committed to serve a special target group (e.g. elderly, large family, etc.), do the development and operating plans contain specific provisions for implementation? | X   |  |
| HOME ONLY: If points were given for match funds, is the match percentage the same as or greater than that indicated in the Application?   | N/A |  |
| HC ONLY: Is the rate of syndication the same as or greater than that shown in the Application?  | X   |  |
| Is the Development in all other material respects the same as presented in the Application?   | X   |  |

The following are explanations of each item checked "No" in the table above:

1. Additional sources of funds include a Seller Note.
2. Total Development Costs have increased by \$5,622,080, which is comprised primarily of increases in construction, financing and developer fee costs.

Does the Development Team have any FHFC Financed Developments on the Past Due/Noncompliance Report?

Florida Housing's Past Due Report, dated July 28, 2023, reflects no past due items.

Florida Housing's Asset Management Noncompliance Report, dated May 24, 2023, reflects no noncompliance items past the cure date.

This recommendation is subject to satisfactory resolution of any outstanding past due and/or noncompliance items prior to loan closing and the issuance of the annual HC Allocation Recommendation herein.

Strengths:

1. The Subject Development will receive rental assistance for 70 units for a period of twenty years in the form of a Section 8 Housing Assistance Contract ("HAP Contract") providing an extremely stable revenue stream for 70% of the total units. It is anticipated that the contract amount will be set at 110% Fort Lauderdale, FL HUD Metro Fair Market Rent, less a utility allowance, or \$1,346 and \$1,691 for one and two-bedroom units, respectively. These amounts are approximately 34% and 40% greater than maximum allowed HC rents for the respective one and two-bedroom units. The HAP Contract will be administered by the HAPB, which maintains a long waiting list of eligible tenants.
2. The balance of the units will be subject to maximum allowable HC rents, which the appraiser has concluded are obtainable in the Subject Development's submarket. Maximum allowable HC rents are approximately 42% less than comparable market rate rents indicating strong demand for these units.
3. Based on strong average occupancies in the Subject Development's submarket, Duke concludes a stabilized economic occupancy rate of 98%, confirming strong demand.

4. Although the Borrower, Nonprofit GP, and SLP are newly-formed, the Developer, principal owners of the GP, SLP, General Contractor and Management Company all have sufficient experience and financial resources to develop, construct and operate the Development.

Waiver Requests/Special Conditions:

Special Conditions include the following:

1. Receipt and satisfactory review of HAP Contract indicating rental rates consistent with the assumptions of this report.
2. Receipt and satisfactory review of a Plan and Cost Review and satisfaction of any outstanding items included therein.
3. Receipt and satisfactory review of an executed Construction Contract consistent with the assumptions of this report.
4. Receipt and satisfactory review of an executed Management Agreement consistent with the assumptions of this report.

Additional Information:

1. The not for profit 501(C)(3) GP is an entity controlled by HAPB and shares common board members and officers. The GP is a newly formed entity with no development and ownership experience or financial capacity. HAPB has minimal development and ownership experience. However, the SLP and Developer entity are affiliated with The Vestcor Companies and its principal owner, John Rood, have substantial experience and financial capacity. The SLP will retain decision making authority during the construction and permanent periods.
2. It is anticipated that the Subject Development will qualify for an ad valorem real estate tax exemption under Florida Statute 196.1975, The Homes for the Aged Exemption. To qualify for the exemption the Subject Development must be owned by a Florida Limited Partnership and the sole general partner must be a not for profit 501(C)(3) corporation. The GP is a not for profit 501(C)(3) corporation. Seltzer's net operating income analysis assumes that the Subject Development will apply for and receive the ad valorem real estate exemption.

Recommendation:

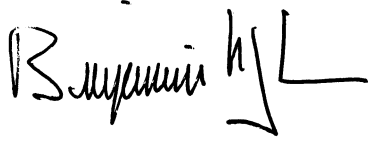
SMG recommends HFABC issue MMRB in the amount of \$21,000,000, with a reduction at conversion to \$13,250,000 during the permanent period.

This recommendation is based upon the assumptions detailed in the Report Summary (Section A) and Supporting Information and Schedules (Section B). The reader is cautioned to refer to these sections for complete information.

This recommendation is only valid for six months from the date of the report.

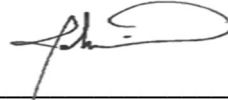
Prepared by:

Reviewed by:



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Benjamin S. Johnson  
President



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Josh Scribner  
Credit Underwriting Manager

## Overview

### Construction Financing Sources

| Source                 | Lender         | Applicant           | Revised Applicant   | Underwriter         | Interest Rate | Construction Debt Service |
|------------------------|----------------|---------------------|---------------------|---------------------|---------------|---------------------------|
| First Mortgage         | TD Bank/HFABC  | \$17,750,000        | \$21,000,000        | \$21,000,000        | 8.065%        | \$1,871,483               |
| Second Mortgage        | Broward County | \$3,500,000         | \$2,800,000         | \$2,800,000         | 0.00%         | \$0                       |
| Seller Note            | HAPB           | \$0                 | \$3,000,000         | \$3,000,000         | 0.00%         | \$0                       |
| HC Equity              | RJ             | \$2,906,772         | \$3,237,482         | \$3,237,482         |               |                           |
| Deferred Developer Fee | Developer      | \$4,223,622         | \$3,849,215         | \$3,916,941         |               |                           |
| Operating Deficit      | Developer      | \$370,757           | \$355,808           | \$355,808           |               |                           |
| <b>Total</b>           |                | <b>\$28,751,151</b> | <b>\$34,242,505</b> | <b>\$34,310,231</b> |               | <b>\$1,871,483</b>        |

#### Tax-Exempt Project Loan:

As evidenced by a TD Bank letter of intent (“LOI”) dated August 15, 2023, the Applicant anticipates receiving a \$21,000,000 construction period loan. Terms include a floating interest rate, monthly payments of interest only and a 24-month maturity. The interest rate will be determined daily based on the 1-Month Term SOFR (currently 5.315%) plus 2.50% or 7.8150% based on current market conditions. To account for market volatility, SMG has added an underwriting cushion of 0.25% resulting for an underwriting rate of 8.065%.

Construction Debt Service above is reflective of the Applicant’s draws schedule, which appears reasonable, and reflects an average outstanding loan balance of \$11,970,000 (or 57% of loan amount) during the 18-month construction period and 100% of the loan amount during the 3-month stabilization period.

#### Second Mortgage Financing:

Per correspondence, dated January 7, 2023, Broward County will provide an American Rescue Plan (“ARP”) gap loan in an amount not to exceed \$3,500,000. This loan is made through the Broward County affordable housing development program. Terms of the loan include a zero percent interest rate, no principal amortization and a 30-year maturity. The entire loan shall be due and payable in full upon the first to occur: upon maturity of the loan by an event of default; upon the 30<sup>th</sup> anniversary date of the closing date (maturity date); or upon the sale, transfer, conveyance or refinancing, unless approved by Broward County. There will be no application fee or origination fee for the loan. The Applicant will be required to set-aside 100% of the units at 80% or less AMI for 30 years.

Up to 80% (or \$2,800,000) may be advanced during the construction period with the balance disbursed upon receipt of Housing Credit form 8609. The funds will be disbursed proportionate with construction progress.

#### Seller Note:

#### Other Construction Sources of Funds:

Additional sources of funds for this Subject Development during construction consist of Housing Credit equity, deferred Reserve Funding (costs incurred concurrent with or after permanent period conversion) and deferred Developer Fees. See the Permanent Financing section below for details.

**Permanent Financing Sources**

| Source             | Lender         | Applicant           | Revised Applicant   | Underwriter         | Interest Rate | Amort. Yrs. | Term Yrs. | Annual Debt      |
|--------------------|----------------|---------------------|---------------------|---------------------|---------------|-------------|-----------|------------------|
| First Mortgage     | R4/HFABC       | \$12,500,000        | \$13,250,000        | \$13,250,000        | 6.10%         | 40          | 16        | \$808,250        |
| Second Mortgage    | Broward County | \$3,500,000         | \$3,500,000         | \$3,500,000         | 0.00%         | N/A         | 30        | \$0              |
| Seller Note        | HAPB           | \$0                 | \$3,000,000         | \$3,000,000         | 0.00%         | N/A         |           | \$0              |
| HC Equity          | RJ             | \$11,627,085        | \$12,949,929        | \$12,930,733        |               |             |           |                  |
| Def. Developer Fee | Developer      | \$1,061,066         | \$1,542,576         | \$1,629,498         |               |             |           |                  |
| <b>Total</b>       |                | <b>\$28,688,151</b> | <b>\$34,242,505</b> | <b>\$34,310,231</b> |               |             |           | <b>\$808,250</b> |

First Mortgage Financing:

The Applicant has provided an R4 financing proposal, last updated August 8, 2023, for permanent period financing, via an Unfunded Forward Tax-Exempt Loan. Terms of the financing include a fixed interest rate and a maturity of 16-years. Monthly payments of interest only are due for the initial three years from closing followed by monthly principal and interest payments based on a 40-year amortization period. The interest rate will be set prior to closing of the transaction based on the 18-year AAA Municipal Market Data General Obligation Yield Curve, as published by Thomson Municipal Market Monitor (currently 3.20%), plus a spread of 2.80%. To account for market volatility, SMG has added an underwriting cushion of 0.10%, resulting for an underwriting rate of 6.10%. Annual debt service presented above is reflective of interest only payments. Principle and interest payments due upon the commencement of principle amortization beginning in year-four totals \$885,949.

The final sizing of the permanent loan shall be determined at Stabilization, defined as a minimum debt service coverage ratio of 1.15 to 1.00 for three consecutive months, average economic occupancy of at least 90% for three consecutive months and lien free completion. Origination, Construction Administration and Conversion fees equal to 0.75%, 0.25% and 0.50%, respectively, of the loan amount are due at closing.

Second Mortgage Financing:

For detail see Construction Financing Sources

Seller Note:

For detail see Construction Financing Sources

Housing Credits Equity Investment:

The Borrower will apply to Florida Housing to receive 4% HCs directly from the United States Treasury in conjunction with tax-exempt bond financing. An HC calculation is contained in Exhibit 4 of this credit underwriting report.

Based upon a August 7, 2023, letter of agreement, RJ or an affiliate will purchase a 99.99% membership interest in the Applicant and provide HC equity as follows:

| Capital Contributions | Amount       | Percent of Total | When Due        |
|-----------------------|--------------|------------------|-----------------|
| 1st Installment       | \$1,939,610  | 15.00%           | Closing         |
| 2nd Installment       | \$1,293,073  | 10.00%           | 95% Completion  |
| 3rd Installment       | \$1,293,073  | 10.00%           | 100% Completion |
| 4th Installment       | \$8,304,977  | 64.23%           | Stabalization   |
| 5th Installment       | \$100,000    | 0.77%            | Receipt of 8609 |
| Total                 | \$12,930,733 | 100.00%          |                 |

Annual Tax Credits per Syndication Agreement: \$1,405,655

Total HC Available to Syndicator (10 years): \$14,055,144

Syndication Percentage (investor member interest): 99.99%

Calculated HC Exchange Rate (per dollar): \$0.920

Proceeds Available During Construction: \$3,232,683

Sufficient equity proceeds will be disbursed at closing to meet regulatory requirements.

Other Permanent Sources of Funds:

In order to balance the sources and uses of funds after all loan proceeds, capital contributions and interest income have been received, the Developer will have to defer \$1,629,498 (34.57%) of Developer Fee.



## Uses of Funds

| CONSTRUCTION COSTS:                         | Applicant Costs     | Revised Applicant Costs | Underwriters Total Costs CUR | Cost Per Unit    | HC Ineligible Costs CUR |
|---|---------------------|-------------------------|------------------------------|------------------|-------------------------|
|   | Accessory Buildings |                         |                              |                  | \$0                     |
| Installation of Pre Fab Units               |                     |                         |                              | \$0              |                         |
| New Rental Units                            | \$17,250,000        | \$15,554,558            | \$15,554,558                 | \$155,546        | \$1,170,750             |
| Off-Site Work                               |                     |                         |                              | \$0              | \$0                     |
| Recreational Amenities                      |                     |                         |                              | \$0              |                         |
| Site Work                                   |                     | \$1,214,060             | \$1,214,060                  | \$12,141         | \$182,109               |
| Swimming Pool                               |                     |                         |                              | \$0              |                         |
| Furniture, Fixture, & Equipment             |                     |                         |                              | \$0              |                         |
| Hard Cost Contingency - in Constr. Cont.    |                     |                         |                              | \$0              |                         |
| Constr. Contr. Costs subject to GC Fee      | \$17,250,000        | \$16,768,618            | \$16,768,618                 | \$167,686        | \$1,352,859             |
| General Conditions                          |                     | \$670,745               | \$670,745                    | \$6,707          |                         |
| Overhead                                    |                     | \$335,372               | \$335,372                    | \$3,354          |                         |
| Profit                                      |                     | \$838,433               | \$838,433                    | \$8,384          |                         |
| Builder's Risk Insurance                    |                     | \$251,529               | \$251,529                    | \$2,515          |                         |
| General Liability Insurance                 |                     |                         |                              | \$0              |                         |
| Payment and Performance Bonds               |                     | \$167,686               | \$167,686                    | \$1,677          |                         |
| Contract Costs not subject to GC Fee        |                     |                         |                              | \$0              |                         |
| Total Construction Contract/Costs           | \$17,250,000        | \$19,032,383            | \$19,032,383                 | \$190,324        | \$1,352,859             |
| Hard Cost Contingency                       | \$862,500           | \$951,619               | \$951,619                    | \$9,516          |                         |
| <b>PnP Bond paid outside Constr. Contr.</b> |                     |                         |                              | \$0              |                         |
| FF&E paid outside Constr. Contr.            | \$400,000           | \$400,000               | \$400,000                    | \$4,000          | \$100,000               |
| Other:                                      |                     |                         |                              | \$0              |                         |
| <b>Total Construction Costs:</b>            | <b>\$18,512,500</b> | <b>\$20,384,002</b>     | <b>\$20,384,002</b>          | <b>\$203,840</b> | <b>\$1,452,859</b>      |

### Notes to the Construction Costs:

- The Applicant has provided a draft AIA Document A102-2017 Standard Form of Agreement between Owner and Contractor where the basis of payment is the Cost of the Work plus a Fee with a Guaranteed Maximum Price dated August 8, 2023, in the amount of \$19,032,383. The contract provides for achievement of substantial completion within 510 days (approximately 17 months) from the date of commencement. Ten percent (10%) retainage will be withheld on all work performed up to 50% completion and no retainage thereafter.

### Allowances in the GMP Agreement:

- Dewatering - \$15,000
- Landscape and Irrigation - \$150,000
- Decorative Metals/Trellis - \$40,000
- Lobby Mill Work - \$15,000
- Club House Tile - \$9,500
- Common Areas LTV - \$35,000
- Common Areas Carpet - \$12,500

- Wallpaper - \$12,000
  - Plumbing and Fixtures - \$84,000
  - Lighting Fixtures - \$110,000
  - CCTV/Access Control/Data/TV Conduit - \$50,000
2. SMG received the General Contractor's Certification of Requirements, whereby the General Contractor acknowledges and commits to adhere to all requirements related to a General Contractor as published within Rule Chapters 67-21 ("Rule"), Florida Administrative Code.
  3. General Contractor fees as stated are within the 14% maximum per the Rule.
  4. The hard cost contingency is within the 5.0% allowed by the Rule and is not included within the GC Contract or schedule of values.
  5. General liability insurance and payment and performance bond costs reflected are paid for by the Contractor outside the Contract and shall be reimbursed by the Applicant.
  6. SMG has not yet received a Plan and Cost Analysis ("PCA") from Moran Construction Consultants, LLC ("Moran"). Receipt and satisfactory review is a condition to closing.

| GENERAL DEVELOPMENT COSTS:              | Revised            |                    | Underwriters       |     | HC Ineligible   |                  |
|---|--------------------|--------------------|--------------------|-----|-----------------|------------------|
|   | Applicant Costs    | Applicant Costs    | Total Costs        | CUR | Costs           | CUR              |
| Accounting Fees                         | \$15,000           | \$15,000           | \$15,000           |     | \$150           | \$7,500          |
| Appraisal                               | \$10,000           | \$10,000           | \$10,000           |     | \$100           |                  |
| Architect's and Planning Fees           | \$332,000          | \$332,000          | \$332,000          |     | \$3,320         |                  |
| Architect's Fee - Supervision           | \$56,000           | \$56,000           | \$56,000           |     | \$560           |                  |
| Building Permits                        | \$200,000          | \$200,000          | \$200,000          |     | \$2,000         |                  |
| Builder's Risk Insurance                | \$175,000          | \$175,000          | \$175,000          |     | \$1,750         |                  |
| Capital Needs Assessment/Rehab          |                    |                    |                    |     | \$0             |                  |
| Engineering Fees                        | \$200,000          | \$258,600          | \$258,600          |     | \$2,586         |                  |
| Environmental Report                    | \$10,000           | \$25,000           | \$25,000           |     | \$250           |                  |
| Federal Labor Standards Monitoring      |                    |                    |                    |     | \$0             |                  |
| FHFC Administrative Fees                | \$106,000          | \$127,000          | \$130,040          |     | \$1,300         | \$130,040        |
| FHFC Application Fee                    | \$3,000            | \$3,500            | \$3,500            |     | \$35            | \$3,500          |
| FHFC Credit Underwriting Fee            | \$25,000           | \$30,848           | \$30,848           |     | \$308           | \$30,848         |
| FHFC Compliance Fee                     |                    | \$127,000          | \$121,088          |     | \$1,211         | \$121,088        |
| Impact Fee                              | \$350,000          | \$350,000          | \$350,000          |     | \$3,500         |                  |
| Lender Inspection Fees / Const Admin    | \$140,000          | \$140,000          | \$140,000          |     | \$1,400         |                  |
| Green Building Cert. (LEED, FGBC, NGBS) | \$100,000          | \$0                | \$0                |     | \$0             |                  |
| Home Energy Rating System (HERS)        |                    |                    |                    |     | \$0             |                  |
| Insurance                               | \$120,000          | \$120,000          | \$120,000          |     | \$1,200         | \$120,000        |
| Legal Fees - Organizational Costs       | \$305,000          | \$145,000          | \$145,000          |     | \$1,450         | \$72,500         |
| Local Subsidy Underwriting Fee          |                    |                    |                    |     | \$0             |                  |
| Market Study                            | \$5,000            | \$5,000            | \$5,000            |     | \$50            | \$5,000          |
| Marketing and Advertising               | \$75,000           | \$75,000           | \$75,000           |     | \$750           | \$75,000         |
| Plan and Cost Review Analysis           | \$5,000            | \$5,000            | \$5,000            |     | \$50            |                  |
| Property Taxes                          | \$35,000           | \$0                | \$0                |     | \$0             |                  |
| Soil Test                               | \$25,000           | \$25,000           | \$25,000           |     | \$250           |                  |
| Survey                                  | \$35,000           | \$35,000           | \$35,000           |     | \$350           | \$8,750          |
| Tenant Relocation Costs                 |                    |                    |                    |     | \$0             |                  |
| Title Insurance and Recording Fees      | \$150,000          | \$150,000          | \$150,000          |     | \$1,500         | \$37,500         |
| Traffic Study                           |                    |                    |                    |     | \$0             |                  |
| Utility Connection Fees                 | \$500,000          | \$500,000          | \$500,000          |     | \$5,000         |                  |
| Soft Cost Contingency                   | \$250,000          | \$190,202          | \$166,853          |     | \$1,669         |                  |
| Other: <a href="#">Syndicator Legal</a> |                    | \$30,000           | \$30,000           |     | \$300           |                  |
| Other:                                  |                    |                    |                    |     | \$0             |                  |
| <b>Total General Development Costs:</b> | <b>\$3,227,000</b> | <b>\$3,130,150</b> | <b>\$3,103,929</b> |     | <b>\$31,039</b> | <b>\$611,726</b> |

*Notes to the General Development Costs:*

1. Architect's Fees are consistent on the Agreement between Owner and Architect ATL, dated May 25, 2022, plus additional hourly fees for services outside of the Agreement.
2. The FHFC Administrative Fee is based on 9% of the recommended annual allocation of HC. The FHFC Application Fee is reflective of the application fee for 4% HC.
3. The FHFC Credit Underwriting Fee is for the 4% HC. The HFABC MMRB underwriting fee is included in Local HFA Cost of Issuance in Financial Cost section below.
4. The FHFC Compliance Fee is the future 4% HC compliance fees based on the 2023 FHFC Compliance Calculator.

5. Legal Fees include those attributable to Borrower's Counsel. SMG estimates that 50% of these costs to be ineligible.
6. SMG estimates that 25% of Survey and Title Insurance costs to be HC ineligible.
7. Soft cost contingency is within the 5% as allowed per Rule.
8. Other General Development Costs are based on the Applicant's estimates, which appear reasonable.

| FINANCIAL COSTS:                                       | Applicant Costs     | Revised Applicant Costs | Underwriters        |     | HC Ineligible    |                    |
|--|---------------------|-------------------------|---------------------|-----|------------------|--------------------|
|  |                     |                         | Total Costs         | CUR | Cost Per Unit    | Costs              |
| Construction Loan Application Fee                      |                     |                         |                     |     | \$0              |                    |
| Construction Loan Origination Fee                      | \$17,750            | \$210,000               | \$210,000           |     | \$2,100          |                    |
| Construction Loan Closing Costs                        |                     | \$50,000                | \$50,000            |     | \$500            |                    |
| Construction Loan Interest                             | \$1,400,000         | \$1,800,000             | \$1,871,483         |     | \$18,715         | \$423,413          |
| Permanent Loan Application Fee                         |                     | \$80,000                | \$80,000            |     | \$800            | \$80,000           |
| Permanent Loan Origination Fee                         | \$238,000           | \$198,750               | \$198,750           |     | \$1,988          | \$198,750          |
| Permanent Loan Closing Costs                           |                     |                         |                     |     | \$0              | \$0                |
| Permanent Loan Interest                                |                     |                         |                     |     | \$0              | \$0                |
| Local HFA Bond Cost of Issuance                        | \$300,000           | \$334,100               | \$334,100           |     | \$3,341          | \$334,100          |
| Other: BC Subordinate Loan Costs                       |                     |                         | \$8,500             |     | \$85             |                    |
| Other:   |                     |                         |                     |     | \$0              |                    |
| <b>Total Financial Costs:</b>                          | <b>\$1,955,750</b>  | <b>\$2,672,850</b>      | <b>\$2,752,833</b>  |     | <b>\$27,528</b>  | <b>\$1,036,263</b> |
| <b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b> | <b>\$23,695,250</b> | <b>\$26,187,002</b>     | <b>\$26,240,764</b> |     | <b>\$262,408</b> | <b>\$3,100,848</b> |

*Notes to the Financial Costs:*

1. Construction Origination Fee is consistent with the TD Bank LOI.
2. Construction Loan Interest is as discussed in the Construction Period Sources section.
3. Permanent Loan Origination Fee includes Origination Fee, Construction Administration Fee and Conversion fee equal to 0.75%, 0.25% and 0.50%, respectively, of the loan amount which is consistent with the R4 proposal.
4. Permanent Loan Closing costs include lender counsel.
5. BC Subordinate Loan Costs is reflective of the credit underwriting fee. Legal costs included in the COI line item.
6. Local Bond HFA Cost of Issuance amount is based on an estimate provided by RJ and includes the following: fees and expenses of the Issuer, MMRB Underwriter, Bond Counsel and Fiscal Agent. Additional fees include Seltzer's MMRB credit underwriting and closing fees.
7. Other Financial Costs are based on the Applicant's estimates, which appear reasonable.

| NON LAND ACQUISITION COSTS               | Applicant Costs | Revised Applicant Costs | Underwriters |     | HC Ineligible |            |
|--|-----------------|-------------------------|--------------|-----|---------------|------------|
|  |                 |                         | Total Costs  | CUR | Cost Per Unit | Costs      |
| Building Acquisition Cost                |                 |                         | \$0          |     | \$0           |            |
| Developer Fee on Non-Land Acq. Costs     |                 |                         | \$0          |     | \$0           |            |
| Other:                                   |                 |                         |              |     | \$0           |            |
| <b>Total Non-Land Acquisition Costs:</b> | <b>\$0</b>      | <b>\$0</b>              | <b>\$0</b>   |     | <b>\$0</b>    | <b>\$0</b> |

*Notes to the Non-Land Acquisition Costs:*

1. Not applicable, new construction.

| DEVELOPER FEE ON NON ACQUISITION COSTS | Revised            |                    | Underwriters       |     | HC Ineligible   |            |
|--|--------------------|--------------------|--------------------|-----|-----------------|------------|
|  | Applicant Costs    | Applicant Costs    | Total Costs        | CUR | Costs           | CUR        |
| Developer Fee - Unapportioned          | \$4,265,144        | \$4,713,659        | \$4,713,659        |     | \$47,137        |            |
| DF to fund Operating Debt Reserve      |                    |                    |                    |     | \$0             |            |
| DF to Brokerage Fees - Land            |                    |                    |                    | \$0 | \$0             |            |
| DF to Excess Land Costs                |                    |                    |                    |     | \$0             |            |
| DF to Excess Bldg Acquisition Costs    |                    |                    |                    |     | \$0             |            |
| DF to Consultant Fees                  |                    |                    |                    |     | \$0             |            |
| DF to Guaranty Fees                    |                    |                    |                    |     | \$0             |            |
| Other:                                 |                    |                    |                    |     | \$0             |            |
| Other:                                 |                    |                    |                    |     | \$0             |            |
| Other:                                 |                    |                    |                    |     | \$0             |            |
| <b>Total Other Development Costs:</b>  | <b>\$4,265,144</b> | <b>\$4,713,659</b> | <b>\$4,713,659</b> |     | <b>\$47,137</b> | <b>\$0</b> |

*Notes to the Developer Fee on Non-Acquisition Costs:*

1. Developer Fee does not exceed 18% of the Development's construction cost, exclusive of land acquisition costs and reserves, as required per Rule.

| LAND ACQUISITION COSTS          | Revised          |                    | Underwriters       |     | HC Ineligible   |                    |
|---------------------------------|------------------|--------------------|--------------------|-----|-----------------|--------------------|
|                                 | Applicant Costs  | Applicant Costs    | Total Costs        | CUR | Costs           | CUR                |
| Land Acquisition Cost           |                  |                    |                    |     | \$0             | \$0                |
| Land                            | \$420,000        | \$3,000,000        | \$3,000,000        |     | \$30,000        | \$3,000,000        |
| Land Lease Payment              |                  |                    |                    |     | \$0             | \$0                |
| Other:                          |                  |                    |                    |     | \$0             | \$0                |
| <b>Total Acquisition Costs:</b> | <b>\$420,000</b> | <b>\$3,000,000</b> | <b>\$3,000,000</b> |     | <b>\$30,000</b> | <b>\$3,000,000</b> |

*Notes to the Land Acquisition Costs:*

1. The Subject Site is subject to a Ground Lease Agreement, dated August 16, 2021, between the Housing Authority of Pompano Beach and Applicant. The terms of the ground include an one-time capitalized lease payment of \$1,500,000 and a term of 65-years.
2. The appraisal estimated the "as is" market value of the leasehold interest to be \$3,000,000.

| RESERVE ACCOUNTS                           | Revised          |                  | Underwriters     |     | HC Ineligible  |                  |
|--|------------------|------------------|------------------|-----|----------------|------------------|
|  | Applicant Costs  | Applicant Costs  | Total Costs      | CUR | Costs          | CUR              |
| Operating Deficit Reserve (FHFC)           |                  |                  |                  |     | \$0            | \$0              |
| Operating Deficit Reserve (Lender)         | \$307,757        | \$355,808        | \$355,808        |     | \$3,558        | \$355,808        |
| Operating Deficit Reserve (Syndicator)     |                  |                  |                  |     | \$0            | \$0              |
| Debt Service Coverage Reserve (Lender)     |                  |                  |                  |     | \$0            | \$0              |
| Debt Service Coverage Reserve (Syndicator) |                  |                  |                  |     | \$0            | \$0              |
| Replacement Reserves (Lender)              |                  |                  |                  |     | \$0            | \$0              |
| Replacement Reserves (Syndicator)          |                  |                  |                  |     | \$0            | \$0              |
| Other:                                     |                  |                  |                  |     | \$0            | \$0              |
| <b>Total Reserve Accounts:</b>             | <b>\$307,757</b> | <b>\$355,808</b> | <b>\$355,808</b> |     | <b>\$3,558</b> | <b>\$355,808</b> |

Notes to Reserve Accounts:

1. The Operating Deficit Reserves is a requirement of **RJ**.

| TOTAL DEVELOPMENT COSTS         | Applicant Costs | Revised Applicant Costs | Underwriters Total Costs CUR | Cost Per Unit | HC Ineligible Costs CUR |
|---------------------------------|-----------------|-------------------------|------------------------------|---------------|-------------------------|
| <b>TOTAL DEVELOPMENT COSTS:</b> | \$28,688,151    | \$34,256,469            | \$34,310,231                 | \$343,102     | \$6,456,656             |

## Operating Pro Forma

| OPERATING PRO FORMA                   |  | ANNUAL                       | PER UNIT        |
|---------------------------------------|--|------------------------------|-----------------|
| INCOME                                | Gross Potential Rental Income            | \$1,673,880                  | \$16,739        |
|                                       | Other Income:                            |                              |                 |
|                                       | Ancillary Income-Parking                 | \$0                          | \$0             |
|                                       | Miscellaneous                            | \$25,000                     | \$250           |
|                                       | Washer/Dryer Rentals                     | \$0                          | \$0             |
|                                       | Gross Potential Income                   | \$1,698,880                  | \$16,989        |
|                                       | Less:                                    |                              |                 |
|                                       | Physical Vacancy Loss - Percentage: 1.0% | (\$16,989)                   | (\$170)         |
|                                       | Collection Loss - Percentage: 1.0%       | (\$16,989)                   | (\$170)         |
|                                       | <b>Total Effective Gross Revenue</b>     | <b>\$1,664,902</b>           | <b>\$16,649</b> |
| EXPENSES                              | Fixed:                                   |                              |                 |
|                                       | Real Estate Taxes                        | \$48,000                     | \$480           |
|                                       | Insurance                                | \$120,000                    | \$1,200         |
|                                       | Other                                    | \$0                          | \$0             |
|                                       | Variable:                                |                              |                 |
|                                       | Management Fee - Percentage: 6.0%        | \$99,894                     | \$999           |
|                                       | General and Administrative               | \$35,000                     | \$350           |
|                                       | Payroll Expenses                         | \$140,000                    | \$1,400         |
|                                       | Utilities                                | \$70,000                     | \$700           |
|                                       | Marketing and Advertising                | \$10,000                     | \$100           |
|                                       | Maintenance and Repairs                  | \$80,000                     | \$800           |
|                                       | Grounds Maintenance and Landscaping      | \$0                          | \$0             |
|                                       | Resident Programs                        | \$0                          | \$0             |
|                                       | Contract Services                        | \$0                          | \$0             |
|                                       | Security                                 | \$0                          | \$0             |
|                                       | Other-Pest Control                       | \$0                          | \$0             |
|                                       | Reserve for Replacements                 | \$30,000                     | \$300           |
|                                       | <b>Total Expenses</b>                    | <b>\$632,894</b>             | <b>\$6,329</b>  |
|                                       | <b>Net Operating Income</b>              | <b>\$1,032,008</b>           | <b>\$10,320</b> |
|                                       | DEBT SERVICE                             | <b>Debt Service Payments</b> |                 |
| First Mortgage - R4/HFABC             |  | \$808,250                    | \$8,083         |
| Second Mortgage - Broward County      |  | \$0                          | \$0             |
| Third Mortgage - HAPB                 |  | \$0                          | \$0             |
| First Mortgage Fees - R4/HFABC        |  | \$23,850                     | \$239           |
| Second Mortgage Fees - Broward County |  | \$0                          | \$0             |
| Third Mortgage Fees - HAPB            |  | \$0                          | \$0             |
| <b>Total Debt Service Payments</b>    | <b>\$832,100</b>                         | <b>\$8,321</b>               |                 |
| <b>Cash Flow After Debt Service</b>   | <b>\$199,908</b>                         | <b>\$1,999</b>               |                 |
| <b>Debt Service Coverage Ratios</b>   |  |                              |                 |
| DSC - First Mortgage plus Fees        | 1.240                                    |                              |                 |
| DSC - Second Mortgage plus Fees       | 1.240                                    |                              |                 |
| DSC - Third Mortgage plus Fees        | 1.240                                    |                              |                 |

*Notes to the Operating Pro forma and Ratios:*

1. The Subject Development will receive rental assistance for 70 units. It is anticipated that the contract amount will be set at 110% Fort Lauderdale, FL HUD Metro Fair Market Rent, less a utility allowance. The balance of the units will be subject to maximum allowable HC rents, which the appraiser has concluded are obtainable in the Subject Development's submarket.
2. Seltzer has utilized utility allowances based on a Broward County Housing Authority HUD Utility Allowance Schedule, dated January 1, 2023. Residents pay for electricity only. Applicant pays for water, sewer, trash disposal and pest control.

A rent roll for the Development is illustrated in the following table:

MSA/County: Fort Lauderdale HMFA / Broward County

| Bed Rooms | Bath Rooms | Units | Square Feet | AMI% | Low HOME Rents | High HOME Rents | Gross HC Rent | Utility Allow. | Net Restricted Rents | PBRA Contr Rents | Applicant Rents | Appraiser Rents | CU Rents | Annual Rental Income |
|-----------|------------|-------|-------------|------|----------------|-----------------|---------------|----------------|----------------------|------------------|-----------------|-----------------|----------|----------------------|
| 1         | 1.0        | 2     | 774         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$24,144             |
| 1         | 1.0        | 4     | 668         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$48,288             |
| 1         | 1.0        | 9     | 689         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              |                  | \$1,006         | \$1,006         | \$1,006  | \$108,648            |
| 1         | 1.0        | 35    | 689         | 60%  |                |                 | \$1,080       | \$74           | \$1,006              | \$1,346          | \$1,346         | \$1,346         | \$1,346  | \$565,320            |
| 2         | 2.0        | 15    | 1,002       | 60%  |                |                 | \$1,296       | \$89           | \$1,207              |                  | \$1,207         | \$1,207         | \$1,207  | \$217,260            |
| 2         | 2.0        | 35    | 1,002       | 60%  |                |                 | \$1,296       | \$89           | \$1,207              | \$1,691          | \$1,691         | \$1,691         | \$1,691  | \$710,220            |
|           |            | 100   | 84,636      |      |                |                 |               |                |                      |                  |                 |                 |          | \$1,673,880          |

3. Miscellaneous income includes washer/dryer rentals, NSF payments, pet deposits, application fees, and other miscellaneous fees.
4. SMG has utilized a vacancy/collection loss assumption of 2%, which is equal to the Developer's assumption and consistent with the Appraisers' conclusion.
5. Real estate tax expense is based on the Appraiser's estimate that the Development will receive a 100% Ad Valorem Tax exemption based on the nonprofit status of the Nonprofit General Partner and elderly set aside demographic. The amount reflected above represents the Appraiser's estimate for non-ad valorem real estate taxes.
6. Management Fees are based on 6% of rental revenue **plus a \$3.50 per unit per month bookkeeping fee**, which is consistent with the Developer's assumption and supported by the appraisal.
7. Other operating expense estimates are based on comparable properties and are supported by the appraisal.
8. Replacement Reserves in the amount of \$300 per unit per year meet RFA and Rule requirements.
9. A 15-year income and expense projection reflects increasing debt service coverage ("DSC"). This projection is attached to this report as Exhibit 1.



**Section B**

**Supporting Information and Schedules**

**Additional Development and Third Party Supplemental Information**

Appraised Value: The appraised value is \$25,100,000, as if completed and stabilized, based on market rents and market financing as reported in the full narrative appraisal dated July 21, 2023, performed by Walter Duke + Partners (“WDP”). Walter Bryan Duke, III, MAI, CCIM and Andrew Scott Rolf, MAI, Certified General Appraisers License Numbers RZ375 and RZ3092, respectively. Based on this market value of the property, the loan-to-value (“LTV”) ratio is 52.8%.

Restricted Rents/Market Financing

The appraised value, as if completed and stabilized and based on HC/HAP restricted rents and market financing terms, is estimated at \$22,900,000. The loan-to-value ratio for the first mortgage debt based on this value is 57.9%.

“As Is” Land Value

The appraisal also estimated an “as is” value for the land in the amount of \$3,000,000.

Market Study: A Market Study was prepared for the Subject Development by WDP and dated July 21, 2023. WDP notes that the Subject Development will contain 100 units, which shall be rented to tenants earning 60% or less of the Area Median Income (“AMI”). The Subject Development will have an elderly demographic commitment. Rental assistance will be provided for 70 units and designated as HAP/PBV units. The balance of the units will be subject maximum allowable HC rents less a utility allowance.

WDP indicates the site will be built on a 4.36-acre site owned by Housing Authority of Pompano Beach and is currently improved with tennis courts and a children’s playground. The site will be leased to the applicant by a 99-year ground lease. According to the FEMA Flood Map Panel it’s located in flood zone “X” and “AH”; therefore, mandatory flood insurance appears to apply.

The Market Study confirms that the Subject Development is not located in a Difficult Development Area (“DDA”), but is located within Qualified Census Tract (“QCT”) 305.00; therefore, 130% HC basis boost will be applied.

The Subject Development is located at 1050 N.W. 18<sup>th</sup> Drive, Pompano Beach, Broward County, Florida. WDP states that overall access and exposure are considered good for multifamily purposes, and all necessary utilities and services are available to the site to support the proposed Subject Development. The location of the site is convenient to neighborhood shopping, employment, educational and medical facilities.

WDP notes that the subject's highest and best use is considered to be suitable for an affordable multifamily development.

WDP defined the Primary Market Area ("PMA") to be a 5-mile radius surrounding the Subject Development and is where most of the demand will originate.

WDP states that there are four existing LIHTC senior developments located within the PMA, totaling 765 units. The weighted average occupancy of the affordable/restricted comparables is 99% (more than the 92% minimum required by Rule).

The capture rate for the Subject Development is determined by WDP to be 5.93%. WDP states that there is ample demand for the Subject Development's units, as evidenced by the extensive waiting lists at the existing properties.

The Market Study noted no Guarantee Fund developments located within the Subject Development's PMA. WDP states that historically, low-income properties are not significantly affected by new developments other than during lease-up; therefore, the impact of a new development on existing properties is considered to be minimal.

WDP projects that the subject property will obtain maximum allowable 2023 HC rents for all units within the Subject Development. According to FHFC requirements, market rents are to exceed restricted rents by a minimum of 10%. WDP projected restricted LIHTC rents at 60% AMI are 44% below the estimated market rent, thus meeting FHFC requirements.

WDP determined an absorption rate of 33 units per month and estimates the Subject Development will achieve stabilized occupancy within three months of receiving its certificate of occupancy.

Environmental Report:

Gallagher Basset Technical Services ("Gallagher") of Miami Lakes, Florida, performed a Phase I Environmental Site Assessment ("ESA") in accordance with ASTM Standard E-1527-21. The ESA indicates a report issue date of July 5, 2022 and a Report Viability date of November 29, 2022.

The northern portion of the Subject Property is developed with a children's playground and the southern portion is developed with tennis courts. The remainder of the site appears to be grassy or vegetated areas. The tennis courts were developed in 1988 and the playground was developed in 1992.

The Subject Property appeared to be undeveloped land in a 1940 aerial photograph. By 1949, the Subject Property was developed with a portion of a historic Farm Labor Supply Camp, and it included 3 or 4 small residential buildings. The 1952, 1958, 1961 and 1968 aerial photographs

depicted the usage of the Subject Property relatively unchanged. The 1971 aerial photograph depicted the former labor camp structures to have been razed, and the Subject Property (and adjoining properties) developed with a new residential development. The Subject Property appeared to be developed with 6 small residential structures at that time. The 1976 and 1981 aerial photographs depicted the usage of the Subject Property relatively unchanged. By 1988, the former 6 residential structures had been razed and the Subject Property developed with the present-day tennis courts with the remainder of the site appearing to be grassy undeveloped land. By 1992, the present-day playground area and paved parking lot had been developed at the northern portion of the site. The 1995 thru 2021 aerial photographs depicted the usage of the Subject Property relatively unchanged.

Gallagher's assessment revealed no evidence of any Recognized Environmental Conditions ("RECs") or Controlled RECs in connection with the Development. Gallagher recommends no additional investigation at this time.

Soil Test Report:

Seltzer has reviewed a Nutting Engineers of Florida, Inc. ("Nutting") Geotechnical Engineering Report, dated May 27, 2022 for the Subject Property. Nutting has assumed final site grades to be within 2 feet of site grades at the time of the geotechnical exploration.

To investigate the subsurface soil conditions, Nutting performed ten (10) Standard Penetration Test ("SPT") borings within the requested locations.

Based on Nutting's analysis of the boring results, in relation to the proposed construction, Nutting provided recommendations to guide design and construction in order to ensure the site is suitable for the proposed Development. Nutting's recommendations consist of site preparation and grading, shallow foundation, compaction, structural fill soils, and dewatering.

Nutting concluded the site is suitable for the proposed Development. Based on the subsurface conditions encountered in the borings, the proposed structure can be supported by using a shallow foundation system designed for an allowable soil bearing pressure of 2,500 pounds per square foot. Seltzer's recommendation is conditioned upon the strict adherence to recommendations in Nutting's geotechnical analysis.

**Pre-Construction Analysis:**

**Receipt and satisfactory review of a pre-construction analysis is a condition to close.**

Site Inspection:

Inspector

Carrie Staley

Date Inspection Conducted

June 20, 2023

Description of Site

The site is currently developed with tennis courts, playground and a surrounding parking lot.

Location of Site

1050 NW 18<sup>th</sup> Drive, Pompano Beach, FL (Broward County)

Proximity to Major Highways, Public Transportation, Airports

Interstate 95 is approximately 1.5 miles east of the site. There are three bus stops within two blocks of the site.

Proximity to Schools, Medical Facilities, Major Business Areas, Retail Outlets, Restaurants, Churches, Parks

Located between Powerline Road and Andrews Avenue, with a residential neighborhood on all sides. Two hospitals, including Holy Cross Hospital, as well as several medical care facilities are within 3 miles of the site. Many churches and the Boys and Girls Club are within a 4-mile radius. There are numerous businesses, banks, retail, grocery stores, pharmacies and restaurants within 2 miles in the surrounding area. Two elementary schools are within a 7-mile radius, one middle school is within a 7-mile radius and three high schools are within a 3-mile radius of the site.

Proximity to Other Affordable Housing (Elderly and/or Family)

The following affordable communities: Captiva Cove, Captiva Cove II, Arborview (Elderly), St. Elizabeth Gardens (Elderly), Regency Gardens, are located within an 8-mile radius of the site.

Adverse Conditions

There does not appear to be any apparent adverse conditions that would negatively affect this development nor impair the property's ability to attract tenants.

**Borrower Information**

Borrower Name: Golden Acres Senior Apartments, LLLP (“Applicant” or “Borrower”)

Borrower Type: Florida Limited Partnership

Contact Information: Elena M. Adames  
Telephone: (305) 216-1894  
E-Mail: [eadames@ambarco.com](mailto:eadames@ambarco.com)

Address: 330 Hartley Rd., Ste. 310  
Jacksonville, FL 32257

Federal Employer ID: 87-2074713

Current Ownership Structure: Borrower is a Florida Limited Partnership registered with the State of Florida on August 6, 2021. The current Certificate of Status was verified with the Secretary of State.

The general partner is HAPB – Golden Acres Senior Apartments GP Corp. (“GP”), a Florida Not for Profit Corporation, that registered with the State of Florida on September 24, 2020. The GP has a 0.0099% ownership interest in the Applicant. The current Certificate of Status was verified with the Secretary of State. The sole owner of GP is the Housing Authority of Pompano Beach (“HAPB”), which shares a common board with GP.

Based upon a HC equity investment letter of intent, dated July 6, 2023, and last updated August 7, 2023, Raymond James Affordable Housing Investments, Inc. (“RJ”) or an affiliate, will purchase a 99.99% limited partner interest concurrent with or prior to closing, replacing the initial Limited Partner.

The Special Limited Partner is TVC Provident, LLC (“SLP”) that registered with the State of Florida on June 15, 2023. The SLP has an 0.0001% ownership interest in the Applicant. The sole member of SLP is John D. Rood Revocable Trust. The Manager of SLP is Vestcor, Inc. (“Vestcor”) whose principal owner is John D. Rood. Vestcor is affiliated with The Vestcor Companies (“TVC”).

The Developer of the Subject transaction is Ambar3, LLC. (“Ambar3”), a Florida Limited Liability Company, registered with the State of Florida on March 29, 2016. Copies of the Articles of Organization have been provided and the Certificate of Status was verified with the Secretary of State. TVC Ambar, Inc. (“TVCAI”) and Elena M. Adames are members of Ambar3 with ownership interests of 75% and 25%, respectively. John D. Rood is the sole shareholder of TVCAI.

Experience: The Applicant, GP, and SLP are either newly formed single-purpose entities or pass through entities and have no assets, liabilities, credit history, resumes, or references.

John D. Rood began his real estate career in 1983 as founder of The Vestcor Companies. Under his direction, the company focused on brokerage of multifamily properties and then expanded into real estate investments, development, and construction. As the managing partner for over 71 investment partnerships, Mr. Rood is responsible for acquisition and/or development, management and disposition of properties in the portfolio. A total of 75 communities, consisting of nearly 14,000 units, have been acquired or developed by partnerships managed by Mr. Rood.

In September of 2004, President George W. Bush appointed Mr. Rood as United States Ambassador to the Commonwealth of the Bahamas where he served until 2007. In 2009, Ambassador Rood was appointed by Florida Governor Crist as the Republican Party of Florida Finance Chairman. Mr. Rood served on the Board of Alico Inc. (“ALCO”) from May 2009 until November 2013. In January 2010, Mr. Rood was appointed by Governor Crist to serve on the Board of Governors of the State University System where he was a member until September 2013. In 2012, he became a member of the Board of Advisors for the JU Public Policy Institute. He is a current member of the Florida Council of 100. Mr. Rood currently serves on the Board of Directors of Fidelity National Financial, Inc. He is also a member of the Board of Directors and Chair of the Audit and Risk Committees of Black Knight Financial Services. In November 2015, Mr. Rood was appointed to the Jacksonville Port Authority Board of Directors by Mayor Lenny Curry, where he served until July, 2016. Governor Rick Scott appointed Mr. Rood to the Florida Prepaid College Board in July, 2016 and serves as Chairman of the Board. In September, 2016 Governor Scott appointed Mr. Rood to the Enterprise Florida, Inc. Board of Directors where he was a member until February 2019.

A corporate resume indicates that the Housing Authority of the City of Pompano Beach (“HAPB”) was created in November of 1951 as a Public Housing Authority, pursuant to Section 421 of the Florida Statutes for the purpose of providing safe, decent, and sanitary rental housing for low-income families. Under the Housing Act of 1956 through the U.S. Public Housing Administration, the HAPB began providing housing for farm laborers at the location currently known as Golden Acres, funded by the United States Department of Agriculture (“USDA”), Rural Development. Currently, the HAPB owns 176 farm laborer units. Additionally, the HAPB entered into an Annual Contributions Contract with the U.S. Housing and Urban Development (“HUD”) to provide 118 low-income public housing units at locations known as Blanche Ely Estates and Ben Turner Ridge. The devastation caused by Hurricane Wilma in 2005 to the public housing units forced the HAPB to demolish its Public Housing properties and relocate its families using Section 8

Vouchers provided by HUD. To date, the HAPB's housing portfolio consists of 1,096 HUD Housing Choice Section 8 Vouchers, and 176 USDA units, 302 tax credits units, 10 units at Ben Turner Ridge, among other programs.

## Credit Evaluation:

The Applicant, GP, and SLP entities are either newly formed single-purpose entities and have no operating or credit history, financial statements, business references, or previous tax returns.

Comprehensive credit reports for John Rood, dated August 7, 2023 reported satisfactory credit history with no significant adversities.

Comprehensive credit reports for HAPB, dated August 7, 2023, reported satisfactory credit histories with no significant adversities.

## Business/Bank References:

The Applicant, GP and SLP entities are either newly formed single-purpose entities and have no operating or credit history, financial statements, business references, or previous tax returns

Business/Bank references for John Rood reported satisfactory depository and payment relationships.

Business/Bank references for HAPB reported satisfactory depository and payment relationships.

## Financial Statements:

The Applicant, GP and SLP entities are either newly formed single-purpose entities and have no operating or credit history, financial statements, business references, or previous tax returns.

John Rood:

|                       |              |
|-----------------------|--------------|
| Cash and Equivalents: | \$33,672,789 |
| Total Assets:         | \$97,043,137 |
| Total Liabilities:    | \$16,200,000 |
| Net Worth:            | \$80,843,137 |

Financial data is from an internally prepared financial statement dated June 30, 2023 and certified as true and correct by John D. Rood. Assets other than cash and securities consist of restricted cash, investments, residences, and personal and other property. Liabilities consist of income tax payable, estimate income tax liability, and present value of payments. SMG also reviewed the 2020 and 2021 Form 1040 U.S. Individual Income Tax Returns.

HAPB:

|                                    |              |
|------------------------------------|--------------|
| Cash and Equivalents Unrestricted: | \$6,772,488  |
| Total Assets:                      | \$15,146,811 |
| Total Liabilities:                 | \$2,507,730  |
| Total Net Position:                | \$12,639,081 |



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The financial information is based upon an audited Statement of Net Position as of December 31, 2022. Total Net Position is comprised of Investment in Capital Assets, Restricted Assets and Unrestricted Assets in the amount of \$6,184,603, \$679,946 and \$5,774,532, respectively.

Contingent Liabilities: The Applicant, GP and SLP entities are either newly formed single-purpose entities and have no operating or credit history, financial statements, business references, or previous tax returns.

SMG was provided with a Schedule of Contingent Liabilities for John Rood as of June 30, 2023. The Contingent Liability Schedule reflects outstanding debt in the low nine figures for ten properties.

HAPB and its subsidiaries provided a Statement of Financial/Credit Affairs, dated August 9, 2023 **with no contingent liabilities reported.**

Summary: Based upon the information provided, John Rood and HAPB appear to have the experience and financial resources to develop and operate the Development.

**Guarantor Information**

|                          |  |
|--------------------------|--|
| Guarantor Name:          | As determined by HFABC and first mortgage lender   |
| Nature of the Guarantee: | <p>The Guarantors will sign standard HFABC Construction Completion, Environmental Indemnity, Recourse Obligation and Operating Deficit Guarantees. The Construction Completion Guarantee will be released upon 100% lien-free completion as approved by the Loan Servicer.</p> <p>For the MMRB Loan, Guarantors are to provide the standard HFABC Operating Deficit Guarantee. If requested in writing by Applicant, the Loan Servicer will consider a recommendation to release the Operating Deficit Guarantee if all conditions are met, including achievement of a 1.15x Debt Service Coverage (“DSC”) Ratio on the MMRB Loan, as determined by the HFABC or its agent and 90% occupancy and 90% of the Gross Potential Rental Income, net of Utility Allowances, if applicable, for a period of 12 consecutive months, all certified by an independent Certified Public Accountant. The calculation of the DSC Ratio shall be made by HFABC or the Loan Servicer. Notwithstanding the above, the Operating deficit Guarantee shall not terminate earlier than three (3) years following the final Certificate of Occupancy.</p> |
| Credit Evaluation:       | Please refer to the Borrower Information section of this report  |
| Banking References:      | Please refer to the Borrower Information section of this report  |
| Financial Statements:    | Please refer to the Borrower Information section of this report  |
| Contingent Liabilities:  | Please refer to the Borrower Information section of this report  |
| Summary:                 | Based upon the financial information provided, the Guarantors appear to have adequate development experience and financial strength to serve as Guarantors for the Development.  |

**Syndicator Information**

Syndicator Name: Raymond James Affordable Housing Investments, Inc. ("RJAHI")

Contact Person: John W. Colvin, Director of Acquisitions

Telephone: 1-800-438-8088

E-Mail: [john.colvin@raymondjames.com](mailto:john.colvin@raymondjames.com)

Address: 880 Carillon Parkway  
St. Petersburg, FL 33716

Experience: RJAHI, a wholly owned subsidiary of Raymond James Financial, Inc. of St. Petersburg, Florida ("RJF"), is the managing member or limited partner of LIHTC funds. RJF was founded in 1962 as Robert A. James Investments. In 1964 Raymond James and Associates was formed. Raymond James became a public company in 1983, with a listing on the New York Stock Exchange under the symbol "RJF". The company offers a comprehensive range of financial services, including wealth management and access to capital markets.

RJF has been sponsoring affordable housing since 1969. Since the inception of the tax credit program in 1986, RJF has raised more than \$6 billion in equity for more than 1,800 properties across the United States. RJF has never had a tax credit recapture to date and boasts an average occupancy rate of 95% throughout their portfolio.

Financial Statements: Raymond James Financial, Inc.:

|                       |                  |
|-----------------------|------------------|
| Cash and Equivalents: | \$9,031,000,000  |
| Total Assets:         | \$80,950,000,000 |
| Total Liabilities:    | \$71,519,000,000 |
| Net Equity (Deficit): | \$9,432,000,000  |

Financial data for RJF is from its fiscal year ending September 30, 2022 Form 10-K filing to the United States Securities and Exchange Commission. Financial information for RJF is available on its website, [www.raymondjames.com](http://www.raymondjames.com).

Summary: RJAHI has demonstrated that its experience and financial strength to serve as syndicator for this Development.

**General Contractor Information**

General Contractor Name: Delant Construction Co. ("Delant")

Type: A Florida Corporation

Contact Person: John A. Delgado, President

Telephone (305) 592-2223

Facsimile (305) 477-3593

E-Mail: [jad@delantconstruction.com](mailto:jad@delantconstruction.com)

Address: 7380 N.W. 77<sup>th</sup> Court  
Miami, FL 33166

Experience: Delant Construction Co. was established in 1982 by the Delgado family. Delant is responsible for a variety of developments, both in the public and private sectors and has completed the construction of some of the most successful design-build properties in Miami-Dade County. These properties, totaling over \$200 million in construction, include the state-of-the-art Metro West Correctional Facility Phase I and II and the Water & Sewer Department Headquarters. Delant notes current work in progress of approximately \$100 million in two developments.

Florida Certified General Contractor's license No. CGC1531483 is in the name of John A. Delgado. It expires August 31, 2024.

Credit Evaluation: A comprehensive Business Credit Report for Delant, dated August 7, 2023, reflected satisfactory credit history with minor late payment activity, but no adverse public filings. There were nine UCC Filings shown.

Banking/Trade References: Banking, trade and business references for Delant reported satisfactory working relationships and payment history.

Financial Statements: Delant has provided a Surety Letter in lieu of financial statements.

Surety: Applicant provided an August 17, 2023 letter from Nielson, Hoover & Company ("NHC"), of Miami Lakes, Florida, representing it has previously provided bid, performance and payment bonds on behalf of Delant through Endurance Assurance Corporation ("EAC"). Currently, EAC is willing to entertain bond requests in the \$65 million range for single projects with a \$125 million aggregate program for Delant. EAC has an A+ (Superior) rating and a Financial Size Category of XV (\$2 billion or greater) by A.M. Best Company, meeting the Rules.

Summary: SMG recommends that Delant be accepted as the General Contractor for Provident Place, subject to the conditions in Section B thereof, if any.

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**Property Manager Information**

Property Manager Name: Diverse Real Estate Services, Inc. d/b/a Nelson and Associates, Inc., ("Nelson")

Type: A Foreign Profit Corporation Authorized to Transact Business in Florida

Contact Information: Ramona Hyson, CPM, President  
Telephone (561) 504-2110

Address: 5181 Natorp Blvd Suite #120  
Mason, OH 45040

Experience: A Corporate resume indicates Nelson is a woman and minority owned professional real estate firm headquartered in Mason, Ohio, with a district office in Boca Raton, Florida, providing management services to most segments of the housing industry. Originating in 1987, the organization provides an array of services to and in collaboration with Public Housing Authorities (PHA's), Non-Profit Housing organizations, For-Profit Housing Corporations and other governmental organizations. Their affordable housing portfolio includes over 2,121 units consisting of Low Income Housing Tax Credit (LIHTC), HUD, RAD, PHA, USDA Rural Development, market rate residential properties and commercial space in three states: Ohio, Indiana, and Florida. Their portfolio includes properties that are comprised of a combination of funding from an array of sources, e.g., tax credit, project-based Section 8, Section 8 Vouchers, Home, 236, 221 (d) (3) and (d) (4), and USDA Section 514/516. The firm is also licensed to conduct business in Alabama, Georgia, Illinois, Pennsylvania, and West Virginia.

Management Agreement: The Applicant submitted a draft Management Agreement between the Applicant and Nelson. **The Agreement states that the commencement date for the services shall be for the period beginning when leasing operations commence and ending one year thereafter, and shall automatically renew for one (1) year period thereafter unless one of the parties notifies the other it does not want to renew at least 30 days before the end of the term, or if Applicant fails to cure a default within 30 days, or Nelson elects to terminate the Agreement without notice. A management fee equal to 6.00% of effective gross income, plus a bookkeeping fee of \$3.50 per unit, per year on all 100 units.**

Management Plan: **The Applicant submitted a Management Plan with Nelson that appears satisfactory.**

Summary: Nelson has been previously approved by the Asset Management Department of FHFC. FHFC will also need to approve the selection of Nelson for the Subject Development prior to the commencement of lease-up activity. Continued approval will be contingent upon ongoing satisfactory performance.

## PROVIDENT PLACE 15 Year Income and Expense Projections

| FINANCIAL COSTS:                     |                                       | Year 1      | Year 2      | Year 3      | Year 4      | Year 5      | Year 6      | Year 7      | Year 8      | Year 9      | Year 10     | Year 11     | Year 12     | Year 13     | Year 14     | Year 15     |           |
|--------------------------------------|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-----------|
| <b>OPERATING PRO FORMA</b>           |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| <b>INCOME</b>                        | Gross Potential Rental Income         | \$1,673,880 | \$1,707,358 | \$1,741,505 | \$1,776,335 | \$1,811,862 | \$1,848,099 | \$1,885,061 | \$1,922,762 | \$1,961,217 | \$2,000,442 | \$2,040,450 | \$2,081,259 | \$2,122,885 | \$2,165,342 | \$2,208,649 |           |
|                                      | Rent Subsidy (ODR)                    | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Other Income:                         |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
|                                      | Ancillary Income-Parking              | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Miscellaneous                         | \$25,000    | \$25,500    | \$26,010    | \$26,530    | \$27,061    | \$27,602    | \$28,154    | \$28,717    | \$29,291    | \$29,877    | \$30,475    | \$31,084    | \$31,706    | \$32,340    | \$32,987    |           |
|                                      | Washer/Dryer Rentals                  | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Cable/Satellite Income                | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Rent Concessions                      | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Alarm Income                          | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Gross Potential Income                | \$1,698,880 | \$1,732,858 | \$1,767,515 | \$1,802,865 | \$1,838,922 | \$1,875,701 | \$1,913,215 | \$1,951,479 | \$1,990,509 | \$2,030,319 | \$2,070,925 | \$2,112,344 | \$2,154,591 | \$2,197,682 | \$2,241,636 |           |
| Less:                                |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| Economic Loss - Percentage:          |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| Physical Vacancy Loss - Percentage:  | 1.0%                                  | (\$16,989)  | (\$17,329)  | (\$17,675)  | (\$18,029)  | (\$18,389)  | (\$18,757)  | (\$19,132)  | (\$19,515)  | (\$19,905)  | (\$20,303)  | (\$20,709)  | (\$21,123)  | (\$21,546)  | (\$21,977)  | (\$22,416)  |           |
| Collection Loss - Percentage:        | 1.0%                                  | (\$16,989)  | (\$17,329)  | (\$17,675)  | (\$18,029)  | (\$18,389)  | (\$18,757)  | (\$19,132)  | (\$19,515)  | (\$19,905)  | (\$20,303)  | (\$20,709)  | (\$21,123)  | (\$21,546)  | (\$21,977)  | (\$22,416)  |           |
| <b>Total Effective Gross Revenue</b> |                                       | \$1,664,902 | \$1,698,200 | \$1,732,164 | \$1,766,808 | \$1,802,144 | \$1,838,187 | \$1,874,951 | \$1,912,450 | \$1,950,699 | \$1,989,712 | \$2,029,507 | \$2,070,097 | \$2,111,499 | \$2,153,729 | \$2,196,803 |           |
| <b>EXPENSES</b>                      | Fixed:                                |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
|                                      | Ground Lease                          | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Sub-Ground Lease                      | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Real Estate Taxes                     | \$48,000    | \$49,440    | \$50,923    | \$52,451    | \$54,024    | \$55,645    | \$57,315    | \$59,034    | \$60,805    | \$62,629    | \$64,508    | \$66,443    | \$68,437    | \$70,490    | \$72,604    |           |
|                                      | Insurance                             | \$120,000   | \$123,600   | \$127,308   | \$131,127   | \$135,061   | \$139,113   | \$143,286   | \$147,585   | \$152,012   | \$156,573   | \$161,270   | \$166,108   | \$171,091   | \$176,224   | \$181,511   |           |
|                                      | Other                                 | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Variable:                             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
|                                      | Management Fee - Percentage:          | 6.0%        | \$99,894    | \$101,892   | \$103,930   | \$106,008   | \$108,129   | \$110,291   | \$112,497   | \$114,747   | \$117,042   | \$119,383   | \$121,770   | \$124,206   | \$126,690   | \$129,224   | \$131,808 |
|                                      | General and Administrative            | \$35,000    | \$36,050    | \$37,132    | \$38,245    | \$39,393    | \$40,575    | \$41,792    | \$43,046    | \$44,337    | \$45,667    | \$47,037    | \$48,448    | \$49,902    | \$51,399    | \$52,941    |           |
|                                      | Payroll Expenses                      | \$140,000   | \$144,200   | \$148,526   | \$152,982   | \$157,571   | \$162,298   | \$167,167   | \$172,182   | \$177,348   | \$182,668   | \$188,148   | \$193,793   | \$199,607   | \$205,595   | \$211,763   |           |
|                                      | Utilities                             | \$70,000    | \$72,100    | \$74,263    | \$76,491    | \$78,786    | \$81,149    | \$83,584    | \$86,091    | \$88,674    | \$91,334    | \$94,074    | \$96,896    | \$99,805    | \$102,797   | \$105,881   |           |
|                                      | Marketing and Advertising             | \$10,000    | \$10,300    | \$10,609    | \$10,927    | \$11,255    | \$11,593    | \$11,941    | \$12,299    | \$12,668    | \$13,048    | \$13,439    | \$13,842    | \$14,258    | \$14,685    | \$15,126    |           |
|                                      | Maintenance and Repairs               | \$80,000    | \$82,400    | \$84,872    | \$87,418    | \$90,041    | \$92,742    | \$95,524    | \$98,390    | \$101,342   | \$104,382   | \$107,513   | \$110,739   | \$114,061   | \$117,483   | \$121,007   |           |
|                                      | Grounds Maintenance and Landscaping   | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Resident Programs                     | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
| Contract Services                    | \$0                                   | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |             |           |
| Security                             | \$0                                   | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |             |           |
| Other-Pest Control                   | \$0                                   | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |             |           |
| Reserve for Replacements             | \$30,000                              | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$30,000    | \$31,827    | \$32,782    | \$33,765    | \$34,778    |             |           |
| <b>Total Expenses</b>                |                                       | \$632,894   | \$649,982   | \$667,563   | \$685,650   | \$704,260   | \$723,406   | \$743,105   | \$763,374   | \$784,227   | \$805,684   | \$828,660   | \$852,302   | \$876,629   | \$901,661   | \$927,419   |           |
| <b>Net Operating Income</b>          |                                       | \$1,032,008 | \$1,048,218 | \$1,064,602 | \$1,081,158 | \$1,097,884 | \$1,114,781 | \$1,131,845 | \$1,149,076 | \$1,166,471 | \$1,184,029 | \$1,201,846 | \$1,219,794 | \$1,237,869 | \$1,256,067 | \$1,274,384 |           |
| <b>Debt Service Payments</b>         |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| <b>DEBT SERVICE</b>                  | First Mortgage - R4/HFABC             | \$808,250   | \$808,250   | \$808,250   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   | \$885,949   |           |
|                                      | Second Mortgage - Broward County      | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Third Mortgage - HAPB                 | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Fourth Mortgage -                     | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Fifth Mortgage -                      | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | All Other Mortgages -                 | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | First Mortgage Fees - R4/HFABC        | \$23,850    | \$23,850    | \$23,850    | \$23,850    | \$23,677    | \$23,494    | \$23,299    | \$23,092    | \$22,871    | \$22,637    | \$22,389    | \$22,124    | \$21,844    | \$21,545    | \$21,228    |           |
|                                      | Second Mortgage Fees - Broward County | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Third Mortgage Fees - HAPB            | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Fourth Mortgage Fees -                | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | Fifth Mortgage Fees -                 | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | All Other Mortgages Fees -            | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         | \$0         |           |
|                                      | <b>Total Debt Service Payments</b>    |             | \$832,100   | \$832,100   | \$832,100   | \$909,799   | \$909,626   | \$909,443   | \$909,248   | \$909,041   | \$908,820   | \$908,586   | \$908,338   | \$908,073   | \$907,792   | \$907,494   | \$907,177 |
| <b>Cash Flow After Debt Service</b>  |                                       | \$199,908   | \$216,118   | \$232,502   | \$171,359   | \$188,258   | \$205,338   | \$222,597   | \$240,035   | \$257,651   | \$275,443   | \$292,509   | \$309,721   | \$327,077   | \$344,573   | \$362,208   |           |
| <b>Debt Service Coverage Ratios</b>  |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| DSC - First Mortgage plus Fees       |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| DSC - Second Mortgage plus Fees      |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| DSC - Third Mortgage plus Fees       |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| DSC - Fourth Mortgage plus Fees      |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| DSC - Fifth Mortgage plus Fees       |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| DSC - All Mortgages and Fees         |                                       | 1.240       | 1.260       | 1.279       | 1.188       | 1.207       | 1.226       | 1.245       | 1.264       | 1.284       | 1.303       | 1.322       | 1.341       | 1.360       | 1.380       | 1.399       |           |
| <b>Financial Ratios</b>              |                                       |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |           |
| Operating Expense Ratio              |                                       | 38.0%       | 38.3%       | 38.5%       | 38.8%       | 39.1%       | 39.4%       | 39.6%       | 39.9%       | 40.2%       | 40.5%       | 40.8%       | 41.2%       | 41.5%       | 41.9%       | 42.2%       |           |
| Break-Even Ratio                     |                                       | 86.4%       | 85.6%       | 85.0%       | 88.6%       | 87.9%       | 87.2%       | 86.5%       | 85.8%       | 85.2%       | 84.6%       | 84.0%       | 83.5%       | 82.9%       | 82.4%       | 82.0%       |           |

**EXHIBIT 1**

**AUGUST 23, 2023**

## COMPLETENESS AND ISSUES CHECKLIST

DEVELOPMENT NAME: Provident Place

DATE: August 23, 2023

In accordance with applicable Program Rule(s), the Borrower is required to submit the information required to evaluate, complete, and determine its sufficiency in satisfying the requirements for Credit Underwriting to the Credit Underwriter in accordance with the schedule established by the Florida Housing Finance Corporation ("Florida Housing" or "FHFC"). The following items must be satisfactorily addressed. "Satisfactorily" means that the Credit Underwriter has received assurances from third parties unrelated to the Borrower that the transaction can close within the allotted time frame. Unsatisfactory items, if any, are noted below and in the "Issues and Concerns" section of the Executive Summary.

| CREDIT UNDERWRITING<br>REQUIRED ITEMS:  | STATUS              | NOTE |
|---|---------------------|------|
|   | Satis.<br>/Unsatis. |      |
| 1. The Development's final "as submitted for permitting" plans and specifications.<br>Note: Final "signed, sealed, and approved for construction" plans and specifications will be required thirty days before closing.   | Satis.              |      |
| 2. Final site plan and/or status of site plan approval.   | Satis.              |      |
| 3. Permit Status.   | Satis.              |      |
| 4. Pre-construction analysis ("PCA").   | Satis.              | 1    |
| 5. Survey.  | Satis.              |      |
| 6. Complete, thorough soil test reports.  | Satis.              |      |
| 7. Full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice.   | Satis.              |      |
| 8. Market Study separate from the Appraisal.  | Satis.              |      |
| 9. Environmental Site Assessment – Phase I and/or Phase II if applicable (If Phase I and/or II disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required). If the report is not dated within one year of the application date, an update from the assessor must be provided indicating the current environmental status. | Satis.              |      |
| 10. Audited financial statements for the most recent fiscal year ended or acceptable alternative as stated in the Rule for credit enhancers, Borrower, general partner, principals, guarantors and general contractor.  | Satis.              |      |

|  |        |   |
|--|--------|---|
| 11. Resumes and experience of Borrower, general contractor and management agent.   | Satis. |   |
| 12. Credit authorizations; verifications of deposits and mortgage loans.   | Satis. |   |
| 13. Management Agreement and Management Plan.  | Satis. | 2 |
| 14. Firm commitment from the credit enhancer or private placement purchaser, if any.   | Satis. |   |
| 15. Firm commitment letter from the syndicator, if any.  | Satis. |   |
| 16. Firm commitment letter(s) for any other financing sources.   | Satis. |   |
| 17. Updated sources and uses of funds.   | Satis. |   |
| 18. Draft construction draw schedule showing sources of funds during each month of the construction and lease-up period.       | Satis. |   |
| 19. Fifteen-year income, expense, and occupancy projection.  | Satis. |   |
| 20. Executed general construction contract with "not to exceed" costs.   | Satis. | 3 |
| 21. HC ONLY: 15% of the total equity to be provided prior to or simultaneously with the closing of the construction financing. | Satis. |   |
| 22. Any additional items required by the credit underwriter.   | Satis. | 4 |

## NOTES AND APPLICANT'S RESPONSES:

1. **PCA – still hoping to get.**
2. The management contract has not been executed. Receipt and satisfactory review of the executed contract consistent with the assumptions of this report is a Special Condition to close.
3. The general construction contract has not been executed. Receipt and satisfactory review of the executed contract consistent with the assumptions of this report is a Special Condition to close.
4. Receipt and satisfactory review of a HUD contract rent schedule for the Subject Development not materially different from those utilized in this report is a Special Condition to close.



## HC Allocation Calculation

| Section I: Qualified Basis Calculation |               |
|--|---------------|
| Development Cost                       | \$34,310,231  |
| Less Land Cost                         | (\$3,000,000) |
| Less Federal Funds                     | \$0           |
| Less Other Ineligible Cost             | (\$3,456,656) |
| Less Disproportionate Standard         | \$0           |
| Total Eligible Basis                   | \$27,853,576  |
| Applicable Fraction                    | 100.00%       |
| DDA/QCT Basis Credit                   | 130.00%       |
| Qualified Basis                        | \$36,209,648  |
| Housing Credit Percentage              | 4.00%         |
| Annual Housing Credit Allocation       | \$1,448,386   |

### Notes to the Qualified Basis Calculation:

1. Other Ineligible Costs primarily include a portion of site work, accounting fees, legal fees, title insurance fees, construction loan interest, permanent loan origination, Costs of Issuance, FHFC, FHFC administrative, application, and underwriting fees, market study, and reserves.
2. The Borrower committed to a set aside of 100%. Therefore, SMG has utilized an Applicable Fraction of 100.00%.
3. The Development is not located in a Difficult Development Area ("DDA") but is in a Qualified Census Tract, 305.00. Accordingly, 130% basis credit has been applied to the Eligible Basis.
4. Per the FY 2021 Omnibus Consolidated Appropriations Act passed by Congress as of December 21, 2020, a permanent 4% minimum HC rate was established. For purposes of this report, a HC percentage of 4.00% has therefore been applied.

|                            |             |
|----------------------------|-------------|
| <b>Section IV: Summary</b> |             |
| HC per Qualified Basis     | \$1,448,386 |
| HC per Gap Calculation     | \$1,582,792 |
| Annual HC Recommended      | \$1,448,386 |

1. SMG estimates the Tax-Exempt MMRB amount to be 68.06% of Depreciable Development Costs plus Land Acquisition Costs. If, at the time of Final Cost Certification, the Tax-Exempt Bond Amount is less than 50%, developer fees will have to be reduced by an amount to ensure compliance with the 50% Test. That may, in turn, result in a reduction to HC Equity.

*Notes to 50% Test:*

|  |              |
|--|--------------|
| <b>Section III: Tax-Exempt Bond 50% Test</b>   |              |
| Total Depreciable Cost                         | \$27,853,576 |
| Plus Land Cost                                 | \$3,000,000  |
| Aggregate Basis                                | \$30,853,576 |
| Tax-Exempt Bond Amount                         | \$21,000,000 |
| Less Debt Service Reserve                      | \$0          |
| Less Proceeds Used for Costs of Issuance       | \$0          |
| Plus Tax-Exempt GIC earnings                   | \$0          |
| Tax-Exempt Proceeds Used for Building and Land | \$21,000,000 |
| Proceeds Divided by Aggregate Basis            | 68.06%       |

2. HC Syndication Pricing and Percentage to Investment Partnership are based upon the RI LOI.  
 1. Mortgages include the R4, Broward County and Seller Note mortgages.

*Notes to the Gap Calculation:*

|  |                |
|--|----------------|
| <b>Section II: Gap Calculation</b>                           |                |
| Total Development Cost (Including Land and Ineligible Costs) | \$34,310,231   |
| Less Mortgages   | (\$19,750,000) |
| Less Grants  | \$0            |
| Equity Gap   | \$14,560,231   |
| Percentage to Investment Partnership                         | 99.99%         |
| HC Syndication Pricing                                       | \$0.9200       |
| HC Required to Meet Gap                                      | \$15,827,921   |
| Annual HC Required   | \$1,582,792    |

---

*Notes to the Summary:*

1. The Annual HC Recommended is based on the Qualified Basis calculation

## **ATTACHMENT 2**

**RESOLUTION NO. 2023-\_\_\_\_\_**

A meeting of the Housing Finance Authority of Broward County, Florida was held at 5:30 p.m. on October 18, 2023, at 110 Northeast Third Street, Suite 201, Fort Lauderdale, Florida.

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

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

Thereupon, the following resolution was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE "HFA") AUTHORIZING THE ISSUANCE OF ITS MULTIFAMILY HOUSING MORTGAGE REVENUE BONDS PROVIDENT PLACE APARTMENTS, SERIES 2023 IN A PRINCIPAL AMOUNT OF NOT TO EXCEED \$22,000,000 (THE "BONDS") FOR THE PURPOSE OF FINANCING THE CONSTRUCTION AND EQUIPPING OF A MULTIFAMILY HOUSING PROJECT KNOWN AS THE PROVIDENT PLACE LOCATED IN BROWARD COUNTY, FLORIDA; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST BY AND BETWEEN THE HFA AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE HFA AND THE BORROWER; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LAND USE RESTRICTION AGREEMENT BY AND AMONG THE HFA, THE TRUSTEE AND GOLDEN ACRES SENIOR APARTMENTS, LLLP, AS BORROWER; APPROVING AND AUTHORIZING THE EXECUTION OF THE ENDORSEMENT TO PROMISSORY NOTE; APPROVING AND AUTHORIZING THE EXECUTION OF THE ASSIGNMENT OF MORTGAGE AND LOAN DOCUMENTS; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PLACEMENT AGENT AGREEMENT FOR THE BONDS BY AND AMONG THE HFA, RBC CAPITAL MARKETS, LLC AND RAYMOND JAMES &**

**ASSOCIATES, INC.; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN ADDITIONAL AGREEMENTS NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF THE BONDS; WAIVING THE FEE FOR SERVICES RELATED TO THE HFA'S ANNUAL AUDIT OF THE PROJECT; AUTHORIZING THE PROPER OFFICERS OF THE HFA TO DO ALL THINGS NECESSARY OR ADVISABLE IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.**

**WHEREAS**, the Housing Finance Authority of Broward County, Florida (the "HFA") 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; and

**WHEREAS**, the HFA desires to issue a Multifamily Housing Mortgage Revenue Bonds Provident Place Apartments, Series 2023 (the "Bonds") in a principal amount of not to exceed \$22,000,000 for the purpose of financing the construction and equipping of a multi-family residential housing development in Pompano Beach, Broward County, Florida (the "County") known as Provident Place (the "Project"); and

**WHEREAS**, Golden Acres Senior Apartments, LLLP, a Florida limited partnership (the "Borrower"), has requested the HFA to issue its Bonds to provide funds to make a loan to the Borrower (the "Loan") to finance the construction and equipping of the Project; and

**WHEREAS**, the HFA shall enter into an Indenture of Trust (the "Indenture"), between the HFA and The Bank of New York Mellon Trust Company, N.A. (the "Trustee") for the purpose of

setting forth the terms, conditions and covenants that are necessary to secure the Bonds and protect the rights of the holders of the Bonds, in substantially the form attached hereto as Exhibit "A"; and

**WHEREAS**, the HFA shall enter into a Loan Agreement (the "Loan Agreement"), between the HFA and the Borrower for the purpose of setting forth the terms, conditions and covenants that are necessary to evidence the terms and conditions of the Loan, in substantially the form attached hereto as Exhibit "B"; and

**WHEREAS**, the HFA shall enter into a Land Use Restriction Agreement among the HFA, the Borrower and the Trustee in substantially the form attached hereto as Exhibit "C"; and

**WHEREAS**, the HFA shall execute the Endorsement to the Promissory Note, in substantially the form attached hereto as Exhibit "D"; and

**WHEREAS**, the HFA shall execute the Assignment of Mortgage and Loan Documents, in substantially the form attached hereto as Exhibit "E"; and

**WHEREAS**, the HFA shall enter into a Placement Agent Agreement among the HFA, RBC Capital Markets, LLC and Raymond James & Associates, Inc., in substantially the form attached hereto as Exhibit "G"; 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, 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 HFA is not obligated to pay the Bonds except from the proceeds derived from the repayment of the Loan and other payments received from the Borrower or from other security pledged therefor pursuant to the Indenture. Neither the faith and credit nor the taxing power of the HFA, the County or the State of Florida or any other political subdivision thereof is pledged to the payment of the principal of or the interest on the Bonds; and

**WHEREAS**, due to the complexity of the financing, the turmoil in the capital markets and the need to coordinate matters among the HFA, the Borrower and the Purchaser, or its affiliates, it is in the best interest of the HFA to negotiate the sale of the Bonds. The disclosure required in Section 218.385, Florida Statutes, as amended, shall be provided to the HFA prior to the sale of the Bonds; and

**WHEREAS**, a notice of public hearing inviting written and oral comments and discussions concerning the issuance of the Bonds was published in the Sun-Sentinel, a newspaper of general circulation on October 9, 2023, at least 7 days prior to the date of such hearing; and

**WHEREAS**, on October 17, 2023, a public hearing concerning the issuance of the Bonds in a face amount of not to exceed \$22,000,000 to finance the Project was held by the HFA; and

**WHEREAS**, the HFA received from the State of Florida Division of Bond Finance an allocation



of 2021 and 2022 private activity bond volume cap in the amounts of \$176,327,678.22 and \$87,614,098.00 respectively, which has been carried forward pursuant to Section 145(f) of the Code and designated for the issuance of bonds for qualified residential rental projects; and

**WHEREAS**, the Ordinance requires that all contracts of the HFA in connection with the issuance of the Bonds be approved by the Board; and

**WHEREAS**, the HFA desires to authorize the execution and delivery of the contracts and any other documents of the HFA to be executed in connection with the issuance of the Bonds.

**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 Bonds.** The HFA hereby authorizes and approves, under the authority of the Act and the Ordinance, and subject to the terms as hereinafter set forth, the issuance of the Bonds to be designated “Housing Finance Authority of Broward County, Florida Multifamily Housing Mortgage Revenue Bonds Provident Place Apartments, Series 2023” in a principal amount of not to exceed \$22,000,000 or such other series or name designation as may be determined by the HFA.

**Section 3. Details of the Bonds.** The Bonds shall be issued under and secured by the Indenture, by which reference is hereby incorporated into this Resolution as if set forth in full herein. The proceeds of the Bonds, together with any commitment fees, shall be applied as provided in the

Indenture, the Bonds 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 Indenture.

**Section 4. Execution of Bonds.** The Chair or Vice Chair and Secretary or Assistant Secretary of the HFA are hereby authorized and directed to execute by manual or facsimile signature, and place the seal of the HFA, in manual or facsimile form, on the Bonds. The Bonds shall be in substantially the form set forth in the Indenture, with such changes, modifications and deletions as the officers executing the Bonds, with the advice of Bryant Miller Olive P.A. ("Bond Counsel") and the County Attorney, may deem necessary and appropriate and as are not inconsistent with the Indenture and this Resolution. The execution and delivery of the Bonds by the aforementioned persons shall be conclusive evidence of the HFA's approval and authorization thereof.

**Section 5. Authentication and Delivery of Bonds.** Upon execution of the Bonds in the form and manner set forth in the Indenture, the HFA shall deliver the Bonds to the Trustee for authentication, and the Trustee is hereby authorized and directed to authenticate and deliver said Bonds to the Purchaser, subject to the terms for delivery set forth in the Indenture.

**Section 6. Approval of Indenture of Trust.** The form and content of the Indenture of Trust by and between the HFA and the Trustee, attached hereto as Exhibit "A", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Indenture and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 7. Approval of Loan Agreement.** The form and content of the Loan Agreement by and among the HFA, the Trustee and the Borrower, attached hereto as Exhibit "B", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Loan Agreement and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 8. Approval of the Land Use Restriction Agreement.** The form and content of the Land Use Restriction Agreement among the HFA, the Borrower and the Trustee, attached hereto as Exhibit "C", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Land Use Restriction Agreement and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 9. Endorsement to Promissory Note.** The Borrower intends to execute and deliver a promissory note in favor of the HFA (the "Promissory Note"). The HFA will assign its interest in the

Promissory Note to the Trustee. The execution of the Endorsement to Promissory Note, attached hereto as Exhibit "D", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Endorsement to Promissory Note and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 10. Execution of Assignment of Mortgage and Loan Documents.** The form and content of the Assignment of Mortgage and Loan Documents made by the HFA in favor of the Trustee (the "Assignment"), attached hereto as Exhibit "E", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Assignment and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 11. Appointment of Trustee, Registrar and Paying Agent.** The Bank of New York Mellon Trust Company, N.A., having its designated corporate trust office in Jacksonville, Florida, is hereby appointed Trustee, Registrar and Paying Agent under the Indenture; and the HFA approves the form and content of the Trustee Fee Agreement between the HFA and the Trustee and attached

hereto as Exhibit "F". The Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Trustee Fee Agreement, and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond Counsel and the County Attorney, may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the HFA.

**Section 12. Approval of Placement Agent Agreement.** The form and content of the Placement Agent Agreement among the HFA, RBC Capital Markets, LLC and Raymond James and Associates, Inc., attached hereto as Exhibit "G", is hereby authorized and approved by the HFA, and the Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Placement Agent Agreement and the Secretary or Assistant Secretary is authorized to place the HFA'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 Bond 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 HFA.

**Section 13. Sale of Bonds.** The Bonds are hereby sold and awarded to TD Bank, or its affiliates as the Purchaser, at the price of par pursuant to its term sheet (the "Term Sheet"). The Term Sheet is attached hereto as Exhibit "H". The Executive Director is hereby authorized to accept additional term sheets in connection with the Bonds upon review and approval from Bond Counsel and County Attorney. The Chair or Vice Chair and the Secretary are authorized to make any and all

changes to the form of the Bonds which shall be necessary to conform the same to the Term Sheet and any subsequently approved term sheets.

**Section 14. Certificated Bonds.** It is in the best interest of the HFA and the Borrower that the Bonds be issued utilizing a certificated form and not utilizing a book-entry system of registration.

**Section 15. Subordinate Financing.** The HFA hereby acknowledges that the Borrower intends to secure subordinate financing for the Project in the form of (i) a loan from Broward County in the approximate principal amount of not to exceed \$3,500,000, and (ii) a loan from the Broward County Housing Authority in the approximate principal amount of not to exceed \$3,000,000 (collectively, 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 HFA hereby determines that it is in the public interest to consent to such Subordinate Financing in this instance. Accordingly, the HFA (i) authorizes the Chair or the Vice Chair of the HFA to consent to such Subordinate Financing, approve such other principal amounts of Subordinate Financing that may be necessary to complete the financing, and to execute and deliver any agreements that may be necessary in connection with such consent, including, but not limited to, certain subordination agreements, with the advice of and in such form as Bond Counsel and the County Attorney may deem necessary and appropriate, and (ii) directs the Trustee 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 Bond Counsel and the County Attorney may deem necessary and appropriate.

**Section 16. 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 HFA's auditor to audit the Project and the Bonds annually. The HFA waives such audit fee in connection with the Project.

**Section 17. Further Actions and Ratifications of Prior Actions.** The officers, agents and employees of the HFA and the officers, agents and employees of the Trustee are hereby authorized and directed to do all acts and things required of them by the provisions of the Bonds, the Indenture, the Loan Agreement, the Land Use Restriction Agreement, the Promissory Note, the Assignment and this Resolution (collectively, the "HFA Documents") 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 HFA with respect to the provisions of the HFA Documents 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 Indenture.

[Remainder of page intentionally left blank]

**Section 19. Resolution Effective.** This Resolution shall take effect immediately upon its passage.

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

the foregoing Resolution was adopted by the following votes:

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

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

Approved on October 9, 2023 as to form and legal sufficiency by:

Bryant Miller Olive P.A., Bond Counsel



STATE OF FLORIDA            )  
  )ss:  
COUNTY OF BROWARD        )

I, Milette T. Manos, 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 18, 2023, 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 Provident Place Apartments, Series 2023 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 \_\_\_\_\_, 2023.

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

By: \_\_\_\_\_  
Milette T. Manos, Secretary

(SEAL)

**EXHIBIT "A"**

**FORM OF INDENTURE OF TRUST**

---

**INDENTURE OF TRUST**

**by and between**

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

**And**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,**

**as Trustee**

**Dated as of December 1, 2023**

**Relating to:**

**[\$\_\_\_\_\_]**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds  
Provident Place Apartments, Series 2023**

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## INDENTURE OF TRUST

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of December 1, 2023, made and entered into by and between 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 “Issuer”), and The Bank of New York Mellon Trust Company, N.A., a national banking association, duly organized and existing under the laws of the United States of America and authorized to accept and execute trusts of the character herein set forth in the state, as trustee (together with any successor trustee hereunder and their respective successors and assigns, the “Trustee”),

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

**WHEREAS**, by virtue of the authority of the laws of the State of Florida, and 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 [\_\_\_\_\_, 2023] Resolution Nos. 2023-014 and [\_\_\_\_\_] adopted by the Issuer on August 16, 2023 and October [18], 2023, respectively, and in accordance with Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Florida Statutes, as amended (the “Act”), the Issuer is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the construction and equipping of multifamily senior rental housing facilities for persons of low, moderate and middle income at prices or rentals they can afford; and

**WHEREAS**, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds Provident Place, Series 2023 in the original aggregate principal amount of \$[\_\_\_\_\_] (the “Bonds”), for the purpose of financing the cost of the acquisition, construction, installation and equipping of a multifamily rental housing facility, consisting of a total of 100 units and related personal property and equipment, and located in Pompano Beach, Florida (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of December 1, 2023 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and Golden Acres Senior Apartments, LLLP, a Florida limited liability limited partnership (together with its permitted successors and assigns, the “Borrower”); and

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

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

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

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

### **GRANTING CLAUSES**

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, redemption premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the "Security"), to wit:

(a) All moneys from time to time paid by the Borrower pursuant to the terms of the Loan Agreement, the Note and the Bond Documents and all right, title and interest of the Issuer (including, but not limited to, the right to enforce any of the terms thereof) under and pursuant to and subject to the provisions of the Loan Agreement, the Bond Documents and the Note (but in each instance excluding the Reserved Rights, as defined herein); and

(b) All other moneys and securities from time to time held by the Trustee under the terms of this Indenture, excluding the Rebate Fund, the proceeds of the Subordinate Debt deposited in the Subordinate Debt Proceeds Account established under Section 4.1 hereof and excluding amounts required to be rebated to the United States Treasury under Section 148(f) of the Internal Revenue Code of 1986, as amended, whether or not held in the Rebate Fund; and

(c) Any and all property, rights and interests (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder to the Trustee, which the Trustee is hereby authorized to receive at any and all times and to hold and apply the same subject to the terms of this Indenture; and

(d) All of the proceeds of the foregoing (except the amounts payable to or on behalf of the Issuer on account of its Reserved Rights), including without limitation investments thereof;



TO HAVE AND TO HOLD, all and singular, the Security with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection of this Indenture of one Bond over or from the others, except as herein otherwise expressly provided;

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased or paid and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Security is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant with the Trustee, for the benefit of the respective Holders from time to time of the Bonds as follows:

## ARTICLE I DEFINITIONS

**Section 1.1 Defined Terms.** In addition to terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture and the preambles hereto shall have the

following meanings unless the context or use clearly indicates another or different meaning or intent.

**“Accessibility Regulation”** means a Legal Requirement relating to accessibility of facilities or properties for disabled, handicapped and/or physically challenged persons, including, without limitation, the Americans with Disabilities Act of 1991, as amended.

**“Accountant”** means [\_\_\_\_\_], or such other accounting firm approved in writing by the Servicer.

**“Accounts”** means all funds and accounts established under this Indenture from time to time.

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

**“Advance”** means any disbursement from the Project Fund established under this Indenture made or to be made by the Trustee pursuant to the terms of the Loan Agreement.

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

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

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

**“Approved Buyer”** means (1) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, (2) an “accredited investor” as defined in Regulation D promulgated under the Securities Act, (3) any other transferee expressly permitted under the Investor Letter, (4) an Affiliate of the Construction Lender or Permanent Lender; or (5) a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers.

**“Architect”** means the architect or firm of architects selected by the Borrower with respect to the Project Facilities and acceptable to the Servicer.

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

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

**“Assignment of HAP Contract”** means the Assignment of Housing Assistance Payments, dated as of the date hereof, made by the Borrower to the Trustee for the HAP Contracts in effect for the Project Facilities, consented to by HUD.

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

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

**“Authorized Denomination”** means \$100,000, and any amount in excess thereof; provided that one Bond may be outstanding in an amount less than \$100,000 if the principal amount of Bonds Outstanding is less than \$100,000; provided further that for purposes of redeeming Bonds, Authorized Denomination shall mean \$1.00.

**“Authorized Person”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are [ \_\_\_\_\_ ] and [ \_\_\_\_\_ ].

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

**“Beneficial Owner”** means the Person in whose name a Bond is recorded as beneficial owner of such Bond by the Securities Depository or a DTC Participant or an Indirect Participant on the records of such Securities Depository, DTC Participant or Indirect Participant, as the case may be, or such Person’s subrogee.

**“Bond”** or **“Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Bond Counsel”** means an attorney, or firm of attorneys, nationally recognized and experienced in legal work relating to the financing of facilities through the issuance of tax-exempt bonds, reasonably acceptable to the Servicer.

**“Bond Coupon Rate”** means the lower of (i) the applicable rates set forth on the Schedule of Financial Terms during the Construction Phase and the Permanent Phase; and (ii) the Maximum Rate.

**[“Bond Documents”** means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreement, the Tax Certificate, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the

Housing Finance Authority of Broward County, Florida Assignment, the Assignment of HAP Contract, the Disclosure Undertaking, the Ground Lease, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Subordination Agreement, the Servicing Agreement, the Forward Commitment Agreement, [the Bondholder Agreement,] the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.]

**“Bond Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Bondholder Agreement”** means that certain Bondholder Agreement dated [\_\_\_\_\_] [\_\_\_\_], 2023 between Permanent Lender and Borrower, as amended, modified or supplemented from time to time.

**“Bond Proceeds Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

**“Bondholder”** or **“Holder”** or words of similar import, when used with reference to the Bonds, means the registered owner or owners or Beneficial Owner or Beneficial Owners of the Bonds, as applicable.

**“Book-Entry System”** means a book-entry system established and operated for the recordation of Beneficial Owners of the Bonds pursuant to Section 2.11 hereof.

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

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

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

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

**“Closing Memorandum”** means Closing Memorandum signed by the Servicer, the Borrower and the Trustee with respect to the initial disbursement of Bond Proceeds and other amounts specified therein.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the rulings and regulations (including temporary and proposed regulations) promulgated thereunder.

**“Collateral”** means all property of the Borrower in which the Trustee is granted a security interest to secure payment of the Bonds.

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

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

(ii) the Borrower shall have obtained the Governmental Actions, if any, required by the Legal Requirements and all Governmental Authorities associated with the Project Facilities, including use and occupancy permits (if any are required), and shall have furnished true copies of all such Governmental Actions to the Servicer. Temporary certificates of occupancy, as opposed to final certificates of occupancy or their equivalent, shall be acceptable provided (A) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (B) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (C) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

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

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

(v) the Completion Certificate in the form required under the Loan Agreement shall have been provided to the Servicer and shall be reasonably acceptable to the Servicer; and

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

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

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

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

(i) All conditions to Completion have been satisfied;

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

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

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

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

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

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

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

(ix) if construction work resulted in new structures or expansion of foot prints of the existing structures, the Trustee shall have received an as-built ALTA/ACSM Urban Class Survey certified to the Trustee and the Servicer;

(x) the final complete Use of Proceeds Certificate in the form required under the Loan Agreement shall have been provided to the Servicer and shall be reasonably acceptable to the Servicer; and

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

**"Construction Contract"** means the contract, dated on or about [\_\_\_\_\_], 2023, between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

**"Construction Lender"** means TD Bank, N.A., or its designated affiliate, together with its successors and assigns.

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

**"Construction Phase"** means the period from and including the Issue Date and to but excluding the Conversion Date.

**“Contamination”** means the uncontained release, discharge or disposal of any Hazardous Substances at, on, upon or beneath the Project Facilities, whether or not originating at the Project Facilities, or arising from the Project Facilities into or upon any land or water or air, or otherwise into the environment, which may require remediation under any applicable Legal Requirements.

**“Contractor”** means [\_\_\_\_\_, a \_\_\_\_\_].

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

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

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

**“Cost of Issuance Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

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

**“Current Index”** means the Index that is determined by Indexing Agent on each Rate Determination Date, subject to the limitation that the Current Index shall not be less than 0.00%.

**“Debt Service Schedule”** means the schedule of debt service payments with respect to the Bonds, together with any replacement thereof, each as delivered by Servicer pursuant to Section 3.4(e) of this Indenture.

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

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

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

**“Determination of Taxability”** means a determination that the interest accrued or paid on any of the Bonds is included in gross income of the Holders or former Holders for federal



income tax purposes, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(a) the day on which the Borrower, the Issuer, the Trustee or any Holder is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

(b) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received (1) a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or former Holder that asserts in effect that the interest on the Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes, or (2) an Opinion of Bond Counsel that concludes in effect that the interest on the Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

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

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

provided, however, no Determination of Taxability shall occur to the extent that the interest on any of the Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Bond was held by a Person who is a Substantial User or a Related Person.

**“Developer”** means Ambar3, LLC, a Florida limited liability company authorized to conduct its business in the State, and HAPB Supporting Housing Opportunities, Inc., a Florida not for profit corporation authorized to conduct its business in the State, together with its successors and assigns approved by the Servicer.

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

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

**“Disclosure Undertaking”** means the Voluntary Disclosure Undertaking dated as of [\_\_\_\_\_] 1, 2023, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“DTC Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository.

**“Effective Gross Revenues”** of the Borrower means, for the Testing Period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Servicer’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Servicer’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) Underwritten Economic Vacancy, or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, or any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Servicer; Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

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

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

**“Environmental Audit”** means the written Phase I environmental site assessment for the Project Facilities prepared by [\_\_\_\_\_] dated \_\_\_\_\_], 2023

**“Environmental Completion Conditions”** shall mean [add any environmental items if necessary].

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

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

**“Environmentally Sensitive Area”** means (i) a wetland or other “water of the United States” for purposes of Section 404 of the federal Clean Water Act or any similar area regulated under any State or local Legal Requirements, (ii) any other natural resources, (iii) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (iv) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (v) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

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

**“Equity Account”** means the account of that name within the Project Fund created pursuant to Section 4.1(a) hereof.

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

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

**“Event of Default”** means, with respect to this Indenture, any of the events specified in Section 6.1 hereof, or with respect to the Loan Agreement, any of the events specified in Section 7.1 thereof.

**“Executive”** means the Chairperson or Vice Chairperson of the Governing Body and the Executive Director of the Issuer.

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Servicer in an amount equal to

the greater of: (i) the actual amount of aggregate annualized Expenses for the Testing Period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Servicer; and (ii) Underwritten Expenses.

**“Favorable Opinion of Bond Counsel”** means an opinion of Bond Counsel, addressed to the Issuer, the Trustee and the Majority Owner, with a copy to the Servicer, to the effect that a proposed action, event or circumstance (i) does not affect the exclusion from gross income of interest on the Bonds for federal income tax purposes, and (ii) does not affect the treatment of interest on the Bonds as not being an item of tax preference for purposes of the federal alternative minimum tax, which opinion may be subject to customary assumptions and exclusions.

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

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

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

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

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

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

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

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

**“Forward Commitment”** means the Forward Commitment Agreement dated [\_\_\_\_], 2023 among Construction Lender, Permanent Lender and Borrower, as amended, modified or supplemented from time to time.

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

**“General Partner”** means HAPB-Golden Acres Senior Apartments GP Corp, a Florida non-profit corporation authorized to conduct its business in the State, the general partner of the Borrower, together with its successors and assigns, as permitted by the Servicer and the restrictions described in the definition of “Permitted Transfer” herein.

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

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

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

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

**“Ground Lease”** means that certain ground lease dated as of [\_\_\_\_\_], 2023 between the Borrower and [\_\_\_\_\_] pursuant to which the Borrower holds a leasehold interest in the real property upon which the Project Facilities are situated, as the same may be amended, modified or supplemented from time to time.

**“Guarantor”** means the Guarantor[s] specified on the Schedule of Financial Terms.

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

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

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

**“Governing Body”** means the members of the board of the Issuer, or any governing body that succeeds to the functions of the governing board of the Issuer.

**“HAP Contract”** means the Housing Assistance Payments Contract #[\_\_\_\_\_], between HUD and the Borrower, providing for housing assistance payments to be made to the Borrower.

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

**“Holder”** or **“Owner”** means the Person who shall be the registered owner of any Bond.

**“HUD”** means the United States Department of Housing and Urban Development.

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

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

**“Indebtedness”** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Issuer, the Servicer, the Trustee or to the Holders from time to time of the Bonds, now existing and hereafter arising, under or in connection with this Indenture or any of the other Bond Documents or any of the Subordinate Debt Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs and other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Servicer, the Trustee, the Issuer or the Holders from time to time of the Bonds.

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

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

**“Index”** shall mean one month-Term SOFR plus 250 basis points all as defined and described in [Construction Lender’s Loan Documents.

**[“Indexing Agent”** shall mean the indexing agent appointed by the Majority Owner to determine the Bond Coupon Rate in accordance with the provisions of this Indenture. The initial Indexing Agent shall be the Construction Lender.

**“Indirect Participant”** means a broker-dealer, bank or other financial institution for which the Securities Depository holds Bonds as a securities depository through a DTC Participant.

**“Insurance and Condemnation Proceeds Account”** means the account within the Project Fund created pursuant to Section 4.1(a) hereof.

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

**“Interest Payment Date”** means the first (1<sup>st</sup>) calendar day of each month that the Bonds are Outstanding, commencing on the First Interest Payment Date, provided that if such day is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computations of payment of interest.

**“Investor Limited Partner”** means RJ MT Golden Acres Senior Apartments L.L.C., a Florida Limited Liability Company, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

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

**“Issue Date”** means December [\_\_\_] 2023, the date on which the Bonds are issued and delivered to the purchaser or purchasers thereof.

**“Issuer”** means 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, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“Issuer Assignment”** means that certain Assignment of Mortgage and Loan Documents dated as of [December \_\_\_], 2023 from the Issuer to the Trustee and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Issuer Extraordinary Fees and Expenses”** means the expenses and disbursements payable to the Issuer under this Indenture for extraordinary services and extraordinary expenses, including extraordinary fees, costs and expenses incurred by the Issuer, Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to the Loan Agreement.

**“Issuer Fees”** means, collectively, the Issuer Ordinary Fees, Issuer Ordinary Expenses and the Issuer Extraordinary Fees and Expenses.

**“Issuer Ordinary Expenses”** means the reasonable expenses of the Issuer with respect to the Bonds and related transactions which are not Issuer Extraordinary Fees and Expenses.

**“Issuer Ordinary Fees”** means collectively, the Issuer’s (i) one (1) time initial issuance fee payable to the Issuer on or before the Issue Date in the amount of \$[\_\_\_\_\_] equal to [fifty] basis points (0.50%) of the original par amount of Bonds; and (ii) the annual fee of the Issuer, payable by the Borrower in the amount of [eighteen] basis points [(0.18%)] of the original principal amount of the Bonds payable in semiannual installments in advance on each [\_\_\_\_\_] 1 and [\_\_\_\_\_] 1, commencing [\_\_\_\_\_] 1, 20\_\_]. Issuer Ordinary Fees do not include Issuer Ordinary Expenses.

**“Land Use Restriction Agreement”** Regulatory Agreement, dated as of December [\_\_\_], 2023, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

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

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

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

**“Loan”** means the loan of proceeds of the Bonds from the Issuer to the Borrower, as evidenced by the Note and pursuant to the terms of the Loan Agreement.

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

**“Local Time”** means eastern time (daylight or standard, as applicable) in New York, New York.



**“Major Contract”** shall mean any subcontract for labor or materials, or both, in connection with the Improvements which is for an aggregate contract price equal to or greater than \$250,000, whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders.

**“Majority Owner”** means any one Person that is the Beneficial Owner of the Outstanding Bonds; provided, however, if no one Person is the Beneficial Owner of all of the Outstanding Bonds, “Majority Owner” means the Beneficial Owner or Owners of at least fifty-one percent (51%) in aggregate principal amount of all Outstanding Bonds.

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

**“Managing Agent”** means [\_\_\_\_\_, a \_\_\_\_\_], together with any successor manager of the Project Facilities approved by the Servicer and their respective successors and assigns.

**“Mandatory Prepayment Amount”** shall mean the amount specified on the Schedule of Financial Terms.

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

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

adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

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

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

**“Maximum Rate”** means twelve (12) percent per annum; provided that such rate shall in no event exceed the maximum rate allowed by law.

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

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

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

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

**“Monitoring Fee”** shall have the meaning given to such term in Section 2.2(a) of the Loan Agreement.

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

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

**“Mortgage”** means the Leasehold Construction Loan Mortgage and Security Agreement dated the Issue Date, made by the Borrower to the Issuer covering the Project Facilities.

**“Note”** means the promissory note of the Borrower, dated the Issue Date, as endorsed by the Issuer to the Trustee, in the form attached as Exhibit A to the Loan Agreement.

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

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

**“Operating Reserve Amount”** shall have the meaning as set forth on the Schedule of Financial Terms.

**“Operating Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Opinion of Bond Counsel”** means any opinion of Bond Counsel delivered pursuant to this Indenture with respect to the excludability of interest on the Bonds from gross income of the Holders thereof for federal income tax purposes or other matters specified in this Indenture. Each such opinion shall be addressed to the Trustee, the Majority Owner, the Servicer and the Issuer.

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

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

**“Outstanding”** means, when used with reference to the Bonds at any date as of which the amount of Outstanding Bonds to be determined, all Bonds that have been authenticated and delivered by the Trustee hereunder, except:

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; [and]

(iv) Bonds authorized but not yet drawn-down and delivered to Construction Lender; and]

(v) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the borrower, then such Bonds shall be deemed to be Outstanding at such time for the purpose of this subparagraph(v).

**“Partnership Agreement”** means the [\_\_\_\_\_] of the Borrower dated as of December [\_\_\_], 2023, as may be amended, modified or supplemented from time to time.

**“Payment and Performance Bonds”** shall mean dual-obligee payment and performance bonds (or a letter of credit in lieu of such bonds) relating to the Contractor (or, if required by Servicer, each contractor that enters into a Major Contract with Borrower), issued by a surety company or companies authorized to do business in the State and acceptable to Servicer, and in form and content reasonably acceptable to Servicer, in each case in an amount not less than the full contract price; together with a dual obligee and modification rider naming the Servicer (or at Servicer’s election, the Trustee) and in the form and substance acceptable to Servicer which shall be attached thereto.

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

**“Permanent Lender”** means Morgan Stanley & Co., or its designated affiliate, together with its successors and assigns.

**“Permanent Phase”** means the period from and including the Conversion Date and to but excluding the Maturity Date.

**“Permitted Encumbrances”** means only:

- (a) the Land Use Restriction Agreement;
- (b) the Mortgage;
- (c) the Ground Lease;
- (d) liens securing the Subordinate Debt;

(e) Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Servicer involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Servicer, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;

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

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

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

(i) Bonds or other obligations of the United States;

(j) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;

(k) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;

(l) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody's or other non-rated obligations of such issuers guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;

(m) Prime commercial paper rated either "A-1" by S&P or "P-1" by Moody's and, if rated by both, not less than "A-1" by S&P and "P-1" by Moody's;

(n) Bankers' acceptances drawn on and accepted by commercial banks;

(o) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations

determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee, an affiliate of the Trustee, a Qualified Custodian or an affiliate of the Qualified Custodian serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian; and

(p) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Servicer.

**“Permitted Transfer”** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) a transfer of partnership interests in Borrower to the Investor Limited Partner and/or the Special Limited Partner, (iv) a transfer of the limited partner interests of the Investor Limited Partner and/or the Special Limited Partner in the Borrower to an Affiliate of such Investor Limited Partner and/or Special Limited Partner, (v) a transfer of indirect shares or ownership interests in the Investor Limited Partner so long as the direct ownership interests in the Investor Limited Partner are owned or controlled by Investor Limited Partner, (vi) a transfer of any shares or ownership interests in the Investor Limited Partner and/or Special Limited Partner after the contributions by the owners of the Investor Limited Partner and/or Special Limited Partner of all installments of capital contributions required to be made by the Investor Limited Partner under the Partnership Agreement, (vii) transfers of any interests in the General Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the General Partner pursuant to the Partnership Agreement, (ix) after the payment in full of all capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Servicer.

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

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

**“Principal Payment Date”** means the first (1st) calendar day of each month, commencing on the First Principal Payment Date.

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

**“Project Facilities”** means the 4.36 acres of land and the multifamily apartment housing facilities consisting of a total of 100 units and related personal property and equipment, located in Pompano Beach, Florida, the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds.

**“Project Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

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

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

**“Qualified Custodian”** means a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

**“Qualified Project Costs”** means the actual costs incurred to acquire, construct and equip the Project Facilities which (i) are or were incurred after [\_\_\_\_\_], 2023, (ii) are (A) chargeable to the Project Facilities’ capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities’ capital account are or would have been deducted only through an allowance for depreciation or (B) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code, and (iii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code.

**“Rate Determination Date”** means the Issue Date and each Interest Payment Date thereafter until the Conversion Date.

**“Rebate Amount”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Rebate Analyst”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement and shall be reasonably acceptable to the Servicer.

**“Rebate Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Rebate Report”** shall have the meaning given to such term in Section 6.10(c) of the Loan Agreement.

**“Record Date”** means with respect to each Interest Payment Date, the Trustee’s close of business on the day before such Interest Payment Date occurs, regardless of whether such day is a Business Day.

**“Redemption Fund”** means the account of that name created pursuant to Section 4.1(a) hereof.

**“Register”** means the register of the record Owners of Bonds maintained by the Trustee.

**“Regulatory Agreement”** means the Land Use Restriction Agreement relating to the Project Facilities, dated as of the date hereof, by and among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.

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

**“Related Person”** with reference to any Substantial User, means a “related person” within the meaning of Section 147(a)(2) of the Code.

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

**“Repayments”** means all payments of principal and interest on the Loan required to be paid by the Borrower to the Trustee, as the assignee of the Issuer pursuant to the Loan Agreement.

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

**“Replacement Reserve Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

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

**“Requisition”** means a requisition in the form attached to the Loan Agreement as Exhibit B, together with all invoices, bills of sale, schedules, applications for payment, certifications and other submissions required for the disbursement of the proceeds of the Bonds from the Project Fund pursuant to the terms hereof.



**“Reserved Rights”** means the rights of the Issuer pursuant to Sections 2.5, 4.2, 6.10, 10.5 and 10.13 of the Loan Agreement and the rights of the Issuer pursuant to other sections of the Loan Agreement providing that notices, reports and other statements be given to the Issuer.

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

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

**“S&P”** means Standard & Poor’s Ratings Services, a division of Standard & Poor’s Financial Services LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns and, if such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Servicer, by notice to the Borrower, the Issuer and the Trustee.

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

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

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

**“Securities Depository”** means The Depository Trust Company and any substitute for or successor to such securities depository that shall maintain a Book-Entry System with respect to the Bonds.

**“Securities Depository Nominee”** means the Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the Register the Bonds to

be delivered to such Securities Depository during the continuation with such Securities Depository of participation in its Book-Entry System.

**“Security”** shall have the meaning given to such term in the Granting Clauses of this Indenture.

**“Security Interest”** or **“Security Interests”** means the security interests created herein and shall have the meanings set forth in the U.C.C.

**“Seltzer”** shall mean Seltzer Management Group, Inc., and its permitted successors and assigns.

**“Servicer”** means any entity designated in writing by the Majority Owner to act as a Servicer hereunder, in accordance with Article IX hereof. If at any time a Servicer has not been designated by the Majority Owner, all references herein and in other Bond Documents to **“Servicer”** shall refer to the Majority Owner. The initial Servicer during the Construction Phase is Construction Lender. The initial Servicer during the Permanent Phase is [R4 Capital Funding LLC].

**“Servicing Agreement”** means: (i) during the Construction Phase, initially not applicable and thereafter any servicing agreement entered into pursuant between Construction Lender and its servicer appointed pursuant to Section 9.1 hereof; and (ii) during the Permanent Phase, the Servicing Agreement, dated as of the date hereof, among the Trustee, the Servicer and the Borrower with respect to servicing during the Permanent Phase.

**“Servicing Fees”** shall have the meaning set forth in the applicable Servicing Agreement.

**“Special Limited Partner”** means [\_\_\_\_\_], a [\_\_\_\_\_], and its successors and assigns in such capacity pursuant to the Partnership Agreement.

**“Stabilization”** means the point at which (i) the Improvements have met Minimum Occupancy by credit-worthy, qualified tenants meeting the requirements of the Bond Documents in each month of the Testing Period; (ii) the ratio of Stabilized NOI in each month of the Testing Period to maximum principal, interest, Issuer Fees and Trustee Fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding equals or exceeds the Minimum Coverage; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Completion and satisfied each of the Construction Closeout Deliveries; [and] (v) the Bonds have been redeemed in an amount equal to the Mandatory Prepayment Amount pursuant to Section 3.4(b)(vii); [and (vi) the Borrower shall have deposited an amount equal to the Operating Reserve Amount, or such other amount as approved by the Servicer, in the Operating Reserve Account], all as determined or approved by the Servicer with the consent of the Permanent Lender.

**“Stabilization Date”** means the earlier to occur of: (i) the Conversion Date specified by the Servicer that all of the conditions to achievement of Stabilization will be satisfied upon tender and transfer of the Bonds to the Permanent Lender pursuant to the Bondholder Agreement; or (ii) the Outside Stabilization Date, as the same may be extended pursuant to Section 6.37 of the Loan Agreement.

**“Stabilized NOI”** means, for any period, (x) Effective Gross Revenues for such period less (y) Expenses for such period, as determined or approved by the Servicer.

**“State”** means the State of Florida.

**“Subordinate Debt”** means, that certain loan in the maximum amount set forth in the Schedule of Financial Terms from the Subordinate Lender to the Borrower evidenced and secured by the Subordinate Debt Documents.

**“Subordinate Debt Documents”** means all documents evidencing or securing the Subordinate Debt or otherwise executed and delivered by the Borrower in connection therewith or as a condition of the advance of the proceeds thereof, together with a subordination agreement executed by lender of such Subordinate Debt, all in form and substance acceptable to the Servicer.

**“Subordinate Lender”** shall mean the Subordinate Lender specified on the Schedule of Financial Terms.

**“Subordination Agreement”** means that certain Subordination Agreement dated on or about the Issue Date among the Issuer, the Trustee, the Borrower and Subordinate Lender, as subordinate lender, as may be amended, modified or supplemented from time to time.

**“Substantial User”** means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code.

**“Surplus Bond Proceeds”** means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund, but not later than Stabilization, and after payment in full of the Project Costs (except for proceeds of the Bonds being retained at the written direction of the Servicer).

**“Surplus Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax and Insurance Escrow Fund”** means the fund of that name created pursuant to Section 4.1(a) hereof.

**“Tax Certificate”** means collectively, (a) the Arbitrage and Tax Certificate dated the Issue Date and executed by the Issuer, (b) the Arbitrage Rebate Agreement dated as of December [\_\_\_], 2023, executed by the Issuer, the Trustee and the Borrower, and (c) the Proceeds Certificate dated the Issue Date and executed and delivered by the Borrower, in each case including all exhibits

and other attachments thereto and in each case as may be amended or supplemented from time to time.

**“Testing Period”** means the period for testing set forth on the Schedule of Financial Terms immediately preceding the date of such determination.

**“Third Party Costs”** means the ongoing Issuer Fees, Trustee Fees and the fees of the Rebate Analysts or any other third party in connection with the Bonds.

**“Title Company”** means the title insurance company insuring the lien of the Mortgage on the Issue Date together with any successor title company approved by the Servicer.

**“Title Policy”** means the mortgagee’s title insurance policy relating to the Project Facilities issued by the Title Company to the Trustee, effective on the date of recording of the Mortgage, as the same may be subsequently down-dated or endorsed from time to time, with the approval of the Servicer.

**“Trustee”** shall have the meaning given to such term in the first paragraph of this Indenture.

**“Trustee Fee”** means (i) \$3,500 payable on the Issue Date, and (ii) an annual fee of \$4,250 payable semi-annually in arrears on each [\_\_\_\_\_] 1 and [\_\_\_\_\_]1 commencing [\_\_\_\_\_]1, 2024.

**“U.C.C.”** means the Uniform Commercial Code of the State as now in effect or hereafter amended.

**“Underwriter Group”** shall have the meaning given to such term in Section 10.12 of the Loan Agreement.

**“Underwritten Economic Vacancy”** shall mean the amount set forth on the Schedule of Financial Terms.

**“Underwritten Expenses”** shall have the meaning set forth on the Schedule of Financial Terms.

**“Underwritten Management Fee”** means the percentage of gross income specified on the Schedule of Financial Terms received from the Project Facilities on account of rents, service fees, late charges, penalties and other charges under Leases.

**“Work”** means the items of construction of the Improvements required to be performed under the Plans and Specifications for the Improvements.

**Section 1.2 Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Indenture:

(a) All terms defined in the Loan Agreement and not defined herein shall have the meaning given to such terms in the Loan Agreement.

(b) Words importing the singular number shall include the plural number and vice versa.

(c) The table of contents, captions, and headings herein are for convenience of reference only and shall not constitute a part of this Indenture nor shall they affect its meaning, construction or effect.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

(e) All references in this Indenture to particular Articles or Sections are references to Articles or Sections of this Indenture, unless otherwise indicated.

## ARTICLE II

### SOURCE OF PAYMENTS, GENERAL TERMS AND PROVISIONS OF THE BONDS

**Section 2.1 Ratably Secured.** All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date. **Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

**Section 2.3 Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

**Section 2.4 Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Executive of the Issuer. In case any officer whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) The Bonds shall be limited obligations of the Issuer. The Bonds and the interest thereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

**Section 2.5 Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Sections 2.6 and 3.1 hereof, executed by an authorized representative of the Trustee and such certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder.

**Section 2.6 Form of Bonds.**

(a) The Bonds, the Trustee's certificate of authentication and the form of assignment shall be in substantially the form set forth as Exhibit A hereto, with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or are required by law and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officer of the Issuer executing such Bonds, as evidenced by such officer's execution of the Bonds.

(b) Bonds shall be in either typewritten or printed form, as the Borrower shall direct, on behalf of the Issuer, with approval of the Trustee. Any expenses, including but not limited to expenses of printing, incurred in connection with the preparation of the form of the Bonds shall be paid by the Borrower.

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them through the Securities Depository in the manner described in Section 2.11(a) hereof.

(b) Prior to the delivery by the Trustee of the Bonds, there shall be filed with the Trustee:

(i) A certified copy of all resolutions adopted and proceedings had by the Issuer authorizing execution of this Indenture, the Loan Agreement and the other Bond Documents to which the Issuer is a party and the issuance of the Bonds; and

(ii) An original executed counterpart of the Bond Documents (and with respect to the Note, endorsed without recourse by the Issuer to the Trustee); and

(iii) Copies of any Financing Statements required to be filed to perfect the security interests in the Security or under Section 3.2 of the Loan Agreement; and

(iv) A copy of completed IRS Form 8038 to be filed by or on behalf of the Issuer pursuant to Section 149(e) of the Code; and

(v) A copy of the Investor Letters delivered by Construction Lender pursuant to this Indenture and by Permanent Lender pursuant to this Indenture and the Bondholder Agreement; and

(vi) An original executed counterpart of the Tax Certificate; and

(vii) An Opinion of Bond Counsel or Counsel to the Issuer to the effect that this Indenture and the Loan Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(viii) An approving Opinion of Bond Counsel that the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Bonds will be excludable from gross income of the Holders thereof for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that this Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(ix) An opinion of Counsel for the Borrower to the effect that the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions reasonably requested by the Servicer, Construction Lender or Permanent Lender; and

(x) A pro forma title insurance policy reasonably acceptable to the Servicer; and

(xi) Reliance letters for, or address of the opinions to, the Servicer, Construction Lender and Permanent Lender of each of the opinions filed with the Trustee; and

(xii) Such other documents as may be required by the Issuer, Trustee, Bond Counsel, Servicer, Construction Lender or Permanent Lender.

[Add Transaction Specific Requirements.]

(c) Upon receipt of the foregoing, the Trustee shall authenticate and deliver the Bonds as provided in the written instructions of the Issuer to the Trustee.

**Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of the same maturity, interest rate, principal amount and tenor in lieu of and in substitution for the Bond mutilated, lost, stolen or destroyed; provided, that there shall be first furnished to the Trustee evidence satisfactory to it and the Issuer of the ownership of such Bond and of such loss, theft or destruction (or, in the case of a mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee and the Issuer and compliance with such other reasonable regulations as the Issuer and the Trustee may prescribe. If any such Bond shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Bond the Issuer may pay the same without surrender thereof. The Issuer and the Trustee may charge the Holder of such Bond with their reasonable fees and expenses in connection with this Section.

**Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.**

(a) The Register and all other records relating to the registration of the Bonds and the registration of transfer of the Bonds as provided herein shall be kept by the Trustee.

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations.

(c) Bonds may be exchanged upon surrender thereof at the principal office of the Trustee with a written instrument of transfer satisfactory to the Trustee executed by the Holder or such Holder's attorney duly authorized in writing, for an equal aggregate principal amount of Bonds of the same tenor as the Bonds being exchanged and of any Authorized Denomination or Authorized Denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds that the Holder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.



(d) Such registrations of transfer or exchanges of Bonds shall be without charge to the Holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Holder of the Bond requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration of transfer or exchange and all reasonable expenses of the Issuer shall be paid by the Borrower.

(e) The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his/her duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(f) All Bonds issued upon any registration of transfer or exchange of Bonds shall be legal, valid and binding limited obligations of the Issuer, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Bonds surrendered upon such registration of transfer or exchange.

(g) Notwithstanding the foregoing, for so long as the Bonds are held under the Book-Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof.

**Section 2.10 Non-presentment of Bonds.** In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof or otherwise, if funds sufficient to pay the principal of and interest on such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer and the Borrower to the owner thereof for the payment of such Bond or portion thereof as the case may be, shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee, subject to any applicable escheat laws, to hold such fund or funds uninvested in the Bond Fund, without liability to the Holder of such Bond for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his/her part on, or with respect to, said Bond, or portion thereof.

**Section 2.11 Book-Entry System.**

(a) On the date of issuance and delivery of the Bonds, one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. During any period that the Book-Entry System is in effect one Bond in the aggregate principal amount of the Bonds and registered in the name of the Securities Depository Nominee will be issued and deposited with the Securities Depository and held in its custody. The Book-Entry System will be

maintained by the Securities Depository and the DTC Participants and Indirect Participants and will evidence beneficial ownership of the Bonds in Authorized Denominations, with registration of transfers of ownership effected on the records of the Securities Depository, the DTC Participants and the Indirect Participants pursuant to rules and procedures established by the Securities Depository, the DTC Participants and the Indirect Participants. The principal of and interest on each Bond shall be payable to the Securities Depository Nominee or any other person appearing on the Register as the registered Holder of such Bond or his/her registered assigns or legal representatives at the principal office of the Trustee. So long as the Book-Entry System is in effect, the Securities Depository will be recognized as the Holder of the Bonds for all purposes except as otherwise provided herein. Transfer of principal and interest payments or notices to DTC Participants and Indirect Participants will be the responsibility of the Securities Depository, and transfer of principal and interest payments or notices to Beneficial Owners will be the responsibility of the DTC Participants and the Indirect Participants. No other party will be responsible or liable for such transfers of payments or notices or for maintaining, supervising or reviewing such records maintained by the Securities Depository, the DTC Participants or the Indirect Participants. While the Securities Depository Nominee or the Securities Depository, as the case may be, is the registered owner of the Bonds, notwithstanding any other provisions set forth herein, payments of principal of and interest on the Bonds shall be made to the Securities Depository Nominee or the Securities Depository, as the case may be, by wire transfer in immediately available funds to the account of said Holder as may be specified in the Register maintained by the Trustee or by such other method of payment as the Trustee may determine to be necessary or advisable with the concurrence of the Securities Depository.

(b) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds, or (ii) the Borrower, on behalf of the Issuer, with the consent of the Servicer, elects to remove the Securities Depository, then the Borrower, on behalf of the Issuer, with the consent of the Servicer, may appoint a new Securities Depository.

(c) If (i) the Securities Depository determines not to continue to administer a Book-Entry System for the Bonds or has been removed and the Borrower fails to appoint a new Securities Depository, (ii) the Servicer or the Borrower, with the consent of the Servicer, determines that continuation of a Book-Entry System of evidence and transfer of ownership of the Bonds would adversely affect the interests of the Beneficial Owners, or (iii) 100% of the Bondholders so elect, the Book-Entry System will be discontinued, in which case the Trustee will deliver replacement Bonds in the form of fully registered certificates in Authorized Denominations in exchange for the Outstanding Bonds as required by the Trustee and the Beneficial Owners.

**Section 2.12 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations

of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any governmental agency is required on the part of the Issuer.

**Section 2.13 No Litigation.** The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the exclusion from gross income of interest on the Bonds.

**Section 2.14 Further Assurances.** The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 2.15 No Other Encumbrances; No Dissolution.** The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 2.16 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or

employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

### **ARTICLE III INTEREST RATE, PAYMENT AND REDEMPTION OF BONDS**

**Section 3.1 Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to the Maximum Bond Amount. The Bonds shall be designated “Housing Finance Authority of Broward County, Florida, Multifamily Housing Revenue Bonds Provident Place, Series 2023.” The form of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein. The Bonds shall be issued as draw-down Bonds in accordance with Section 3.2(e) below.

**Section 3.2 Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 3.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Bonds shall be numbered from R-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 3.4(c) hereof.

(d) The principal of and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds; provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 3.4(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

(e) The Bonds are issued as draw-down Bonds. The Construction Lender shall fund the purchase price of the Bonds from time to time, on the dates and in the amounts set forth on the Schedule of Financial Terms, to provide funds for deposit in the Project Fund for the payment of requisitions therefrom. The initial purchase of Bonds by the Construction Lender on the Issue Date will be in an amount equal to not less than \$51,000. The Trustee shall record amounts funded in such manner in the Bond recordkeeping system maintained by the Trustee. The Holders may request exchange of the Bonds for Bonds reflecting the principal draw-down from time to time in accordance with Section 2.9. Upon deposit by the Construction Lender of each installment of the purchase price of each draw-down Bond, the aggregate amount of Bonds purchased shall be deemed Outstanding and shall begin to accrue interest. Notwithstanding anything herein to the contrary, the aggregate purchase price of the Bonds funded by the Construction Lender may not exceed the authorized amount set forth in Section 3.1 and no additional amounts may be funded after the last day of the third calendar year following Issue Date unless there is delivered a Favorable Opinion of Bond Counsel. The Issuer and the Trustee acknowledge that the Borrower and the Construction Lender have agreed that under certain circumstances the Bonds may be converted from a draw down bond issue to a fully funded issue, and each of the Issuer and the Trustee agrees to take all actions reasonably required of it in connection with such a conversion of the Bonds to a fully funded bond issue.

### **Section 3.3 Interest Rate on Bonds; Conversion to Permanent Phase.**

(a) Initial Interest Rate. The Bonds shall bear interest at the applicable Bond Coupon Rate with respect to the Construction Phase and in the Permanent Phase from the Issue Date to the date of payment in full of the Bonds. Interest in the Construction Phase and in the Permanent Phase shall be calculated in the manner set forth on the Schedule of Financial Terms. Interest accrued on the Bonds shall be paid in arrears on each Interest Payment Date, on the Conversion Date, on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof [The Indexing Agent will promptly after each Rate Determination Date notify the Issuer, the Trustee, the Borrower and the Servicer via electronic mail of the applicable Bond Coupon Rate. The determination of the Bond Coupon Rate by the Indexing

Agent, absent manifest error, shall be conclusive and binding on the Bondholders, the Borrower, the Servicer and the Trustee].

(b) Conversion to Permanent Phase. Upon achievement of Stabilization, the Bonds shall be subject to mandatory tender in whole on the immediately following Interest Payment Date for purchase by the Borrower at a purchase price equal to 100% of the principal amount thereof, plus accrued interest thereon to, but not including, the Conversion Date and the Bonds shall automatically convert to the Permanent Phase. The Holders shall be required to tender such Bond to the Trustee for purchase on the Conversion Date.

(c) Conversion Notice. At such time as each of the requirements set forth in the Bond Documents have been satisfied or waived by the Servicer, the Permanent Lender, at the request of the Servicer, shall deliver to the Borrower, the Construction Lender, the Trustee and the Permanent Lender a Notice of Forward Delivery Date in the form attached to the Bondholder Agreement. If the Construction Lender is the sole Holder of the Bonds, no other notice to Holders shall be required for mandatory tender pursuant to this Section 3.3. If there are other Holders of the Bonds, the Trustee shall provide notice to Holders, in the manner set forth in Section 3.5 hereof with respect to redemptions, of the mandatory tender of the Bonds pursuant to this Section 3.3 not less than three Business Days' prior to the Conversion Date.

#### **Section 3.4 Redemption of Bonds.**

(a) Optional Redemption of Bonds.

(i) The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee and the Servicer (which notice shall be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after the First Optional Call Date [, at a redemption price equal to 100% of the principal amount thereof] [at a redemption price equal to the percentage of principal amount thereof set forth on the Schedule of Financial Terms], plus accrued interest thereon to, but not including, the redemption date.

(ii) The Bonds are subject to optional prepayment in part on any Interest Payment Date specified by the Borrower and consented to by the Servicer following Completion, but not later than the Conversion Date, in an amount not to exceed, in the aggregate, the Mandatory Prepayment Amount at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed without premium or penalty, plus interest accrued thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

(i) The Bonds are subject to mandatory redemption from, and to the extent of, amounts on deposit in the Surplus Fund (subject to Section 4.4 hereof) on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, following the deposit of Surplus Bond Proceeds in the Surplus Fund at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(ii) The Bonds are subject to mandatory redemption in whole or in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture after and to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Project Fund and are not to be used to repair or restore the Project Facilities at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iii) The Bonds are subject to mandatory redemption in part on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture, in the amount as specified by the Servicer to the Trustee necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," if the Project Facilities have not achieved Stabilization by the Stabilization Date at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(iv) The Bonds are subject to extraordinary mandatory redemption in whole or in part, at the direction of the Servicer to the Trustee and the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture following receipt by the Trustee of the direction of the Servicer, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Servicer (A) it cannot reasonably be restored within a period of three (3) consecutive months to the condition thereof immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Servicer, results in the Borrower being prevented thereby from carrying on its

normal operations at the Project Facilities for a period of three (3) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the Bond Documents, in the judgment of the Servicer shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

(4) unreasonable burdens or excessive liabilities shall have been imposed on the Borrower with respect to the operations of the Project Facilities, including, without limitation federal, state or other ad valorem, property, income or other taxes not being imposed on the date of this Indenture that, in the judgment of the Servicer, render the continued operation of the Project Facilities uneconomical;

(5) changes which the Borrower cannot reasonably control or overcome in the economic availability of materials, supplies, labor, equipment and other properties and things necessary for the efficient operation of the Project Facilities for the purposes contemplated by the Loan Agreement shall have occurred or technological changes that the Borrower cannot reasonably overcome shall have occurred that, in the judgment of the Servicer, render the continued operation of the Project Facilities uneconomical;

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (ii) above, which curtailment shall, in the judgment of the Servicer, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months; or

(7) the Loan Agreement is terminated prior to its expiration for any reason, including the occurrence of an Event of Default under the Loan Agreement.

(v) The Bonds are subject to mandatory redemption in whole at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, on the first Interest Payment Date for which notice of redemption can be given in accordance with this Indenture within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory redemption on account of a Determination of Taxability of less than all the Bonds would result, in the opinion of Bond Counsel, in the interest on the Bonds Outstanding following such mandatory redemption being excludable from the gross income of the Holders of such Bonds



Outstanding, then the Bonds are subject to mandatory redemption upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such redemption must be in an Authorized Denomination.

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Servicer on or after the First Put Date, if the Servicer directs redemption by providing notice to the Borrower, the Trustee and the Issuer at least one hundred eighty (180) days prior to the Interest Payment Date specified in such notice on which the Bonds are to be redeemed at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Servicer to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(vii) [The Bonds are subject to mandatory redemption in whole on the Conversion Date, in the amount of the Mandatory Prepayment Amount, to the extent not previously redeemed pursuant to Section 3.4(a)(ii) at a redemption price equal to 100% of the principal amount of the Bonds to be prepaid, without premium or penalty, plus interest accrued thereon to, but not including, the redemption date.]

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on the Debt Service Schedule), at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee or, if the Bonds are held in the Book-Entry System, the Securities Depository shall select or arrange for the selection of Bonds to be redeemed pro rata or otherwise in accordance with the procedures of the Securities Depository pursuant to its rules and procedures, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination. If the Bonds are held in the Book-Entry System, the Securities Depository shall, acting pursuant to its rules and procedures, reflect in said system the partial redemption and the Trustee shall (i) either exchange the Bond or Bonds held by the Securities Depository for a new Bond or Bonds in the appropriate principal amount, if such Bond is presented to the Trustee by the Securities Depository, or (ii) obtain from the Securities Depository a written confirmation of the reduction in the principal amount of the Bonds held by such Securities Depository.

(e) Debt Service Schedule.

(i) In connection with the Conversion Date, the Permanent Lender shall, as an exhibit to the Notice of Forward Delivery Date, deliver to the Servicer, Trustee and the Borrower a schedule of debt service payments providing for level debt service with respect to the Bonds

calculated on the basis of the fixed Bond Coupon Rate and a [480-month amortization schedule] each commencing on the Conversion Date with principal payments commencing on the First Principal Payment Date (with all remaining principal payable on the Maturity Date, if applicable). In the event of a partial redemption of Bonds other than pursuant to Section 3.4(c) hereof, the Debt Service Schedule shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the number of months remaining in the original [480-month amortization schedule]. The Servicer shall provide the Trustee and the Borrower with a new Debt Service Schedule reflecting such adjustment promptly following any such partial redemption.

(ii) The Servicer, with the prior written consent of the Borrower and Majority Owner, may deliver a modified Debt Service Schedule from time to time hereafter for any other purpose agreed to by Servicer, Borrower and Majority Owner. In connection with any such modified Debt Service Schedule, the Servicer may, at its election and at Borrower's expense, require a Favorable Opinion of Bond Counsel.

(f) Partial Redemption of Bonds. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 3.4(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the Trustee and the Servicer given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 3.4(b)(vi) hereof), in advance of such redemption date, to cause purchase of the Bonds in whole, but not in part, in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 3.5 Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date

to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Servicer, but no defect in or failure to give such notice of redemption to any person shall affect the validity of the redemption as to any other person; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 3.4(c) hereof. All Bonds properly called for redemption and for which monies for payment of the redemption price are held by the Trustee will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed. Notwithstanding the foregoing, with respect to any Bonds held under the Book Entry System, notices of redemption shall be provided in accordance with the rules and procedures established by the Securities Depository, as more fully described in Section 2.11 hereof.

**Section 3.6 Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

#### **ARTICLE IV FUNDS**

**Section 4.1 Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts.**

- (a) The following are hereby created and established as special trust funds:
  - (i) the Project Fund, consisting of:
    - (A) the Bond Proceeds Account;
    - (B) the Costs of Issuance Account (containing a Bond Proceeds Subaccount and an Equity Subaccount);
    - (C) the Equity Account;
    - (D) Intentionally Omitted;
    - (E) the Insurance and Condemnation Proceeds Account;
    - (F) the Subordinate Debt Proceeds Account;
  - (ii) the Replacement Reserve Fund;
  - (iii) the Tax and Insurance Escrow Fund;

- (iv) the Rebate Fund;
  - (v) the Bond Fund;
  - (vi) the Surplus Fund;
  - (vii) the Redemption Fund; and
  - (viii) the Operating Reserve Fund
- (b) All the Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.
- (c) The proceeds of the sale of the Bonds and other the sources shown therein will be applied in accordance with the Closing Memorandum. Following the disbursements set forth in the Closing Memorandum, the Trustee shall receive and deposit into the respective Accounts specified the amounts, if any, provided in the Closing Memorandum.

**Section 4.2 Bond Fund.**

(a) There is hereby separately created and established with the Trustee the Bond Fund. There shall be deposited in the Bond Fund (i) all Repayments specified in the Loan Agreement to be deposited in the Bond Fund, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Trustee under the Loan Agreement for deposit by it in the Bond Fund.

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

(c) After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of any amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Bond Fund shall be paid to the Borrower.

**Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in the Closing Memorandum into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit installments of the purchase price of the Bonds, as set forth in Section 3.2(e) hereof, into the Bond Proceeds Account of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Investor

Limited Partner and the General Partner in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. The County shall deposit or cause to be deposited with the Trustee monies from the Subordinate Debt into the Subordinate Debt Proceeds Account of the Project Fund to be used solely for Project Facilities costs. Notwithstanding anything herein to the contrary, no monies from the Subordinate Debt shall be disbursed without the written approval of Seltzer and receipt by the Trustee of a signed requisition in the form attached as Exhibit B to the Loan Agreement. The Trustee shall deposit any other amounts received, to the extent not otherwise directed herein, in such Accounts as directed by Servicer.

Further, notwithstanding anything herein, the Loan Agreement or in any of the related documents to the contrary, funds disbursed by the Trustee from the Subordinate Debt Proceeds Account shall be used only for the purposes set forth in the Loan agreement between the County and the Borrower. Further, notwithstanding anything herein, the Loan Agreement or any of the related documents to the contrary, any Subordinate Debt funds deposited with the Trustee and not drawn down within 6 months after the completion of the Project Facilities shall be returned to the County upon the written direction of either the County or Seltzer to the Trustee.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Servicer in accordance with the provisions of the Loan Agreement. Except as otherwise consented to in writing by the Servicer, through approval of a Requisition or otherwise, moneys in the Project Fund shall be applied for payment or reimbursement of Project Costs and at least 95% of moneys on deposit in the Bond Proceeds Account of the Project Fund shall be applied to Qualified Project Costs. No later than the Conversion Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall either be transferred to the Surplus Fund, applied to the Mandatory Prepayment Amount, if any, or applied to another use, in each case as directed in writing by the Servicer. All remaining amounts in the Equity Account, and the Subordinate Debt Proceeds Account of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Servicer, which approval shall not be unreasonably withheld or delayed.

(c) Intentionally Omitted.

(d) Amounts in the Costs of Issuance Account shall be disbursed by the Trustee on the Issue Date pursuant to the Closing Memorandum and thereafter only to pay costs of issuance pursuant to a Requisition signed by the Borrower and the Servicer identifying the amount to be paid and the payee. Amounts remaining in the Costs of Issuance Account (including investment proceeds) after the payment of all costs of issuance, and in any event not later than thirty (30) days following the Issue Date, shall be transferred to the Bond Proceeds Account or Equity Account of the Project Fund, as applicable.

(e) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and

notice of such deposit thereof shall be given by the Trustee to the Servicer and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the redemption of Bonds in accordance with Section 3.4 hereof, or (ii) released to the Borrower if, upon request of the Servicer, the Borrower obtains an Opinion of Bond Counsel that such release will not affect the excludability of the interest on the Bonds from gross income for federal income tax purposes, all in accordance with direction of the Servicer to the Trustee and subject to the provisions of the Bond Documents.

(f) The Trustee shall transfer moneys between Accounts as directed in writing by the Servicer and consented to by the Borrower, provided that no consent shall be required with respect to a transfer pursuant to 4.3(c) above or following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Servicer to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Servicer may determine.

**Section 4.4 Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the direction of the Servicer pursuant to Section 4.3(b) above. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be deemed to be joint direction by the Borrower and the Servicer to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 3.4(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds.

**Section 4.5 Use of Certain Additional Funds and Accounts.**

(a) **Redemption Fund.**

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the

redemption of Bonds pursuant to Section 3.4 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Servicer, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 3.4 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

(ii) Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Redemption Fund may be disbursed at the direction of the Servicer to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Servicer may determine.

(b) Tax and Insurance Escrow Fund. There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Servicer; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Servicer to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Servicer may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower. If the Servicer determines that the Tax and Insurance Escrow Fund is over-funded for any reason, the Servicer may direct the Trustee to return all or a portion of the moneys in the Tax and Insurance Escrow Fund to the Borrower.

(c) Rebate Fund. The Rebate Fund is for the sole benefit of the United States of America and shall not be subject to the claim of any other person, including without limitation, the Issuer and shall not be part of the Security. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, is held in trust and applied solely as provided in the Tax Certificate. Moneys and securities held by the Trustee in the Rebate Fund are not pledged or otherwise subject to any security interest in favor of the Trustee to secure the Bonds or any other payments required to be made hereunder or any other document executed and delivered in connection with the issuance of the Bonds. The Trustee will make deposits to and disbursements from the Rebate Fund, as well as investments of the amounts therein, in accordance with the written directions received from the Borrower, all in accordance with the

provisions of the Tax Certificate. Notwithstanding the foregoing, the Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

(d) Replacement Reserve Fund. There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to the Replacement Reserve Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Trustee upon receipt of a written request therefor executed by the Borrower and approved in writing by the Servicer, in accordance with the terms of the Replacement Reserve Agreement; provided that, upon the occurrence and continuation of an Event of Default hereunder, all moneys and investments in the Replacement Reserve Fund (other than moneys held to pay costs required to be paid but not yet payable) may be disbursed at the direction of the Servicer to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Servicer may determine. Upon the payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable. If the Servicer determines that the Replacement Reserve Fund is over-funded for any reason, the Servicer may direct the Trustee to return all or a portion of the moneys in the Replacement Reserve Fund to the Borrower.

(e) Operating Reserve Fund. There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.5 of the Loan Agreement. Funds shall be disbursed from the Operating Reserve Fund, at the request of the Borrower, but only with the Servicer's written consent, to fund any operating deficits or expenses of the Borrower or for any other operating or capital needs of the Project Facilities. Upon receipt by the Trustee from the Borrower of a written request together with the written approval of the Servicer, which approval shall not be unreasonably withheld or delayed, the Trustee shall disburse funds from the Operating Reserve Fund in accordance with such written request. Upon the occurrence and continuation of an Event of Default, all moneys and investments in the Operating Reserve Fund may be disbursed at the direction of the Servicer to pay any costs and expenses of the Project Facilities, to pay any costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Servicer may determine. Interest earnings on amounts held in the Operating Reserve Fund shall be released not more frequently than annually to the Borrower upon its written request and with the prior written consent of the Servicer. Upon payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.



**Section 4.6 Records.**

(a) The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder and all disbursements therefrom and shall periodically deliver to the Borrower, with a copy to Servicer, monthly statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Servicer, within a reasonable period of time, with a report stating the principal amount of Bonds Outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Servicer in its request.

(b) The Trustee shall provide the Borrower and the Servicer with a written report, on a monthly basis through the calendar month in which the last obligation of the Bonds is retired, identifying the Permitted Investments in which the moneys held as part of the Accounts were invested during the preceding period and the dates of such investments, together with such other information as the Trustee ordinarily provides to Persons such as the Borrower and the Servicer in its regular monthly investment reports.

**Section 4.7 Investment of Funds.** Subject to the provisions of Section 4.8 hereof, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed by the Borrower with the prior written consent of the Servicer; provided, however, that any moneys held by the Trustee to pay the principal of or interest that has become payable with respect to the Bonds shall not be invested. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower approved by the Servicer to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days. Notwithstanding the foregoing, upon the written election of the Holders of all of the Outstanding Bonds, after providing written notice to the Borrower, the Trustee and the Servicer of such election, any or all Accounts established under this Indenture may be maintained on behalf of Holders at a Qualified Custodian and not by the Trustee and all payments required to be made by the Borrower with respect to such

Accounts shall be paid directly to such Qualified Custodian. Notwithstanding anything herein to the contrary, funds in the Subordinate Debt Proceeds Account shall be held uninvested by the Trustee.

**Section 4.8 Yield Restriction.** Funds in the [list appropriate funds/accounts] in excess of \$ \_\_\_\_\_, the allowable minor portion, will not be invested at an overall yield in excess of the yield on the Bonds, which has been computed to be not greater than \_\_\_\_% per annum, unless the Borrower, the Trustee and the Servicer receive an Opinion of Bond Counsel that the investment of such funds at an overall yield in excess of such amount does not adversely affect the excludability of interest on the Bonds by the Holders thereof for federal income tax purposes.

**Section 4.9 Transfers Between Funds and Accounts; Use of Amounts in Funds and Accounts.** The Trustee shall transfer moneys between Accounts as directed in writing by the Servicer and consented to by the Borrower, provided that no consent shall be required following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments hereunder may be disbursed at the direction of the Servicer to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Servicer may determine.

**Section 4.10 Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations or the Environmental Indemnity shall be used or applied or invested by the Trustee as directed in writing by the Servicer.

## ARTICLE V DISCHARGE OF LIEN

**Section 5.1 Discharge of Lien and Security Interest.** Upon payment in full of all of the Bonds and all other amounts payable under the Loan Agreement and other Bond Documents, these presents and the Security Interests shall cease, determine and be discharged, and thereupon the Trustee shall, upon receipt by the Trustee of a Favorable Opinion of Bond Counsel and an opinion of Counsel stating that all conditions precedent to the satisfaction and discharge of this Indenture have been complied with, (a) cancel and discharge this Indenture and the Security Interests; (b) execute and deliver to the Issuer and the Borrower, at the Borrower's expense, such instruments in writing as shall be required to cancel and discharge this Indenture and the Security Interests and reconvey to the Issuer and the Borrower the Security, and assign and deliver to the Issuer and the Borrower so much of the Security as may be in its possession or subject to its control, except for moneys and Government Obligations held in the Bond Fund for the purpose of paying Bonds; and (c) mark as cancelled the Note and satisfy the Mortgage; provided, however, that the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof shall not terminate the powers and rights granted to the Trustee, with respect to the payment, registration of transfer and exchange of the Bonds; provided, further, that the rights of

the Issuer and the Trustee to indemnity, non-liability and payment of all reasonable fees and expenses shall survive the cancellation and discharge of this Indenture pursuant to this Section or Section 5.3 hereof.

**Section 5.2 Provision for Payment of Bonds.** Bonds shall be deemed to have been paid within the meaning of Section 5.1 hereof if:

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds not later than the earliest redemption date possible under Section 3.4 (and any earlier partial redemption date required herein) and interest to accrue thereon, and redemption premium, if any, through such maturity or redemption dates, as the case may be;

(b) there shall have been paid or provision duly made for the payment of all fees and expenses of the Issuer and the Trustee, due or to become due; and

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

(d) Limitations set forth elsewhere herein regarding the investment of moneys held by the Trustee in the Bond Fund shall not be construed to prevent the depositing and holding in the Bond Fund of the Government Obligations described in this Section 5.2 for the purpose of defeasing the lien of this Indenture as to Bonds which have not yet become due and payable. Notwithstanding any other provision of this Indenture to the contrary (but subject to Section 5.2(a) hereof), all funds deposited with the Trustee as provided in this Section may be invested and reinvested, at the direction of the Borrower, in Government Obligations (or in a money market fund that invests solely in Government Obligations and is rated no lower than the second highest category by one of Fitch, Moody's or S&P and, if more than one of such rating agencies then rates such money market fund, is rated no less than the second highest rating category by each of such rating agencies then rating such money market fund) maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations (or money market fund) in the hands of the Trustee pursuant to this Section which is not required for the payment of the Bonds and interest and redemption premium, if any, thereon with respect to which such moneys shall have been so deposited shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in the Bond Fund.

**Section 5.3 Discharge of this Indenture.** Notwithstanding the fact that the lien of this Indenture upon the Security may have been discharged and cancelled in accordance with Section 5.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Security may have been discharged and cancelled, shall nevertheless continue and subsist after payment in full of the Bonds or the deemed payment in full of the Bonds in accordance with Section 5.2 hereof until the Trustee shall have returned to the Borrower all funds held by the Trustee which the Borrower is entitled to receive pursuant to this Indenture after all Bonds have been paid at maturity or redeemed. Upon payment in full or defeasance of the Bonds, payment of amounts payable to the United States pursuant to any rebate requirement and payment of all other amounts owing hereunder and under the Loan Agreement, all remaining amounts held by the Trustee shall be paid to the Borrower.

## **ARTICLE VI DEFAULT PROVISIONS AND REMEDIES**

**Section 6.1 Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

- (a) Failure to pay interest on any Bond when and as the same shall have become due;
- (b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due, whether at the stated maturity or redemption date thereof or by acceleration;
- (c) Failure to observe or perform any other of the covenants, agreements or conditions on the part of the Issuer included in this Indenture or in the Bonds and the continuance thereof for a period of thirty (30) days after written notice to the Issuer and the Borrower has been given by the Trustee or by the Servicer (with a copy to the Trustee); or
- (d) The occurrence of an Event of Default under the Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Bond Documents to which the Borrower is a party and continuation of such failure beyond the expiration of any notice, grace or cure period provided in the Loan Agreement or the Bond Documents (as applicable).

**Section 6.2 Acceleration.**

(a) Upon the direction of the Servicer, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Holders and the Servicer, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon

to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 hereof (if applicable).

(b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

### **Section 6.3 Other Remedies; Rights of Holders.**

(a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Servicer, and shall upon the direction of the Servicer, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.

(b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Servicer, the Majority Owner or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Majority Owner, the Servicer or to the Holders hereunder or now or hereafter existing.

(c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(d) No waiver of any Default or Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Default or Event of Default or shall impair any rights or remedies consequent thereon.

(e) The Trustee, as the assignee of substantially all right, title and interest of the Issuer in and to the Loan Agreement and the Note, shall be empowered to enforce each and every right granted to the Issuer under the Loan Agreement and the Note other than Reserved Rights.

### **Section 6.4 Right of Servicer to Direct Proceedings.**

(a) Anything in this Indenture to the contrary notwithstanding, the Servicer shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

(b) No Holder shall have the right to institute any proceeding for the enforcement of this Indenture unless such Holder has given the Trustee and the Borrower written notice of an

Event of Default, the Servicer shall have requested the Trustee in writing to institute such proceeding, the Trustee shall have been afforded a reasonable opportunity to exercise its powers or to institute such proceeding, there shall have been offered to the Trustee indemnity satisfactory to it against the cost, expense and liability to be incurred in connection with such request and the Trustee shall have thereafter failed or refused to exercise such powers or to institute such proceeding within sixty (60) days after receipt of notice with no inconsistent direction given during such sixty (60) days by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. Nothing in this Indenture shall affect or impair any right of enforcement conferred on any Holder by the Act or otherwise to enforce (i) the payment of the principal of, acceleration premium, if any, and interest on Bonds at and after the maturity thereof, or (ii) the obligation of the Issuer to pay the principal of, acceleration premium, if any, and interest on Bonds to such Holder at the time, place, from the sources and in the manner as provided in this Indenture.

**Section 6.5 Discontinuance of Default Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Issuer and the Trustee shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 6.6 Waiver.** The Trustee, with the consent of the Servicer may, and shall upon the written direction of the Servicer, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Bonds in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Bonds and all fees and expenses of the Trustee and the Issuer shall have been paid or provided for.

**Section 6.7 Application of Moneys.** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

(a) Unless the principal of all Bonds shall have become or been declared due and payable, all such moneys shall be applied:

**First:** To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available

shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

**Second:** To the payment of the unpaid principal of and acceleration premium, if any, of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), with interest on such Bonds from the respective dates upon which they became due (at the rate borne by the Bonds, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date;

**Third:** To the payment of the amounts required to reimburse the Issuer and the Owners of the Bonds for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder; and

**Fourth:** The balance shall be paid to the Borrower (subject to any required deposits to the Rebate Fund).

(b) If the principal of all the Bonds shall have become or been declared due and payable, all such moneys shall be applied to the payment of the principal, acceleration premium, if any, and interest then due and unpaid upon the Bonds, without preference or priority as between principal, premium, interest, installments of interest or Bonds, ratably according to the amounts due respectively for principal, premium and interest to the persons entitled thereto.

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section.

(d) Notwithstanding anything contained herein to the contrary, the Servicer may, with express written consent of the Majority Owner, by written notice to the Trustee direct the application of funds other than in the manner set forth in Section 6.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Bonds.

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven (7) calendar days after such acceleration upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid

in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before the First Optional Call Date, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII THE TRUSTEE**

**Section 7.1 Appointment of Trustee.** The Trustee is hereby appointed and does hereby agree to act in such capacity, and to perform the duties of the Trustee under this Indenture, but only upon and subject to the following express terms and conditions (and no implied covenants or other obligations shall be read into this Indenture against the Trustee):

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees. The Trustee may act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as provided in Section 7.8 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any Financing Statements or continuation statements, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Trustee shall not be liable to the Borrower, any Holder, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Servicer, as applicable. The Trustee shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder after such Bonds shall have been delivered in accordance with instructions of the Issuer or for the use by the Borrower of the proceeds of the Bonds advanced to the Borrower as provided in the Loan Agreement. The Trustee may become the owner of Bonds secured hereby with the same rights as any other Holder.



(d) The Trustee shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Trustee pursuant to the terms of this Indenture or any of the Bond Documents shall not be effective until provided in writing. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the Holder of any Bond shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) The permissive right of the Trustee to do things enumerated in this Indenture or the Loan Agreement shall not be construed as duties. The Trustee shall only be responsible for the performance of the duties expressly set forth herein and shall not be answerable for other than its gross negligence, bad faith or willful misconduct in the performance of those express duties.

(f) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts, relating to the Project Facilities.

(g) The Trustee shall not be required to give any bond or surety in respect of the execution of said trust and powers or otherwise in respect of this Indenture.

(h) Before taking any action requested hereunder by the Holders which may require it to expend its own funds, the Trustee may require satisfactory security or indemnification for the reimbursement of all expenses to which it may be put by reason of any action so taken. The Trustee shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Majority Owner or the Servicer which do not require the Trustee to expend its own funds or for which funds have been advanced by the Majority Owner or the Servicer to the Trustee in advance of its taking such action.

(i) All moneys received by the Trustee, until used or applied or invested as herein provided, shall be held as special trust funds for the purposes specified in this Indenture and for the benefit and security of the Holders of the Bonds as herein provided. Such moneys need not be segregated from other funds except to the extent required by law or herein provided, and the Trustee shall not otherwise be under any liability for interest on any moneys received hereunder except such as may be agreed upon.

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) hereof if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) in

the event of written notification of a Determination of Taxability by the Holder of any Bonds, (iv) in the event of written notification of such Default by the Servicer, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) in the event of receipt of an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Trustee's other duties hereunder, the Trustee shall authenticate and cancel Bonds as provided herein, keep such books and records relating to such duties as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer and the Borrower at all reasonable times. All Bonds shall be made available for authentication, exchange and registration of transfer at the principal office of the Trustee.

(m) The Trustee shall have no duty to inspect or oversee the construction or completion of the Improvements or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

(n) Without limiting the duties of the Trustee expressly set forth herein, the Trustee shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Bonds or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Bonds under Section 148 of the Code, or (iii) the calculation of any amount required to be rebated to the United States under Section 148 of the Code.

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

(p) Whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee may, in the absence of bad faith on its part and except as otherwise expressly set forth herein, rely upon a written certificate of the Servicer or the Majority Owner.

(q) In the absence of a direction from the Servicer, if the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of Holders of the Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Indenture, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

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

(s) The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold or deal in any of the Bonds and may join in any action that any Holder may be entitled to take with like effect as if it were not the Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the Borrower and may act as depository, trustee or agent for any committee of Holders secured hereby or other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the affiliates of the Trustee.

(t) The Trustee shall have no responsibility or obligation to DTC Participants, to Indirect Participants, or to the Persons for whom they act as nominees with respect to the Bonds, or to any Beneficial Owner of Bonds in respect of the accuracy of any records maintained by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant, the payment by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any amount in respect of the principal of or interest on the Bonds, any notice which is permitted or required to be given under this Indenture, the selection by the Securities Depository, the Securities Depository Nominee or any DTC Participant or Indirect Participant of any Person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by the Securities Depository or the Securities Depository Nominee as Holder.

(u) Whether or not expressly so provided, each and every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section.

## **Section 7.2 Compensation and Indemnification of Trustee; Trustee's Prior Claim.**

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its own account. Except as set forth in Section 6.7, the Trustee

shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

(b) The Borrower shall (i) pay the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), (ii) pay or reimburse the Trustee upon request for all reasonable expenses, disbursements and advances incurred or made, in accordance with any of the provisions of this Indenture and the Loan Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its Counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own gross negligence, willful misconduct or bad faith, and (iii) indemnify the Trustee for, and hold it harmless against, any loss, liability or expense incurred by it, arising out of or in connection with the acceptance or administration of this Indenture or the trusts hereunder or the performance of its duties hereunder or under the Loan Agreement, including the reasonable costs and expenses of defending itself against or investigating any claim of liability in the premises, except to the extent that any such loss, liability or expense was due to its own gross negligence, willful misconduct or bad faith. "Trustee," for purposes of this Section shall include any predecessor Trustee, but the gross negligence, willful misconduct or bad faith of any Trustee, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Indenture.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Servicer, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

**Section 7.4 Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Servicer and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Servicer and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Servicer may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Servicer and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper of any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Servicer and the Borrower and signed by the Majority Owner. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Servicer, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Servicer and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Servicer, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the

directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

**Section 7.7 Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be

appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8 Filing of Financing Statements.** The Trustee shall file or record or cause to be filed or recorded all Financing Statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection therewith, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) those Financing Statements which shall have been filed at or prior to the issuance of the Bonds in connection with the security for the Bonds pursuant to the authority of the U.C.C., and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the financing and continuation statements required under Section 3.2 of the Loan Agreement. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required hereunder and under Section 3.2 of the Loan Agreement.

## ARTICLE VIII AMENDMENTS, SUPPLEMENTAL INDENTURES

### **Section 8.1 Supplemental Indentures.**

(a) The Issuer and the Trustee, with the prior written consent of the Servicer, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to modify, amend or supplement this Indenture to permit a transfer of Bonds from one Securities Depository to another or the discontinuance of the Book-Entry System and issuance of replacement Bonds to the Beneficial Owners;



(vi) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders; or

(vii) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and will not adversely affect the excludability of interest on the Bonds from the gross income of the Holders thereof for federal income tax purposes, the Trustee will join the Issuer in the execution of such supplemental indenture, but shall not be required to join the Issuer in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2 and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Majority Owner) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for

any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the Issuer in the execution of any supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3 Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Servicer. The Issuer may, with the consent of the Servicer, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the exclusion of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Servicer.

**Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment

of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Servicer and the Majority Owner.

**Section 8.5 Notice to and Consent of Holders.** If consent of the Servicer, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Servicer, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Servicer, the Majority Owner or the Holders of all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Holders shall thereby be conclusively presumed.

## ARTICLE IX SERVICER; SERVICING

**Section 9.1 Majority Owner to Appoint Servicer [and Indexing Agent].** The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, to act on behalf of the Majority Owner under the Bond Documents as the “Servicer” [and “Indexing Agent”]. The Majority Owner may terminate such Servicer [or Indexing Agent] as provided in the Servicing Agreement [or any separate agreement with the Indexing Agent]. The Majority Owner shall give written notice to the Trustee, the Issuer and the Borrower of its appointment, termination, removal or replacement of any Servicer [or Indexing Agent], and the parties may rely on any such notice until any subsequent notice is given and cause the Servicing Agreement [and any separate agreement with the Indexing Agent] to be replaced or assumed in connection with any such replacement. Initially, the Majority Owner [will act as Indexing Agent and] [as Servicer] [has engaged [Servicer] to act as the “Servicer” hereunder and [Servicer] has accepted such engagement]. The Majority Owner is under no obligation to appoint a Servicer [or an Indexing Agent]; if at any time a Servicer [or Indexing Agent] has not been designated by the Majority Owner, all references to the “Servicer” [or Indexing Agent] herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion or certificate provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Servicer [or Indexing Agent] shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Borrower, the Trustee or any other Person for any act or omission of the Servicer [or Indexing Agent] unless the Servicer is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case.

**Section 9.2 Servicing Agreement.** The Construction Lender will initially act as Servicer during the Construction Phase . The Permanent Lender has appointed the [Permanent Lender Servicer] to be the servicer of the Loan during the Permanent Phase and directed the Trustee to enter into the Servicing Agreement. Each Servicer has accepted such appointment and shall be responsible for the performance of the servicing duties set forth herein and in any applicable Servicing Agreement.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of the Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its “prime rate” shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Servicer and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or electronic mail (with confirmed receipt) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be

deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Servicer and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

**To the Issuer:** Housing Finance Authority of Broward  
County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, FL 33301  
Attention: Executive Director  
Telephone: (954)-357-5728

**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 the County with respect to the  
County Loan:** Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Telephone: (954) 357-5728

**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

**To the Borrower:** Golden Acres Senior Apartments, LLLP  
c/o Housing Authority of Pompano Beach  
321 W. Atlantic Blvd.  
Pompano Beach, FL 33060  
Attention: Executive Director

**with a copy to:** Stearns Weaver Miller Weissler Alhadeff &  
Sitterson, P.A.  
150 West Flagler Street  
Suite 2200  
Attn: Brian McDonough, Esq.  
Telephone: (305) 789-3350

Email: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

**To the Trustee:**

The Bank of New York Mellon Trust  
Company, N.A.  
4655 Salisbury Rd. Suite 300 Jacksonville,  
FL 32256  
Attention: Corporate Trust Department  
E-mail: [shanna.cooke@bnymellon.com](mailto:shanna.cooke@bnymellon.com)  
Telephone: 904-645-1985

**To the Majority Owner:**

At the address set forth on the Register  
maintained by the Trustee

**If to the Servicer during the  
Construction Phase:**

TD Bank, N.A.  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

**With a copy to:**

Holland & Knight LLP  
1180 West Peachtree Street, NW  
Suite 1800  
Atlanta, Georgia 30309  
Attention: Woodrow W. Vaughan III

**If to Investor Limited Partner:**

RJ MT Golden Acres Senior Apartments,  
L.L.C.  
c/o Raymond James Affordable Housing  
Investments, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Email: [Steve.Kropf@RaymondJames.com](mailto:Steve.Kropf@RaymondJames.com)  
Attention: Steven J. Kropf, President

**With a copy to:**

Nixon Peabody, LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Nathan A. Bernard

**Section 10.5 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**Section 10.6 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.7 Governing Law.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 10.8 Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement or any other Bond Document shall not constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security.

**Section 10.9 Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

[The remainder of this page is left blank intentionally.]

**IN WITNESS WHEREOF**, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

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

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

Name: Scott Ehrlich

Title: Chair



**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee**

By: \_\_\_\_\_  
Name: Shanna Cooke  
Title: Vice President

**EXHIBIT A  
FORM OF BOND**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE BONDS  
PROVIDENT PLACE, SERIES 2023**

No. R-\_\_\_

| DATED DATE    | MATURITY DATE | INTEREST RATE   | CUSIP NO. |
|---------------|---------------|---|-----------|
| _____, 2023__ | _____, 20__   | [Variable] [___%]<br>[until the Conversion<br>Date and ___%<br>thereafter] [___%] | [_____]   |

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND  
DOLLARS (\$\_\_\_\_\_)

The Housing Finance Authority of Broward County, Florida (the "Issuer"), a public body corporate and politic duly organized and existing under the laws of the State of Florida, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing \_\_\_\_\_, 20\_\_ to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), or its successor.

[FIXED RATE TRANSACTIONS-Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months.] [VARIABLE RATE TRANSACTIONS-To but excluding the Conversion Date, interest on this Bond shall be computed on the basis of a 360-day year, for actual days elapsed, and from and after the Conversion Date, interest shall be computed on the basis of a 360-day year comprised of twelve 30 day months]. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized Housing Finance Authority Of Broward County, Florida Multifamily Housing Revenue Bonds Provident Place, Series 2023, issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), pursuant to the provisions of the Florida Housing Finance Authority Law, Florida Statutes, Sections 159.601 through 159.623, as amended (the "Act").

[This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Construction Lender, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the Construction Lender shall be noted on the recordkeeping system maintained by the Trustee.]

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of [December] 1, 2023 (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located in Pompano Beach, Florida, and known as "Provident Place" (the "Project Facilities"). The Borrower's payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of [December] 1, 2023 (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Servicer as provided in the Indenture and authorizes the Servicer to exercise such rights and remedies afforded to the Servicer on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the State to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability

by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

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

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Secretary all as of the dated date hereof.

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

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

Name: Scott Ehrlich

Title: Chair

Attest:

\_\_\_\_\_  
Milette Thurston Manos, Secretary

**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as trustee**

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

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:  
Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.



**EXHIBIT B**  
**FORM OF INVESTOR LETTER**

[Date]

Housing Finance Authority of Broward County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, FL 33301

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256

Re: Housing Finance Authority of Broward County, FL  
Multifamily Housing Revenue Bonds  
Provident Place, Series 2023

The undersigned, as purchaser (the "Purchaser") of the above-referenced Bonds issued pursuant to the Indenture of Trust dated as of [December] 1, 2023 (the "Indenture") between the Housing Finance Authority of Broward County, Florida (the "Issuer") and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), hereby represents that:

1. The Purchaser has authority to purchase the Bonds and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Bonds.

2. The Purchaser is a "qualified institutional buyer" (a "Qualified Institutional Buyer") under Rule 144A of the Securities Act of 1933, as amended (the "1933 Act"), or an "accredited investor," as defined in Regulation D under the 1933 Act, and, as such, is an Approved Buyer, as defined in the Indenture, and therefore has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the Bonds.

3. The Bonds are being acquired by the Purchaser for its own account for investment purposes and not with a present view to or for resale thereof. The Purchaser understands that it may need to bear the risks of this investment for an indefinite time, since any sale prior to maturity may not be possible. Nothing in the prior sentences, however, shall limit the Purchaser's right to sell and transfer the Bonds at any time subject to the terms of the Indenture.

4. Any disposition by the Purchaser at this time of all or any part of the Bonds shall be only to an institution or entity that is an Approved Buyer or that Purchaser reasonably believes

is an Approved Buyer (or otherwise in accordance with the terms of paragraph 9 of this letter); provided, however, the Purchaser reserves the right to deposit such Bonds into a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Buyers; it being understood and agreed that, under such circumstances, each such beneficial owner, in connection with its acquisition of an interest in such arrangement, would be required to represent to the relevant trustee or custodian that it was acquiring such interest for its own account and for investment purposes, and not with a present view to or for resale.

5. The Purchaser understands that the Bonds are not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further understands that the Bonds (a) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any disposition of the Bonds by it, and further acknowledges that any current exemption from registration of the Bonds does not affect or diminish such requirements.

6. The Purchaser understands that (a) the Bonds are not secured by any pledge of any moneys received or to be received from taxation by the State of Florida or any political subdivision thereof and that the Issuer has no taxing power, (b) the Bonds do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Issuer, the State of Florida or any political subdivision thereof; and (c) the liability of the Issuer with respect to the Bonds is limited to the Security as set forth in the Indenture.

7. The Purchaser acknowledges that to its knowledge 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 Purchaser has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower, the Project Facilities and the Bonds and the security therefor so that, as a reasonable investor, the Purchaser has been able to make its decision to purchase the Bonds.

8. The Purchaser has made its own inquiry and analysis with respect to the Bonds and the security therefor, and other material factors affecting the security and payment of the Bonds. The Purchaser is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

9. The Purchaser acknowledges that it has the right to sell and transfer the Bonds in Authorized Denominations: (i) to an Affiliate of the Purchaser; (ii) to an institution or entity it reasonably believes is a Qualified Institutional Buyer; (iii) to an Approved Buyer other than a Qualified Institutional Buyer in a transaction that is in compliance with, or exempt from, the

registration requirements of the Securities Act and other applicable securities laws; or (iv) by deposit into a trust or custodial arrangement as described in paragraph 4 of this letter.

10. In entering into this transaction the Purchaser has not relied upon any representations or opinions made by the Issuer other than representations and statements set forth in the documents and opinions delivered in connection with the issuance of the Bonds, nor has it looked to, nor expected, the Issuer to undertake or require any credit investigation or due diligence reviews relating to the Borrower, its financial condition or business operations, the Project Facilities (including the financing or management thereof), or any other matter pertaining to the merits or risks of the transaction, or the adequacy of the funds pledged to secure repayment of the Bonds.

11. Capitalized terms used herein and not otherwise defined have the meaning given such terms in the Indenture.

\_\_\_\_\_, as  
Purchaser  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



|                               |   |
|-------------------------------|---|
| First Interest Payment Date:  | ___ 1, 20__   |
| First Principal Payment Date: | [IF AMORTIZATION COMMENCES AT CLOSING- ___ 1, 20__ (Insert the first calendar day of the second month following the Issue Date)]<br><br>[IF AMORTIZATION COMMENCES AT STABILIZATION-The first (1 <sup>st</sup> ) calendar day of the month following achievement of Stabilization.] |
| Conversion Date:              | The first Interest Payment Date following approval of achievement of Stabilization by the Servicer, with the consent of the Permanent Lender, subject to mandatory tender and transfer of the Bonds to the Permanent Lender pursuant to the Bondholder Agreement.                   |
| First Optional Call Date:     | ___ 1, 20__   |
| First Put Date:               | ___ 1, 20__   |
| Mandatory Prepayment Amount:  | \$_____   |
| [Optional Redemption Premium] | [insert premium call dates and amounts]   |
| <b>Other Terms:</b>           |   |
| Minimum Coverage:             | 1.____ to 1.0   |
| Minimum Occupancy:            | [90%]   |
| Testing Period:               | Three (3) Months  |
| Operating Reserve Amount:     | \$_____   |
| Completion Date:              | ___ 1, 20__   |
| Outside Stabilization Date:   | ___ 1, 20__   |
| Underwritten Expenses:        | \$_____ per annum (increased on an annual basis commencing January 1, 20__ by 3%) adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions  |

|                                |   |
|--------------------------------|---|
|                                | constituting real property taxes, if any, the cost shall be based on the full assessed value of the Project Facilities after taking into account completion of [construction/rehabilitation]), plus all required deposits into the Replacement Reserve Account. |
| Underwritten Economic Vacancy  | ___%  |
| Underwritten Management Fee    | ___%  |
| Retainage                      | ___%  |
| Guarantor(s):                  | TVC Development, Inc. and the Housing Authority of Pompano Beach.   |
| Guarantor Financial Covenants: | Minimum Liquidity: \$1,000,000<br>Minimum Net Worth: \$10,000,000   |
| Subordinate Loan:              | Broward County: \$3,500,000<br>Broward County Housing Authority: \$3,000,000  |
| Subordinate Lender:            | Broward County and Broward County Housing Authority   |
| [Origination Fee]:             | [Revise for and Servicer, Construction Lender or Permanent Lender Fees as applicable]   |
| [Construction Monitoring Fee]: | [Revise for and Servicer, Construction Lender or Permanent Lender Fees as applicable]   |
| Tax Abatement/Exemption:       | [Applicable. [Insert Authority Reference]<br><br>[None]   |

**EXHIBIT "B"**

**FORM OF LOAN AGREEMENT**

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**LOAN AGREEMENT**

**by and between**

**GOLDEN ACRES SENIOR APARTMENTS, LLLP**

**and**

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

**Dated as of [December] 1, 2023**

**Relating to:**

**\$\_[\_\_\_\_\_]**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds  
Provident Place Apartments, Series 2023**

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The amounts payable to Housing Finance Authority of Broward County (the "Issuer") and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") under the Indenture of Trust between the Issuer and the Trustee dated as of [December] 1, 2023.



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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this "Agreement") made as of [December] 1, 2023, by and between Housing Finance Authority of Broward County, Florida a public body corporate and politic, duly organized and validly existing under the laws of the State of Florida (together with its successors and assigns, the "Issuer") and Golden Acres Senior Apartments, LLLP, a limited liability limited partnership duly organized and validly existing under the laws of the State of Florida (together with its permitted successors and assigns, the "Borrower"),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under Florida Housing Finance Authority Law, as amended (the "Act") to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$[\_\_\_\_\_] in original aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds Provident Place Apartments, Series 2023 (the "Bonds"), pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the "Indenture"), dated as of [December] 1, 2023, between the Issuer and The Bank of New York Mellon Trust Company, N.A., a national banking association, duly organized and existing under the laws of the United States of America trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the "Trustee"), to provide funds to finance the costs of the acquisition, construction, and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 100 units and related personal property and equipment, located in Pompano Beach, Florida and known as "Provident Place" (the "Project Facilities").

**WHEREAS**, contemporaneously with the issuance of the Bonds, TD Bank, N.A., the Borrower and R4 Capital Funding (the "Permanent Lender") are entering into that certain Forward Commitment Agreement (the "Forward Commitment") pursuant to which the Permanent Lender will purchase the Bonds from the Construction Lender upon satisfaction of the Conditions to Conversion (as defined in the Forward Commitment).

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

## ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture.

Section 1.2. Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words "hereof", "herein", "hereto", "hereby" and "hereunder" refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants", (v) the term "including" shall mean "including, but not limited to," and (vi) the terms "best knowledge" or "knowledge" shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## ARTICLE 2 LOAN AND PROVISIONS FOR REPAYMENT

Section 2.1. Basic Loan and Repayment Terms.

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower's obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

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

It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan re-payments payable to the Issuer pursuant to the Note and this subsection. The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

Section 2.2. Fees.

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to [\_\_\_\_\_] the Origination Fee and to [\_\_\_\_\_] a Construction Monitoring Fee, together with the fees and expenses of its counsel together with any fees and expenses set forth in the Forward Commitment. [Revise along the Schedule of Financial Terms for any applicable fees of servicers, Construction Lender or Permanent Lender]

(b) [The Borrower shall pay (as directed by the Servicer) two Business Days before each Interest Payment Date, commencing on the First Interest Payment Date and continuing through final completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the [Servicer] [Construction Lender] in the prior month in an amount not to exceed \$\_\_\_ per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Servicer may direct the Trustee to disburse such amounts as part of any Advance.] [Revise or remove based on Construction Lender term sheet]

(c) The Borrower shall pay the Issuer Fees and all expenses of the Issuer.

(d) The Borrower shall pay the Trustee Fees and all expenses of the Trustee and the fees and expenses of any Qualified Custodian.

[From and after the Conversion Date,] the Borrower shall pay the Servicing Fee to the Servicer.

Section 2.3. Termination; Voluntary Prepayment and Redemption.

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

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 3.4(a) of the Indenture, on any Interest Payment Date on or after the First Optional Call Date, upon the payment of the principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, the First Optional Call Date.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on the Debt Service Schedule, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 3.4(c) of the Indenture.

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

Section 2.4. Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5. Indemnification. The Borrower covenants to defend, indemnify and hold harmless the Issuer, the Trustee, the Servicer, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective directors, officers, employees, representatives and agents (collectively, the "Indemnified Parties"), except as limited below,



from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Bonds, Indenture, Loan Agreement, Regulatory Agreement or Tax Agreement, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance or redemption of the Bonds;

(b) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(c) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Servicer or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;

(d) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(f) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition or construction of, the Improvements or any part thereof;

(g) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project Facilities;

(h) any violation or alleged violation of any applicable law or regulation including, without limitation, any Environmental Law or any inspection, review or testing with respect to Contamination or Environmentally Sensitive Areas;

(i) the enforcement of, or any action taken by the Issuer or any Indemnified Party, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

(j) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(k) any action, suit, claim or demand contesting or affecting the title of the Project Facilities;

(l) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party; and

(m) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project Facilities.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of any Indemnified Party. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith as directed by the Borrower, the Servicer or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof. Amounts payable to the Issuer hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Issuer incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The

obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6. Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1. Mortgage and Other Bond Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered, to the Trustee (and where required, duly record) the Mortgage and each of the other Bond Documents.

Section 3.2. Financing Statements. The Borrower hereby authorizes the Trustee and the Servicer, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Servicer may designate.

### **ARTICLE 4 REPRESENTATIONS OF ISSUER**

Section 4.1. Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a public body corporate and politic, duly organized and existing under the laws of the State and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively

taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

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

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

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

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

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

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

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under the Indenture. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

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

(k) The Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds. All of the amounts received upon the sale of the Bonds shall be allocated to, and shall be used, for the purpose of financing the aggregate basis of land and building costs within the meaning of Section 42(h)(4)(B) of the Code. To the extent within the reasonable control of the Issuer, and provided that the Issuer shall be under no duty to enforce compliance, the amounts received upon the sale of the Bonds and interest and other investment earnings on those amounts shall be allocated and used for financing Project Costs of each building and related land in the Project Facilities so that the aggregate basis of each such building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed fifty percent (50%) or more from those amounts.

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

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

Section 4.2. No Liability of Issuer; No Charge Against Issuer's Credit. . Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

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

Section 5.1. Existence. The Borrower is a limited liability limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to do business in the State. The Borrower has furnished to the Issuer, the Trustee and the Servicer true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, constructing equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is HAPB-Golden Acres Senior Apartments GP Corp, a Florida non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Florida and is duly qualified to do business in the State. The General Partner has furnished to the Issuer, the Trustee and the Servicer true and complete copies of its [organizational documents and certificate of good standing]. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2. Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3. Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. Except as set forth on Schedule 5 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal

or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4. Validity and Binding Effect. This Agreement and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5. No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds, the Subordinate Debt Documents or the Bond Documents or the construction, operation or ownership of the Project Facilities, or the exclusion from gross income of interest on the Bonds for purposes of federal income taxation or, if specified on the Schedule of Financial Terms, as applicable, the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State.

Section 5.6. No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any

Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7. Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate and the Land Use Restriction Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and, if specified as applicable on the Schedule of Financial Terms, the requirements for exemption from ad valorem real estate taxation under the laws of the State.

Section 5.8. Title to Properties; Liens and Encumbrances. The Borrower has a leasehold interest in the real property on which the Project Facilities will be constructed pursuant to the Ground Lease and is the fee simple owner of the Improvements thereon, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9. Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10. Financial Information. All of the financial information furnished to the Servicer or the Majority Owner with respect to the Borrower, the Guarantor, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the General Partner has any material liability or



contingent liability not disclosed to the Servicer or the Majority Owner in writing; and Since its formation, each of the Borrower, the Guarantor, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the General Partner.

Section 5.11. ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation ("PBGC") or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower's, the General Partner's or any ERISA Affiliate's property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "ERISA Affiliate" means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12. Environmental and ADA Representations.

(a) Except as set forth on the Environmental Audit delivered to the Servicer (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities,

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

(b) The Borrower has no knowledge of: (i) any activity or condition at the Project Facilities in violation of any Accessibility Regulation; (ii) any investigation of the Project Facilities with respect to violation of any Accessibility Regulation; (iii) no notice has been issued by any Governmental Authority to the Borrower, the General Partner or any Guarantor identifying the Borrower, the General Partner or any Guarantor as a potentially responsible party with respect to violation of any Accessibility Regulation; (iv) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Accessibility Regulation with respect to the Project Facilities; and (v) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Accessibility Regulation with regard to the Project Facilities.

Section 5.13. Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14. Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

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

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

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

Section 5.18. Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is

included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

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

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

Section 5.21. Development Budget. The Development Budget attached hereto as Schedule 3 accurately reflects: (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22. Plans and Specifications. The Borrower has furnished the Trustee, the Servicer and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Trustee, the Servicer and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for construction of the Project Facilities.

Section 5.23. Survey. The survey for the Project Facilities delivered to the Trustee, the Servicer and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

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

Section 5.25. Rent Roll. To the Borrower's actual knowledge, the rent roll dated [\_\_\_\_\_] 2023, provided to the Servicer, is a true, correct and complete rent roll for the Project Facilities (the "Rent Roll"), which includes all leases affecting the Project Facilities. Except as set forth on the Rent Roll, to the Borrower's actual knowledge: (i) each lease is in full force and effect; (ii) the tenants under the leases have accepted possession of and are in

occupancy of all of their respective demised Project Facilities, have commenced the payment of rent under such leases, and there are no offsets, claims, or defenses to the enforcement thereof; (iii) all rents due and payable under the leases have been paid and no portion thereof has been paid for any period more than thirty (30) days in advance; (iv) the rent payable under each lease is the amount of fixed rent set forth in the Rent Roll, and there is no claim or basis for a claim by tenant thereunder for an adjustment to the rent; (v) no tenant has made any claim against the landlord under the leases which remains outstanding, there are no defaults on the part of the landlord under any lease, and no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; and (vi) to the Borrower's best knowledge, there is not present a material default by the tenant under any lease. The Borrower will hold any security deposits under the leases in a non-commingled bank account in the name of the Borrower and meeting the requirements of applicable laws. None of the leases contains any option to purchase or right of first refusal to purchase the Project Facilities or any part thereof. Neither the leases nor the Rents have been assigned or pledged to any Person and no Person has any interest therein except the tenants thereunder.

Section 5.26. Requisition. Each Requisition submitted to the Servicer shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Servicer is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

## **ARTICLE 6 GENERAL COVENANTS**

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

Section 6.1. Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited liability limited partnership and a Non-Profit Corporation, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) not amend any provision of its certificate of limited partnership, or its Partnership Agreement, articles of incorporation and bylaws, as applicable, relating to its purpose, management or operation without the prior written consent of the Servicer, and (vi) promptly and diligently enforce its rights under the Partnership Agreement and cause Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement.

Section 6.2. Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Servicer.

Section 6.3. Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Servicer and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Servicer.

Section 6.4. Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Servicer for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 12 hereto and such additional insurance as Servicer may require from time to time.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Servicer. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Servicer and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the

occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Servicer on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Servicer, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Servicer may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Servicer toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5. Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6. Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements

(structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7. Inspection Rights.

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

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Servicer notifying the Servicer of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Servicer shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

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



completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8. Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9. Reporting Requirements. The Borrower will furnish or cause to be furnished to the Servicer the following in form satisfactory to the Servicer and in such number of copies as the Servicer may reasonably require:

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

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

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

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

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year (with a draft of such financial statements delivered within ninety (90) days of the close of such Fiscal Year); and

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as

disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate;

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

(4) notwithstanding the foregoing, if the Issue Date occurred on or after November 15, the Borrower may elect, by written notice to Servicer, to include the period from the Issue Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Issue Date occurred.

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Servicer, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Servicer;

(d) Weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

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

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

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

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

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

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

(k) Not later than the Completion Date (i) a Completion Certificate in the form attached as Schedule 7 hereto; and (ii) an Estimated Use of Proceeds Certificate in the form set forth in Schedule 8 hereto;

(l) Not later than the Stabilization Date: (i) a Construction Closeout Deliveries Certificate in the form attached as Schedule 9 hereto; (ii) a Final Use of Proceeds Certificate in the form set forth in Schedule 10 hereto; and (iii) a Stabilization Certificate in the form set forth on Schedule 11 hereto;

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

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

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

(p) [As soon as possible, notice of any violation of the terms and conditions of the Ground Lease and a copy of any notice it receives from the landlord under the Ground Lease;]

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

(r) Upon receipt thereof, copies of all bills for Issuer Fees or Trustee Fees and, upon payment, evidence of payment of such fees.

(s) Promptly following filing thereof, all tax returns of the Borrower and, if requested by the Servicer, the General Partner; and

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

**IF BORROWER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO BORROWER'S DUTY TO PROVIDE PUBLIC RECORDS**

**RELATING TO THIS FINANCING AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 357-4900, [\_\_\_\_\_], 110 NE 3RD STREET, SUITE 300, FORT LAUDERDALE, FLORIDA 33301.**

Section 6.10. Tax-Exempt Status.

(a) The Borrower covenants, represents and agrees that it will not take or omit to take or permit any action that, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Bonds from gross income 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 Agreement, the Mortgage and the Land Use Restriction Agreement, as may be necessary, in the Opinion of Bond 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 Bonds or affecting the Project Facilities.

(b) The Borrower will not make or permit any use, and will not direct the Trustee to make any investment or use of the proceeds of any of the Bonds, which would cause any of the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations thereunder as the same may be applicable to the Bonds at the time of such action, investment or use and agrees to take and cause the Issuer and Trustee to take all actions required to comply with the provisions of Section 148 of the Code. The representations contained in the Tax Certificate (which is incorporated herein by reference) are true and correct, and the Borrower and the Issuer will observe the applicable covenants therein as if set forth herein.

(c) The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to insure that the Trustee complies with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Bonds and the interest thereon, including the employment of a Rebate Analyst for the calculation of any rebatable amount (the “Rebate Amount”) to the United States Treasury Department. The Borrower agrees that it will cause a qualified rebate analyst reasonably acceptable to the Servicer (the “Rebate Analyst”) to calculate the Rebate Amount not later than forty-five (45) days after the fifth (5<sup>th</sup>) anniversary of the Issue Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower shall promptly (i) deliver a report or letter from the Rebate Analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each, a “Rebate Report”) to the Issuer, the Servicer and the Trustee, (ii) deliver the Rebate Amount to the Trustee, and (iii) deliver to the Trustee any forms required by the Internal Revenue Service to be submitted with the Rebate Amount, if any, and the addresses to which such forms must be sent.

(d) Neither the Borrower nor any related person shall, pursuant to any arrangement, formal or informal, purchase any of the Bonds, unless the Borrower or such related person delivers a Favorable Opinion of Bond Counsel to the Trustee, the Servicer and the Issuer.

(e) No changes will be made to the Project Facilities, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(f) The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project Facilities set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Trustee and the Servicer a Favorable Opinion of Bond Counsel.

(g) [No portion of the proceeds of the Bonds will be used to acquire existing property or any interest therein unless such acquisition meets the rehabilitation requirements of Section 147(d) of the Code.]

(h) The Project Facilities will be owned, managed and operated as a “qualified residential rental property” as such phrase is utilized in Section 142(d) of the Code. To that end, the Borrower hereby represents and covenants and agrees that it will comply with the terms, conditions and provisions of the Land Use Restriction Agreement.

(i) The Borrower will permit any duly authorized representative of the Trustee, the Department of the Treasury or the Internal Revenue Service and the Servicer to inspect the books and records of the Borrower pertaining to the incomes of qualifying tenants residing in the Project Facilities upon reasonable notice (given at least 5 days in advance) and at reasonable times during business hours on business days.

(j) The Borrower will promptly notify the Trustee and the Servicer if at any time the dwelling units in the Project Facilities are not available for occupancy as required by the Land Use Restriction Agreement and, upon request, the Borrower will provide the Trustee and the Servicer a copy of the compliance certificates required to be filed by the Borrower under and at the times provided by the Land Use Restriction Agreement.

#### Section 6.11. Single Purpose Entities.

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

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

Section 6.12. Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale

agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

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

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

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

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

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

Section 6.14. Environmental and ADA Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by

the Servicer, the Borrower will provide to the Servicer copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

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

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

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

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



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

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

(h) The Borrower shall comply with all Accessibility Regulations which are applicable to the Project Facilities. In the event that (i) Trustee reasonably believes that a material violation of an Accessibility Regulation may have occurred in connection with the Project Facilities; or (ii) Trustee receives notice from the Borrower or otherwise has knowledge that an event described in subparagraph 3(d) and pertaining to Accessibility Regulations has occurred; then, in any such event, the Borrower shall at its cost obtain and deliver to Trustee an Accessibility Regulation compliance report relating to the Project Facilities; or shall have any previously delivered materials updated and/or amplified, by a qualified consultant selected by

the Borrower and acceptable to Trustee; if the Borrower fails to do so within forty-five (45) days after such request is made, Trustee shall have the right to do so, in which event the Borrower shall reimburse Trustee for the cost incurred by Trustee in doing so within ten (10) days following demand therefor by Trustee.

(i) The Borrower shall, promptly after obtaining knowledge thereof, give notice to Servicer of: (i) any activity or condition in violation of any applicable Accessibility Regulations relating to the Project Facilities, (ii) any governmental or regulatory actions instituted or threatened under any Accessibility Regulations affecting the Project Facilities, and (iii) all claims made or threatened by any third party against the Borrower or any Guarantor or the Project Facilities relating to any Accessibility Regulations.

Section 6.15. Servicer. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed Servicer to serve in the capacity of Servicer hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Servicer, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Servicer made on behalf of the Majority Owner.

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

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

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

Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Ground Lease and the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19. Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Servicer with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts and all payments due under the Ground Lease. The Borrower shall not replace the Managing Agent for the Project Facilities without the Servicer's prior written approval, and the Management Agreement shall not be terminated or modified without the Servicer's prior written approval. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Servicer for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Servicer may (but shall not be required to) engage a new Managing Agent on terms satisfactory to the Servicer in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Servicer, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20. Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for purposes of federal income taxation without first providing reasonable advance notice to the Servicer and the Majority Owner and permitting the Servicer or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Servicer and the Majority Owner.

Section 6.21. List of Bondholders. Upon the written request of the Servicer, the Borrower shall exercise any right it may have under the Indenture to request a list of

Bondholders and shall deliver such list to the Servicer. Any costs associated with obtaining the list of Bondholders at the Servicer's request shall be paid by the Servicer.

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

Section 6.23. Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 –Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an "OFAC Violation"), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Servicer of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the "Anti-Terrorism Regulations"), and the Borrower and the General Partner hereby authorize and consent to the Servicer's taking any and all reasonable steps the Servicer deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24. Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Servicer for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the "Proposed Budget"). The

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

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

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

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

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

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

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

Section 6.26. Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Servicer shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27. Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 6 hereof.

Section 6.28. No Amendments. The Borrower shall not amend, modify or otherwise change the Ground Lease or the Subordinate Debt Documents without the prior written consent of the Servicer.

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

Section 6.30. Evidence of Payment of Costs. If requested by the Servicer, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Servicer, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

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

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

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

Section 6.34. Special Servicing Costs. The Servicer, as servicer of the Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35. Developer Fee. Borrower will not pay any Developer Fee unless permitted under Section 2 of the Developer Fee Pledge.

Section 6.36. Payment and Performance Bonds. Borrower shall furnish to Servicer, and shall maintain in effect through final completion of the Work, such Payment and Performance Bonds with respect to the Contractor, or if the Contractor does not obtain such Payment and Performance Bond, such Payment and Performance Bonds shall be obtained with respect to each contractor that enters into a Major Contract; provided, however, that if Payment and Performance Bonds have been provided by any contractor under a Major Contract in accordance with the terms hereof, any subcontractor of such contractor shall not be required to post any Payment and Performance Bonds in respect of such subcontract. Borrower shall take

such action and require such performance as Servicer deems necessary under the Payment and Performance Bonds. In the event that any payments under any Payment and Performance Bonds are issued jointly to Borrower and Trustee or Borrower and Servicer, Borrower shall endorse any such jointly issued payments to the order of Trustee or Servicer, as determined by Servicer in its discretion, promptly upon Servicer's demand. Notwithstanding the foregoing, provided no Default or Event of Default exists, the Borrower may request that Servicer consent in writing to the release of the Payment and Performance Bonds following achievement of Completion.

Section 6.37. Extension of the Outside Stabilization Date.

(a) The Borrower may, upon 30 days prior written notice to the Servicer, extend the deadline for the Project Facilities to achieve Stabilization so long as:

- (1) there is no uncured Default or Event of Default exists and the Borrower is then in compliance with its obligations under the Bond Documents;
- (2) the extended deadline for the achievement of Stabilization is no later than the earlier of: (i) six months after the initial Outside Stabilization Date; or (ii) the Forward Commitment Expiration Date (as defined in the Forward Commitment);
- (3) and an extension fee equal to 0.25% times the principal amount of Bonds Outstanding at the date of extension is paid to the Servicer with respect to such extension;
- (4) any conditions to such extension set forth in the Forward Commitment or the Bondholder Agreement have been satisfied; and
- (5) the Borrower certifies in writing to the Servicer that cash flows generated from property operations and/or funds on deposit with the Trustee (or other sources approved by the Servicer) will be sufficient to pay debt service during the term of the extension.

(b) -In connection with such extension, the First Principal Payment Date shall be extended to commence on the first Interest Payment Date following Stabilization.

**ARTICLE 7  
DEFAULTS AND REMEDIES**

Section 7.1. Defaults. Each of the following shall constitute an event of default hereunder ("Event of Default"):



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

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

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

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

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

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents or the Subordinate Debt Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents or the Subordinate Debt Documents; [or the occurrence of a breach under the HAP Contract [IRP Agreement] which causes, or, with the giving of notice, the passage of time, or both, would cause HUD to terminate the payments thereunder;]

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts

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

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

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

(j) The Project Facilities fail to achieve (i) Completion on or before the Completion Date; (ii) Stabilization on or before the Stabilization Date, or (iii) if specified on the Schedule of Financial Terms, as applicable, to obtain and maintain the exemption from ad valorem real estate taxation under the laws of the State;

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

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days

or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

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

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

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

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

(q) An event of default or termination event shall have occurred under the Forward Commitment or Bondholder Agreement.

Section 7.2. Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the direction of the Servicer, shall:

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

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Servicer shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Servicer elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Servicer shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Servicer's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Note, and shall be considered part of the indebtedness evidenced by the Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Servicer shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Servicer in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Servicer shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Servicer in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums

required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

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

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

Section 7.3. No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Servicer (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4. No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Servicer or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5. Set-Off Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or

unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6. Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Servicer and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.7. Cure by Investor Limited Partner and/or Special Limited Partner. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner and/or Special Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that neither the Investor Limited Partner nor the Special Limited Partner shall have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8. Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9. Reserved Rights; Regulatory Agreement Defaults.

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

(b) If there shall have occurred and be then continuing an event of default under the Land Use Restriction Agreement which would, in the reasonable judgment of the Issuer or the Trustee, jeopardize the exclusion from gross income of interest on the Bonds (a "Regulatory Agreement Default") and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Servicer and the Majority Owner receive written notice from the Trustee or the Issuer stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the consent of the Servicer or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with an opinion of Bond Counsel to the effect that the failure to cure such default will not have an adverse effect on the exclusion from gross income for federal income tax purposes of interest on the Bonds (which opinion may be requested and obtained by the Servicer or the Majority Owner);

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

(iii) If such Regulatory Agreement Default is not reasonably curable by the Servicer or the Majority Owner without the Trustee's first securing possession of the Project Facilities and/or operational control of the Borrower and the Servicer or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Servicer or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel provided to the Trustee, such extension will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Servicer and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Servicer and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Servicer and the Majority Owner, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other

similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## ARTICLE 8 DEPOSITS TO FUNDS

Section 8.2. Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.3. Deposits to Tax and Insurance Escrow Fund. Unless otherwise directed by the Servicer, two Business Days before each Interest Payment Date, commencing the First Interest Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.4. [Notwithstanding anything herein, during the Construction Phase, disbursements shall be made in accordance with the Construction Lender's loan documents.]

Section 8.5. Deposits to Redemption Fund. Two Business Days before each Principal Payment Date, commencing on the First Principal Payment Date and continuing thereafter until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on the Debt Service Schedule, as modified from time to time pursuant to Section 3.4(e) of the Indenture, for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 3.4(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Servicer as provided in Section 3.4(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.6. Deposits to Operating Reserve Fund. The Borrower [upon achievement of Stabilization,] [upon receipt of the Installment under the Partnership Agreement of the Borrower shall pay or cause to be paid to the Trustee, to be deposited in the Operating Reserve Fund, the Operating Reserve Amount pursuant to Section 4.1 of the Indenture. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund monthly, from and to the extent of revenue from the operation of the Project Facilities available after payment of Expenses, capital expenditures and amounts then due and owing under the Bond Documents, and prior to the payment of any distributions to the Borrower's partners until such time as the balance on deposit in the Operating Reserve Fund equals the Operating Reserve Amount.



Section 8.7. Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Servicer, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Servicer to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Servicer shall not be unreasonably withheld or delayed.

Section 8.8. Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.9. Reports. The Trustee shall provide to the Borrower detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.10. No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## ARTICLE 9 CONSTRUCTION AND FUNDING OF ADVANCES

Section 9.1. Construction of Project Facilities; Completion and Stabilization. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days' following the Issue Date, and shall achieve Completion of such Work in

accordance with the Plans and Specifications on or before the Completion Date and Stabilization on or before the Stabilization Date. At the request of the Borrower and with the prior written approval of the Servicer, the Completion Date may be extended one or more times for such periods as the Servicer may approve in its sole discretion and upon delivery of such other information and funds as the Servicer may require in its sole discretion and the Stabilization Date may be extended as provided in Section 6.37 herein.

Section 9.2. Making The Advances.

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Servicer for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Servicer, and each advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Servicer. The Servicer shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Servicer at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Servicer. Except as otherwise provided for herein, the Servicer shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3. Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Servicer may direct the Trustee to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Servicer in good faith determines payment is due.

Section 9.4. Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Servicer prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs.

Section 9.5. Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section 9.7 hereof, the Servicer shall not be required to approve any Requisition

requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Servicer approve any Advance in an amount exceeding (a) the total cost (as determined by the Servicer) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Trustee from the Project Fund for such costs.

Section 9.6. Retainage. The Servicer shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7. Contingency Reserve. The amount allocated to "contingency" in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Servicer. The disbursement of a portion of the contingency reserve shall in no way prejudice the Servicer from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.8. Stored Materials; Removal of Materials.

(a) The Servicer shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Servicer's receiving satisfactory evidence that:

- (1) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and
- (2) such materials are stored at the Project Facilities, or at such other site as the Servicer shall approve, and are insured and protected against theft and damage.

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

Section 9.9. Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$50,000 or more, the Borrower shall immediately notify the Servicer in writing and promptly submit to the Servicer for its approval a revised Development Budget. If the Servicer otherwise becomes aware of any such change in costs of the Work, the Servicer shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

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

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

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

Section 9.10. Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Servicer and at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Servicer, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Servicer of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

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

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

Section 9.12. Initial Advances. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the conditions precedent listed on Part A of Schedule 6 attached hereto.

Section 9.13. Subsequent Advances. The right of the Borrower to draw any subsequent advances of funds from the Project Fund shall be subject to the satisfaction of the conditions listed on Part B of Schedule 6 attached hereto.

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

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

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

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

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

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

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

(g) Any update to any item described above which Borrower may have previously delivered to Servicer.

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

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

**ARTICLE 10**  
**MISCELLANEOUS**

Section 10.1. Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower: Golden Acres Senior Apartments, LLLP  
c/o Housing Authority of Pompano Beach  
321 W. Atlantic Blvd.  
Pompano Beach, FL 33060  
Attention: Executive Director

With a copy to: Stearns Weaver Miller Weissler Alhadeff  
& Sitterson, P.A.  
150 West Flagler Street  
Suite 2200  
Attn: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email: [bmcdonough@stearnsweaver.com](mailto:bmcdonough@stearnsweaver.com)

If to the Issuer: Housing Finance Authority of Broward  
County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, FL 33301  
Attention: Executive Director  
Telephone: (954)-357-5728

If to the Trustee: The Bank of New York Mellon Trust  
Company, N.A.  
4655 Salisbury Rd. Suite 300 Jacksonville,  
FL 32256  
Attention: Corporate Trust Department  
E-mail: [shanna.cooke@bnymellon.com](mailto:shanna.cooke@bnymellon.com)  
Telephone: 904-645-1985

If to the Servicer during the  
Construction Phase: TD Bank, N.A.  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

With a copy to: Holland & Knight LLP  
1180 West Peachtree Street, NW  
Suite 1800

Atlanta, Georgia 30309  
Attention: Woodrow W. Vaughan III

If to Servicer during Permanent Phase: R4 Capital Funding LLC  
780 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10017  
Attention: Jim Spound  
Email: [jspound@r4cap.com](mailto:jspound@r4cap.com)  
Telephone: (646) 844-0935

With a copy to: Kutak Rock LLP  
Two Logan Square  
100 North 18<sup>th</sup> Street, Suite 1800  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
Email: [Andrew.Schmutz@kutakrock.com](mailto:Andrew.Schmutz@kutakrock.com)

If to the Majority Owner: At the address set forth on the Register  
maintained by the Trustee

If to Investor Limited Partner: RJ MT Golden Acres Senior Apartments,  
L.L.C.  
c/o Raymond James Affordable Housing  
Investments, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Email: [Steve.Kropf@RaymondJames.com](mailto:Steve.Kropf@RaymondJames.com)  
Attention: Steven J. Kropf, President

With a copy to: Nixon Peabody, LLP  
Exchange Place  
53 State Street  
Boston, Massachusetts 02109  
Attention: Nathan A. Bernard

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2. Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Servicer and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the



Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Servicer. The Borrower and the Issuer intend that no person other than the parties hereto, the Majority Owner, the Servicer, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3. Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4. Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5. Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Servicer and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Servicer, and the reasonable fees and expenses of counsel for the Majority Owner and the Servicer with respect thereto and with respect to advising the Majority Owner and the Servicer as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Servicer and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6. Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such

interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7. Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8. Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Servicer, the Trustee, the Issuer and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9. Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Servicer and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER**

**THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

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

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

Section 10.12. Sale of Bonds and Secondary Market Transaction.

(a) At the Servicer or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Servicer or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Servicer or Majority Owner in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Bonds 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 Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Servicer or Majority Owner, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Issuer shall, so long as the Loan is still outstanding:

- (i) (1) provide financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Managing Agent, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Servicer or Majority Owner, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor and other third parties in connection with the Bonds, as may be reasonably requested from time to time by the Servicer or Majority Owner 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 Servicer or Majority Owner pursuant to

this paragraph (i) and the other information provided pursuant to this Agreement and the other Bond Documents used in connection with a Secondary Market Transaction being called the “Provided Information”), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Servicer or Majority Owner and the Rating Agencies;

- (ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower, General Partner, Guarantor, Managing Agent, Contractor or other third parties and the Bond Documents reasonably acceptable to the Servicer or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a “bringdown” of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and
- (iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Servicer and Majority Owner in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Managing Agent, cause it to provide, information reasonably requested by the Servicer or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Servicer or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party). The Borrower shall, if requested by the Servicer or the

Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Servicer, the Trustee, the Issuer and issuer, sponsor, guarantor and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and Servicers (the "Underwriter Group") for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Servicer, the Majority Owner, the Trustee, the Issuer, its members, and the Underwriter Group for any liabilities to which the Majority Owner, the Servicer, the Issuer, the Trustee or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Servicer, the Majority Owner, the Trustee, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Servicer, the Majority Owner, the Trustee or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in

its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

Section 10.13. Nonrecourse.

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

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

(i) the Borrower fails to pay to the Trustee upon demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this

Section 10.13(b)(i) if Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

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

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

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

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

(vi) the occurrence of any of the following transfers:

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

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

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

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

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

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

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, binds, enjoins or otherwise interferes with or

frustrates the efforts of Trustee to exercise any rights and remedies available to Trustee provided herein or in the other Bond Documents.

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

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

(ii) the Borrower's taking any action which adversely affects the exclusion from gross income of interest on the Bonds for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

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

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

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

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



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

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

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

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

(ii) the costs of any audit under Section 6.8 of this Agreement;

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

(iv) Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

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

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

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

Section 10.15. Determinations by the Majority Owner and Servicer. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Servicer or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Servicer or the Majority Owner under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Servicer or the Majority Owner (or its designated representative) at its sole and absolute discretion. The Trustee may, and shall at the written direction of the Holders of all Outstanding Bonds, by separate instrument delegate, assign, transfer and set over unto the Servicer any or all of the rights, remedies, duties and obligations of the Trustee under this Indenture and the other Bond Documents, in which event the Servicer shall have each of the rights, remedies, duties and obligations delegated to it as if specifically named herein and in the other Bond Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Trustee, to enforce each of the remedies provided to the Trustee hereunder or under the other Bond Documents.

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

other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Servicer.

[The remainder of this page is left blank intentionally.]

**IN WITNESS WHEREOF**, the Issuer and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

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

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

Name: Scott Ehrlich

Title: Chair

**GOLDEN ACRES SENIOR APARTMENTS,  
LLP, a Florida limited liability limited  
partnership**

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

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

Name: Lennard N. Robinson

Title: Director

**EXHIBIT A  
FORM OF PROMISSORY NOTE**

**[ISSUER]  
[bond caption]**

No. R-\_\_\_

| <u>DATED DATE</u> | <u>MATURITY DATE</u> | <u>INTEREST RATE</u>   | <u>CUSIP NO.</u> |
|-------------------|----------------------|--|------------------|
| _____, 20__       | _____, 20__          | [Variable] [__%] [until<br>the Conversion Date<br>and __% thereafter]<br>[__%] | [_____]          |

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ MILLION \_\_\_\_\_ HUNDRED THOUSAND DOLLARS  
(\$ \_\_\_\_\_)

The [Issuer] (the "Issuer"), a \_\_\_\_\_, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Bond Coupon Rate (as defined in the Indenture), payable on the first Business Day of each month, commencing \_\_\_\_\_, 20\_\_ to the person whose name appears on the registration books on the day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of \_\_\_\_\_, as trustee (the "Trustee"), or its successor.

[FIXED RATE TRANSACTIONS-Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months.] [VARIABLE RATE TRANSACTIONS-To but excluding the Conversion Date, interest on this Bond shall be computed on the basis of a 360-day year, for actual days elapsed, and from and after the Conversion Date, interest shall be computed on the basis of a 360-day year comprised of twelve 30 day months]. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized [Bond Caption] issued in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"), pursuant to the provisions of the [name of Act] (the "Act").

[This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Construction Lender, less (ii) any payment of principal on the Bonds received by the Holders thereof. Principal amounts advanced by the Construction Lender shall be noted on the recordkeeping system maintained by the Trustee.]

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of \_\_\_\_\_ 1, 20\_\_ (as amended, modified or supplemented from time to time, the "Loan Agreement"), between the Issuer and the Borrower, to finance the acquisition, [construction/renovation] and equipping of a multifamily residential facility located in \_\_\_\_\_, \_\_\_\_\_, and known as "\_\_\_\_\_" (the "Project Facilities"). The Borrower's payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of \_\_\_\_\_ 1, 20\_\_ (as amended, modified or supplemented from time to time, the "Indenture"), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

THE BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, INCOME AND RECEIPTS OF THE ISSUER PLEDGED TO THE PAYMENT THEREOF. THE BONDS DO NOT CONSTITUTE, WITHIN THE MEANING OF ANY STATUTORY OR CONSTITUTIONAL PROVISION, AN INDEBTEDNESS, AN OBLIGATION OR A LOAN OF CREDIT OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION, OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. THE BONDS DO NOT CREATE A MORAL OBLIGATION ON THE PART OF THE STATE, THE SPONSORING POLITICAL SUBDIVISION OR ANY OTHER MUNICIPALITY, COUNTY OR OTHER MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE AND EACH OF SUCH ENTITIES IS PROHIBITED BY THE ACT FROM MAKING ANY PAYMENTS WITH RESPECT TO THE BONDS. THE ISSUER HAS NO TAXING POWER.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Servicer as provided in the Indenture and authorizes the Servicer to exercise such rights and remedies afforded to the Servicer on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the State to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

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

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

[ISSUER]

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

Name:

Title:

Attest:

\_\_\_\_\_  
Secretary



**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

[TRUSTEE], as trustee

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

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:  
Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER: GOLDEN ACRES SENIOR APARTMENTS, LLLP

PROJECT :

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

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

TO: The Bank of New York Mellon Trust Company, N.A., as trustee  
4655 Salisbury Rd. Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

TD Bank, N.A., as Servicer  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

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

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

**Requisition - Contents and Attachments**

- Borrower's Request for Payment
- Borrower's Representations and Warranties
- Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- Pending Change Order and Change Order Log (dated)
- Vendor Payee List or equivalent
- Requisitions and Invoices Supporting Application
- Contractor's Requisition Certificate
- Architect's Requisition Certificate
- Lien Waivers, Conditional for the current Hard cost pay request

- Lien Waivers, Unconditional for payment thru the prior period pay request
- Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- Current Project Schedule
- Other Documents as Requested by the Trustee or Servicer

## Representations and Warranties

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Servicer under the terms of the Loan Agreement dated as of [December] 1, 2023 (the "Agreement"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$[\_\_\_\_\_] in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Servicer.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of [December] 1, 2023, with respect to the Bonds.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Servicer and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents and Subordinate Debt Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Bond Documents or the Subordinate Debt Documents, (ii) except as previously disclosed by the Borrower to the Servicer, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents and the Subordinate Debt

Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents and the Subordinate Debt Documents are in full force and effect.

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

Executed this \_\_\_\_ day of \_\_\_\_, 2023.

Golden Acres Senior Apartments, LLLP,  
a Florida limited liability limited partnership

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

By: \_\_\_\_\_  
Lennard N. Robinson, Director

Approved:

TD Bank, N.A., as Servicer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 2023

**SELTZER MANAGEMENT GROUP, INC.,**  
with respect to the Subordinate Debt

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

**Contractor's Application for Payment**

Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)  
Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)  
Pending Change Order and Change Order Log (dated)



**Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: The Bank of New York Mellon Trust Company, N.A. ("Trustee")  
TD Bank, N.A. ("Servicer")

FROM: \_\_\_\_\_ ("Contractor")

RE: Construction of Provident Place Apartments (the "Project Facilities") by Golden Acres Senior Apartments, LLLP ("Borrower").

We are the general contractor for the Project Facilities and, to induce the Servicer to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements and knowing that the Trustee and the Servicer will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 2023, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 2023, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 2023, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none]

4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.
  
5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 2023 plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

[CONTRACTOR]

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

Name:

Title:

**Architect's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO:           The Bank of New York Mellon Trust Company, N.A. ("Trustee")  
              TD Bank, N.A. ("Servicer")

FROM:       \_\_\_\_\_ ("Architect")

RE:           Construction of Provident Place Apartments (the "Project Facilities") by Golden Acres Senior Apartments, LLLP ("Borrower")

We are the architect for the Project Facilities and, to induce the Servicer to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements, and knowing that the Servicer will rely on this certificate in doing so, we hereby certify as follows:

1.     We inspected the Project Facilities on \_\_\_\_\_, 2023 and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 2023 to be as follows: \_\_\_\_\_  
      \_\_\_\_\_ [substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here]
  
2.     We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
  
3.     All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_  
      \_\_\_\_\_
  
4.     We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from [\_\_\_\_\_] ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for

by and paid to Contractor) \_\_\_\_\_% of the value of labor and materials incorporated into the Improvements.

5. All permits, licenses, approvals and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
6. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
7. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
8. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 2023 with the Borrower except such as have had your prior written approval.
9. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[ARCHITECT]

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

Name:

Title:

**Borrower's Request for Payment**

[attach spreadsheets in form provided by Construction Lender]



**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, \_\_\_\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 2023 (the "Lease") by and between Golden Acres Senior Apartments, LLLP ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

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

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

Resident or Residents:  
(all Residents must sign here)

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

Lessor:

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

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

Authorized Representative:

---

Resident's Signature

---

Resident's Name

---

Resident's Unit No.

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

**SCHEDULE 3  
DEVELOPMENT BUDGET**

**SCHEDULE 4  
PLANS AND SPECIFICATIONS**

**SCHEDULE 5**  
**PERMITS AND APPROVALS NOT YET OBTAINED**

[Borrower to provide list]



**SCHEDULE 6**  
**CONDITIONS TO ADVANCES**

A. **CONDITIONS TO INITIAL ADVANCE.** The right of Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Servicer:

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

2. **Subcontracts; Other Contracts.** The Borrower shall have delivered to the Servicer, and the Servicer shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Servicer correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. **Validity of Liens.** The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Assignment of HAP Contract, the Assignment of Subordinate Debt Documents, the Developer Fee Pledge and the General Partner Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

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

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

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

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

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

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

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

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

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

(d) the obtaining of all approvals, permits and licenses (or evidence that no such permits or licenses are required) which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

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

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

is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Servicer, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

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

9. Deposit of Funds. The initial installment of Required Equity Funds and the other deposits required pursuant to the Closing Memorandum shall have been delivered in accordance with the Closing Memorandum.

10. Requisition. If any portion of the initial Advance shall be for hard costs of construction, a completed Requisition and together with the approval of the Engineering Consultant.

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

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

13. Searches. The Servicer shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Servicer) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of [the Borrower, the General Partner and the Guarantor] (collectively, the "Obligors"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

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

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

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

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

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

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

20. Payment and Performance Bonds. The Servicer shall have received the original Payment and Performance Bonds in form and content and from a surety satisfactory in all respects to the Servicer.

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Servicer:

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

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

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

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

5. Receipt by Servicer. The Servicer shall have received:
  - (a) Requisition. A completed Requisition in the form set forth on Exhibit B to this Agreement, accompanied by the certificates, applications, invoices and other materials required thereby together with approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds specified in the Development Budget are adequate to complete construction of the Improvements in accordance with the Plans and Specifications; and
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition;
6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Insurance Company or the Servicer;
7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;
8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Servicer, and that the Payment and Performance Bonds have been obtained, as required.
9. Mechanics' Liens. The Servicer may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise

collateralized to the satisfaction of the Servicer, or if notice of intention to record or file any such lien has been received.

10. Lien Waivers. No sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

11. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Trustee.

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

13. Loan Rebalancing. The Servicer shall not be obligated to authorize any further advances until the requirements of Section 6.32 of this Agreement have been satisfied.

14. Material Change Orders. No Material Change Order shall have been made without the written approval of the Servicer.

**SCHEDULE 7**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_ , 20\_\_

The Bank of New York Mellon Trust Company, N.A, as trustee  
4655 Salisbury Rd., Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

TD Bank, N.A., as Servicer  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

Re: Provident Place (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and [Construction Lender] and [Servicer] as Servicer, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the "Servicer") that "Completion" of the Project Facilities (as defined in the Indenture of Trust dated as of [December] 1, 2023 (the "Indenture") by and between the Trustee and Housing Finance Authority of Broward County, Florida (the "Issuer")) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of [December] 1, 2023 between the undersigned and the Issuer (the "Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial completion as required by clause (i) of the definition of "Completion" contained in the Indenture;
2. Attached hereto are true copies of all Governmental Actions as required by clause (ii) of the definition of "Completion" contained in the Indenture;
3. The requirement of clause (iii) and clause (iv) of the Indenture are true and correct as of the date hereof except for the following: [\_\_\_\_\_] [Not Applicable]

**GOLDEN ACRES SENIOR APARTMENTS,  
LLP**, a Florida limited liability limited  
partnership

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

Accepted and agreed to by:

TD Bank, N.A., as Servicer

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

Name:

Title:

Effective Date:



## **Schedule of Attachments to Completion Certificate**

Punchlist Items

Governmental Actions

**SCHEDULE 8**  
**FORM OF ESTIMATED USE OF PROCEEDS COMPLIANCE CERTIFICATE**

---

The Bank of New York Mellon Trust Company, N.A., as trustee  
4566 Salisbury Rd. Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

TD Bank, N.A., as Servicer  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

Re: Provident Place (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to The Bank of New York Mellon Trust Company, N.A, as trustee (the "Trustee"), and [Servicer], as Servicer, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Servicer") that;

(i) no less than 95% of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Bonds for purposes of Section 42(h)(4).

[(iii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the "portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds" for "rehabilitation expenses" within the meaning of Section 147(b) of the Code.]

Attached hereto is a schedule of expected expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of [December] 1, 2023 between the Trustee and the Housing Finance Authority of Broward County, Florida.

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

**GOLDEN ACRES SENIOR APARTMENTS,  
LLLP**, a Florida limited liability limited  
partnership

By: HAPB-Golden Acres Senior Apartments  
GP Corp., a Florida Non-Profit  
Corporation, its General Partner

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

Name: Lennard N. Robinson

Title: Director

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

[Attach Schedule]

## SCHEDULE 9

### FORM OF CONSTRUCTION CLOSEOUT DELIVERIES CERTIFICATE

\_\_\_\_\_ , 20\_\_

The Bank of New York Mellon Trust Company, N.A., as trustee  
4566 Salisbury Rd. Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

TD Bank, N.A., as Servicer  
21845 Powerline Road, 2nd Floor  
Boca Raton, Florida 33433  
Attention: Mario A. Facella

Re: Provident Place (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to \_\_\_\_\_, as trustee (the "Trustee"), and [Servicer] as Servicer, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the "Servicer") that each of the "Construction Closeout Deliveries" (as defined in the Indenture of Trust dated as of [December] 1, 2023 (the "Indenture") by and between the Trustee and Housing Finance Authority of Broward County, Florida (the "Issuer")) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of [December] 1, 2023 between the undersigned and the Issuer (the "Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect's certificate in the form attached hereto as Exhibit A as required by clause (ii) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

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

3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (i) of the definition of "Completion" contained in the Indenture. The undersigned has completed all Punchlist Items.

4. Attached are lien waivers required by clause (vi) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (vii) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

6. Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Trustee and the Servicer and meeting the requirements of clause (ix) of the definition of "Construction Closeout Deliveries" contained in the Indenture.

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

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Loan Agreement.

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

**GOLDEN ACRES SENIOR APARTMENTS,  
LLP, a Florida limited liability limited  
partnership**

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

Accepted and agreed to by:

TD Bank, N.A., as Servicer

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

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

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

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

**Schedule of Attachments to Construction Closeout Deliveries Certificate**

Architect's Completion Certificate

Occupancy Permits

Lien Waivers

Endorsement to Title Policy

[As-Built Survey]

Insurance Certificates

Evidence of Payment of Impositions

Evidence of Satisfaction of Environmental Completion Conditions



**EXHIBIT A**

Form of Architect's Certificate

**ARCHITECT'S COMPLETION CERTIFICATE**

The undersigned, an architect duly licensed and registered in the State of [State] has prepared final working plans and detailed specifications (the "Plans and Specifications") for [Borrower] (the "Borrower") in connection with the [construction / rehabilitation] of improvements on certain real property located in [City, State], such improvements or project being known as [Project Facilities] (the "Improvements").

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

[Architect]

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

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

**SCHEDULE 10**  
**FORM OF FINAL USE OF PROCEEDS COMPLIANCE CERTIFICATE**

\_\_\_\_\_, 20\_\_

The Bank of New York Mellon Trust Company, N.A, as trustee  
4655 Salisbury Rd. Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

R4 Capital Funding LLC  
780 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10017  
Attention: Jim Spound

Re: Provident Place (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to The Bank of New York Mellon Trust Company, N.A, as trustee (the "Trustee"), and [TD Bank, N.A.], as Servicer, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Servicer") that;

(i) no less than 95% of the Net Proceeds of the Bonds has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(ii) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Bonds for purposes of Section 42(h)(4).

[(iii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the "portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds" for "rehabilitation expenses" within the meaning of Section 147(b) of the Code.]

Attached hereto is the Cost Certification evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of [December] 1, 2023 between the Trustee and the Housing Finance Authority of Broward County, Florida.

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

**GOLDEN ACRES SENIOR APARTMENTS,  
LLLP**, a Florida limited liability limited  
partnership

By: HAPB-Golden Acres Senior Apartments  
GP Corp., a Florida Non-Profit  
Corporation, its General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

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

Cost Certification

**SCHEDULE 11  
FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 20\_\_

The Bank of New York Mellon Trust Company, N.A., as trustee  
4655 Salisbury Rd. Suite 300  
Jacksonville, FL 32256  
Attention: Corporate Trust Department

R4 Capital Funding LLC  
780 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10017  
Attention: Jim Spound

Re: Provident Place (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") and [TD Bank, N.A.], as Servicer, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Servicer") that the date of Stabilization was \_\_\_\_\_, 2023 and:

The undersigned hereby represents and warrants that:

1. The Improvements have been \_\_\_% occupied by credit-worthy qualified tenants meeting the requirements of the Bond Documents in each of the prior \_\_\_ (\_\_\_) consecutive months.
2. The ratio of Stabilized NOI in each of the prior \_\_\_ (\_\_\_) consecutive months to maximum principal, interest, Issuer Fees and Trustee Fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding is \_\_\_ to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Land Use Restriction Agreement.
5. There have been no disbursements from [insert names of any required reserves] which have not been replenished.

6. [The Mandatory Prepayment Amount shall have been prepaid in full as required under Section 3.4(b)(vii) of the Indenture].

7. Stabilization [has/has not] occurred.

8. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of [December] 1, 2023 between the Trustee and Issuer.

**GOLDEN ACRES SENIOR APARTMENTS,  
LLLP**, a Florida limited liability limited  
partnership

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

Accepted and agreed to by:

TD Bank, N.A., as Servicer

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

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

## Stabilization Spreadsheet



**SCHEDULE 12**  
**INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Servicer, additional coverage may be required at the Servicer's discretion.

[Insert Current Insurance Guidelines]

**EXHIBIT "C"**

**FORM OF LAND USE RESTRICTION AGREEMENT**

This document prepared by  
(and after recording return to):  
JoLinda Herring  
Bryant Miller Olive P.A.  
One SE 3<sup>rd</sup> Avenue, Suite 2200  
Miami, Florida 33131

**LAND USE RESTRICTION AGREEMENT**

Owner's  
Name and Address: Golden Acres Senior Apartments, LLLP  
c/o Ambar3, LLC  
3030 Hartley Road, Suite 310  
Jacksonville, Florida 32257

Location of Property: See legal description attached hereto as Exhibit "A"

Name of Project: Provident Place Apartments

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 \_\_\_\_\_ 1, 2023, by and among the Housing Finance Authority of Broward County, Florida (the "Issuer"), a public body corporate and politic created, organized and existing under the laws of the State of Florida, The Bank of New York Mellon Trust Company, N.A., a national banking association, in its capacity as trustee (including its successors and assigns, the "Trustee") and Golden Acres Senior Apartments, LLLP, a Florida limited partnership and its successors and assigns (the "Owner").

**WITNESSETH:**

**WHEREAS**, the Owner intends to acquire, construct and equip a multifamily residential housing development located in Pompano Beach, Broward County, Florida (the "County") to be occupied by Lower-Income Persons and Eligible Persons, 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 Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds Provident Place, Series 2023, in the principal amount of \$\_\_\_\_\_ pursuant to an Indenture of Trust dated as of \_\_\_\_\_ 1, 2023 between the Issuer and the Trustee in order to provide for a loan (the "Loan") to the Owner pursuant to a Loan Agreement dated as of \_\_\_\_\_ 1, 2023 (the "Loan Agreement"), between the Issuer and the Owner to finance the Project (as hereinafter defined) and certain costs incurred in connection with the issuance of the Bonds, all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Indenture and the Loan Agreement requires, as a condition of making the Loan, the execution and delivery of this Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Issuer, the Trustee 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 lands described in Exhibit "A" hereto; 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 Bonds, 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 Indenture):

"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.

“Bond 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.

“Bonds” means Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds Provident Place, Series 2023.

“Certificate of Continuing Program Compliance” means the certificate required to be delivered by the Owner to the Issuer and the Trustee pursuant to Section 4(e) of this Agreement.

“Closing Date” means the delivery date of the Bonds.

“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 Section 8 of the Housing Act of 1937, as amended) 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 Section 202, Section 202 with a Section 8 subsidy, Section 221(d)(3) or (4), or Section 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.

"Financing Documents" means the Indenture, the Loan Agreement, this Agreement, the Tax Certificate, the Note and all other instruments, documents and certificates evidencing and securing the Loan.

“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.

“Indenture” means the Indenture of Trust dated as of \_\_\_\_\_ 1, 2023 between the Issuer and the Trustee relating to the issuance of the Bonds, as amended or supplemented from time to time.

“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 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 and there are no Bonds outstanding. Such fee will be due in a lump sum payment on the date the Bonds are paid in full. The fee will be calculated for the period commencing on the date the Bonds are 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 there are no Bonds outstanding.

“Land” means the real property located in Broward County, Florida, described in Exhibit “A” attached hereto.

“Loan” means the loan to the Owner made in connection with the issuance and delivery of the Bonds, evidenced by the Bonds and secured by the Mortgage, and further defined in the Loan Agreement.

“Loan Agreement” means that certain Loan Agreement between the Issuer and the Owner dated as of \_\_\_\_\_ 1, 2023, as amended or supplemented from time to time.

“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.

“Note” means the promissory note executed by the Owner to evidence the obligation to repay the Loan.

“Project” means the acquisition, construction and equipping of a multi-family senior residential housing development in Pompano Beach, Broward County, Florida known as the Provident Place, located on the Land and financed with proceeds of the Bonds pursuant to the Loan Agreement.

“Qualified Project Period” means the period beginning on the date the Bonds are issued, and ending on the latest of (a) the date that is fifteen years after the date on which at least 50% of the units in the Project are first occupied; (b) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding (within the meaning of the Code) or (c) the date that any assistance provided for the Project under Section 8 of the 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 Credit Investor” means \_\_\_\_\_, and its permitted successors and assigns.

(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) (1) The Owner will acquire, rehabilitate, 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 who are Elderly Persons (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 Lower-Income Persons, Eligible Persons, or Elderly Persons, or except as required by HUD. Lower-Income Persons, Eligible Persons, and Elderly Persons who are residents of the Project will have equal access to and enjoyment of all common facilities of the Project at all times. Except to the extent required by HUD, the Owner will not discriminate against children of any age when renting the units in the Project.

(e) The Land 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 comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities financed with proceeds of the Bonds (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 Bonds (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 Trustee 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, Eligible Persons and Elderly 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 or Elderly 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 or Elderly Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person or Elderly 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 or Elderly 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 or Elderly Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person or Elderly 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 or Elderly

Person) only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person (or Eligible Person or Elderly 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 Bond 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 Trustee, which may be as often as may be necessary, in the opinion of Bond 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 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 5 business days' notice to the Owner, any duly authorized representative of the Issuer or the Trustee 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 to the Trustee at the beginning of the Qualified Project Period, and on the 10th day of each month thereafter, rent rolls and to the Issuer and the Trustee, 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 or Elderly 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 or Elderly 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) The Owner shall render a yearly report to the Secretary of the Treasury as required by Section 142(d)(7) of the Code and shall provide such report (IRS Form 8703) to the Issuer no later than January 31 of each year.

(g) In the event the Issuer transfers responsibility for compliance monitoring to the Trustee 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 Trustee 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 Trustee or the newly designated Compliance Agent in connection with such responsibilities. Upon the designation of the Trustee 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 Trustee and/or the Compliance Agent, as applicable.

(h) The Owner shall immediately notify the Trustee and the Issuer of any change in the management of the Project.

(i) If at any time during the term of this Agreement there are no Bonds Outstanding (as provided in the Indenture), 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 acquire, rehabilitate 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 Trustee 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 Loan, the Project or the sale of the Bonds 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 Bonds 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 or breach of contract 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 Trustee 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 Trustee 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 Trustee from (a) any lien or charge upon payments by the Owner to the Issuer and the Trustee 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 Trustee 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 Trustee 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 holders from time to time of the Bonds, the County, Bond Counsel and the other parties to transactions involving the issuance, sale or remarketing of the Bonds and their respective counsel. In performing their duties and obligations hereunder, the Issuer and the Trustee may rely upon statements and certificates of the Owner, Lower-Income Persons and Eligible Persons or Elderly 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 Trustee 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 Trustee 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 or Elderly 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 "Fair 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 from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer or the Trustee. Failure to keep such lists and applications or to make them available to the Issuer or Trustee after written request therefor will be a default hereunder.

Section 9. Tenant Lease Restrictions. All tenant leases shall be expressly subordinate to the Mortgage, and 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 Trustee 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 and Conversion of Project. 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 Trustee and the Issuer having received an opinion of Bond 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 Bonds, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes, and (iii) except for transfer permitted by the terms of this Section 10 of the Agreement, 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) as follows:

(a) Ten percent (10%) of the amount of Bonds outstanding if up to ten percent (10%) of the units are rented.

(b) Two percent (2%) of the amount of Bonds outstanding if eleven percent (11%) to sixty percent (60%) of the units are rented.

(c) One percent (1%) of the amount of Bonds outstanding if over sixty percent (60%) of the units are rented.

(d) One-half percent (.05%) of the amount of Bonds outstanding after one (1) year from the date of completion of rehabilitation, regardless of occupancy.

Items (a) through (d) above are referred to herein as the "Transfer Fee" on the date of the written transfer request. Provided that the above conditions have been satisfied, upon request, the Issuer will provide to the Owner and the purchaser or transferee, its written consent to any transfer, in accordance with this Section, and 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 Bonds 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 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 Trustee a document in form and substance reasonably satisfactory to the Issuer pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this 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 in 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 with respect to assuming the obligations of the Owner under this Agreement, (f) 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 and the Trustee to the effect that such purchaser or assignee will comply with the terms and conditions of this Agreement, (i) the Trustee 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 are enforceable against such purchaser or assignee in accordance with their terms, and (j) the Trustee and the Issuer shall have received an opinion of Bond 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 Bonds, 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 Loan Agreement. In the event that the purchaser or assignee shall assume the obligations of the Owner under the Mortgage, the Loan Agreement and this Agreement, the Owner shall be released from its obligations thereunder and hereunder, other



than its obligations hereunder 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 and applicable commercial spaces, as contemplated by this Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, laundry service leases and/or television cable or internet 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 (including the County Loan), 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 Mortgage, or (v) subject to the provisions of the Mortgage, any transfer of partnership interests in the Owner or in the entities which are partners in the Owner.

Notwithstanding anything herein to the contrary, the Owner's limited partners may transfer all or any portion of their partnership interest in Owner without prior consent from the Issuer. Owner's limited partners retain the right to remove and replace the Owner's general partner pursuant to the terms and conditions of the Owner's organizational documents, without prior consent from the Issuer.

Section 11. Negative Covenants. During the term of this Agreement, the Owner shall not:

(a) Except pursuant to the provisions of this Agreement, or except upon a sale or transfer of the Project in accordance with the terms of this Agreement, the Loan Agreement and the Mortgage, encumber any of the mortgaged property, including the grant of commercial leases (other than for commercial spaces uses on the date hereof, vending machines, 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, internet 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 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 Bond Counsel), but only if within a reasonable period thereafter (i) the Bonds are 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 Bond 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 Trustee 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 "Termination"), the form of which is attached hereto as Exhibit "B." The Chair or Vice-Chair of the Issuer is authorized to execute the 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 Trustee an opinion of Bond Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes). After the Trustee learns of such failure, the Trustee 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 contained herein, the limited partners of the Owner shall have the right, but not the obligation, to cure an event of default hereunder and the Issuer agrees to accept or reject such cure on the same basis as if provided by Owner itself.

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 Bond Counsel addressed to the Issuer, the Owner and the Trustee, 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 Bonds 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 Bond Counsel to effectuate the intent of this Section 15.

Section 16. Burden and Benefit. The Issuer, the Trustee 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 Trustee, 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 or Elderly Persons, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Bonds were 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 Bonds issued by the Issuer to finance the Loan and covenants and agrees that in connection with the acquisition, rehabilitation, 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. 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 Trustee and its successors, the holders of the Bonds and their successors and assigns to the extent permitted by the Indenture, and solely as to Sections 2, 3 and 7 of this Agreement, the Lower-Income Persons and Eligible Persons or Elderly 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 Mortgage or Loan may be paid in full, and whether or not the Bonds are 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 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 Loan Agreement 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.

Notwithstanding anything contained in this Agreement to the contrary, without the prior written consent of the Issuer, the Trustee or any person under their control shall not exercise any remedies or direct any proceeding hereunder other than to enforce rights of specific performance hereunder, provided that such enforcement shall not include seeking monetary damages. The Issuer shall provide, and shall cause the Trustee to provide, the Tax Credit Investor with a copy of any notice of default sent to the Borrower hereunder at the Tax Credit Investor's address as set forth in the Indenture, and the Issuer and the Trustee agree that the Tax Credit Investor shall have the right, but not the obligation, to cure any default hereunder on behalf of the Borrower on the same terms provided to the Borrower and shall be accepted or rejected hereunder on the same basis as if made or tendered by the Borrower.

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 Trustee 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 Bond Counsel, in order for interest on the Bonds 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 Bonds remains exempt from federal income taxes. Any such amendment, revision or termination shall be effected only in accordance with the Indenture.

Section 23. Trustee or Compliance Agent to Monitor Compliance Upon Request of Issuer. The Trustee shall deliver to the Issuer on or prior to the 20th day of each month a statement as to whether the Trustee has received the Certificate of Continuing Program Compliance required to be delivered by the Owner on the 10th day of such month. Additionally, if the Issuer requests in writing that the Trustee or Compliance Agent assume the

role of compliance monitoring, the Trustee or Compliance Agent shall receive and examine all other reports, certifications and other documents required to be delivered to the Issuer or the Trustee or Compliance Agent hereunder and shall notify the Issuer promptly of non-compliance with this Agreement. In such event the Trustee 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 Trustee or Compliance Agent indicates the Owner has failed to comply with any of the requirements contained in this Agreement. The Trustee 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 or electronic mail if a confirmation of transmission is produced by the sending machine (and a copy of each facsimile or electronic mail promptly shall be sent by first class United States mail, postage fully prepaid) or (iv) when delivered, if sent by overnight mail or overnight courier, 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 Trustee.

With respect to any notice required to be given to the Owner hereunder, a copy of such notice shall also be given by certified or registered mail, postage prepaid, return receipt requested, to the following parties:

[Name of Developer]

Attention:

Attention:

With a copy to:

Attention:

And a copy to:

Golden Acres Senior Apartments, LLLP  
c/o Ambar3, LLC  
3030 Hartley Road, Suite 310  
Jacksonville, Florida 32257  
Attention:

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 Trustee. Notwithstanding anything in this Agreement to the contrary, on and after the date the Bonds are no longer outstanding, the Trustee 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 Trustee shall be of no further force and effect. If any approval or consent of the Trustee 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 Trustee's rights to indemnification provided for in the Indenture and this Agreement shall survive such release and discharge.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer, the Trustee, and the Owner have executed this Agreement by duly authorized representatives, all as of the Closing Date.

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

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

By: \_\_\_\_\_  
Milette Thurston Manos, 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 \_\_\_\_\_, 2023 by Scott Ehrlich, Chair of the Housing Finance Authority of Broward County, Florida, a public body corporate and politic, on behalf of said Authority. He is personally known to me or have produced a valid driver’s license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name:  
Notary Public-State of Florida  
Commission Number:

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, 2023 by Milette Thurston Manos, Secretary, of the Housing Finance Authority of Broward County, Florida, a public body corporate and politic, on behalf of said Authority. She is personally known to me or have produced a valid driver’s license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name:  
Notary Public-State of Florida  
Commission Number:



**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee**

By: \_\_\_\_\_  
Nathan Turner, Vice President

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023 by Nathan Turner as Vice President of The Bank of New York Mellon Trust Company, N.A., a national banking association, on behalf of said bank, who is personally known to me or has produced a valid driver's license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name:  
Notary Public-State of Florida  
Commission Number:

**GOLDEN ACRES SENIOR APARTMENTS,  
LLLP, a Florida limited liability limited partnership**

By: HAPB-Golden Acres Senior Apartments GP Corp., a Florida Non-Profit Corporation, its General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

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

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_ day of \_\_\_\_\_, 2023 by Lennard N. Robinson, Director of HAPB-Golden Acres Senior Apartments GP Corp., a Florida nonprofit corporation, general partner of Golden Acres Senior Apartments, LLLP, a Florida limited partnership. She/He is  personally known to me or  has produced \_\_\_\_\_ (type of identification) as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name:  
Notary Public-State of \_\_\_\_\_  
Commission Number:

**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**

**EXHIBIT "B"**  
**FORM OF**  
**NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**  
**(Provident Place)**

RESERVED FOR  
ONLY

ABOVE SPACE  
RECORDING PURPOSES

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 Trustee (the "Trustee"), and \_\_\_\_\_, a Florida \_\_\_\_\_ (the "Current Owner").

1. That certain Land Use Restriction Agreement dated as of \_\_\_\_\_, 2023 and recorded \_\_\_\_\_, 2023, 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.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Provident Place)**

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: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

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

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

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

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 \_\_\_\_\_, on behalf of the corporation. They are personally known to me or have produced \_\_\_\_\_ as identification.

[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**

**(Provident Place)**

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 acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_ and \_\_\_\_\_, as Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, on behalf of the Authority. They are personally known to me or have produced \_\_\_\_\_ as identification.

[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**

**(Provident Place)**

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.

**TRUSTEE:**

WITNESSES:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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 \_\_\_\_\_, as \_\_\_\_\_, of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., on behalf of the corporation. They are personally known to me or have produced \_\_\_\_\_ as identification.

[SEAL]

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

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

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

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

**EXHIBIT "D"**

**FORM OF PROMISSORY NOTE**



**MORTGAGE LOAN NOTE**  
**Floating Rate Term SOFR (One Month)**

**Date of Note:** [December \_\_, 2023] [NTD: WILL TRACK CLOSING DATE]

**Principal Amount:** \$17,600,000

**Initial Interest Rate:** Term SOFR (one month) plus 2.50%

**FOR VALUE RECEIVED**, GOLDEN ACRES SENIOR APARTMENTS, LLLP, a Florida limited liability limited partnership (the “**Borrower**”), having an address as indicated below, **HEREBY PROMISES TO PAY** to the order of 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 (hereinafter, together with its successors and assigns, referred to as the “**Issuer**”), at such place as the holder hereof may from time to time designate in writing, in immediately available federal funds, the Principal Amount, which Principal Amount shall be due and payable as provided herein and on the earlier to occur of (i) the Outside Conversion Date, as such date may be extended pursuant to the Loan Agreement (as hereinafter defined), if Stabilization has not occurred, and (ii) the Maturity Date, together with interest on the outstanding Principal Amount from time to time at the Interest Rate and any other amounts due hereunder.

Payments of interest only shall be due on the first day of each month commencing on [January 1, 2024]. Notwithstanding anything to the contrary herein, whenever any payment to be made under this Note shall be payable in the manner set forth in the Bond Loan Agreement and Section 2.09 of the Loan Agreement. If any payment to be made under this Note is stated to be due on a day that is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computations of payment of interest.

Borrower shall have the option to extend the Outside Conversion Date for an additional six (6) months, provided Borrower satisfies the following conditions precedent:

- a. Borrower shall provide written notice to Purchaser and Issuer requesting the extension of the Outside Conversion Date, at least thirty (30) business days prior to the Maturity Date;
- b. No Event of Default shall have occurred and be continuing on the date Borrower gives written notice of its intent to extend and on the closing date of the extension;
- c. Borrower shall have paid to Lender, at the time the notice required by subsection (a) above is given, an extension fee equal to 0.125% of the then outstanding balance of the Loan;
- d. Borrower shall have established an interest reserve with Lender or Trustee for the payment of the Project Loan during the extension period in such amount as Lender shall determine in its sole but reasonable discretion;

- e. The Operating Agreement shall be in full force and effect with no outstanding default or event of default by any party thereunder;
- f. Borrower shall be in compliance with Sections 5.09 [Subordinate Loans], 5.10 [Compliance with Operating Agreement], 5.11 [Low Income Housing Requirements], 5.12 [Operation of Facility; Regulatory Agreements], 5.14 [Management of Property] and 5.15 [Permanent Loan] of the Loan Agreement;
- g. Borrower shall have achieved lien free substantial completion of the construction of the Improvements by the Completion Date;
- h. Borrower shall have Borrower shall provide evidence satisfactory to Lender that at least 50% of the residential units within the Premises are occupied and have been rented;
- i. The Investor Member shall have contributed the capital installment due under the Operating Agreement upon completion of the construction of the Improvements;
- j. Borrower shall have provided written evidence, at least ten (10) days prior to the Maturity Date, that the Permanent Lender has agreed to extend the Forward Commitment Expiration Date (as such term is defined in the Forward Commitment Agreement) beyond [June \_\_, 2026][NTD: 30 MONTHS FROM CLOSING DATE];
- k. If necessary, all other Subordinate Lenders shall have extended their/its commitment to fund or have continued funding all or any portion of the Subordinate Loans; and
- l. No event shall have occurred which could reasonably be expected to have a material adverse effect on the financial condition of the Borrower or any Guarantor, as determined by Purchaser in its reasonable discretion.

If the term of this Note is extended, the term Outside Conversion Date as used herein shall mean [June \_\_, 2026][NTD: 30 MONTHS FROM CLOSING DATE], or such earlier date as may be approved by the Permanent Lender and shall constitute the Forward Commitment Expiration Date.

### **Benchmark Replacement Setting**

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document upon the occurrence of a Benchmark Transition Event, Lender may replace the then-current Benchmark with a Benchmark Replacement. No replacement of a Benchmark with a Benchmark Replacement pursuant to this clause (a) will occur prior to the applicable Benchmark Transition Start Date. No swap agreement shall be deemed to be a "Loan Document" for purposes of this clause (a).

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark

Replacement Conforming Changes will become effective without any further action or consent of Borrower.

(c) Notices; Standards for Decisions and Determinations. Lender will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Lender will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below. Any determination, decision or election that may be made by Lender pursuant to this Section titled "Benchmark Replacement Setting", including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from Borrower.

(d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then Lender may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice from Lender of the commencement of a Benchmark Unavailability Period, the Interest Rate shall be determined by reference to ABR during any such Benchmark Unavailability Period.

(f) Disclosure. Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the administration of, submission of, calculation of or any other matter related to any Benchmark or Interest Rate, any component definition thereof or rates referenced in the definition thereof or any alternative, comparable or successor rate thereto (including any then-current Benchmark or any Benchmark Replacement), including whether the composition or characteristics of any such alternative, comparable or successor rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as any other Benchmark, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Borrower acknowledges and agrees, and acknowledges its affiliates' understanding, that (i) no fiduciary, advisory or agency relationship between the Borrower and any of its affiliates and Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether the Lender has advised or is advising the Borrower or affiliate any on other matters, (ii) the loans and other services regarding this Note provided by the Lender are arm's-length commercial transactions between the Borrower and its affiliates, on the one hand, and the Lender, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate,

and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents.

### **Effect of Illegality/ Unavailability/Change in Law**

Notwithstanding any other provision of this Note or any other Loan Document, if,

(a) at any time Lender determines that, (x) there is any new law or regulation or change in any law or regulation, or in the interpretation or application thereof to Lender by any governmental authority, that makes it unlawful for Lender to make or maintain loans whose interest is determined by reference to any Benchmark, or (y) reasonable and adequate means do not exist for ascertaining any Benchmark is otherwise unavailable, Lender shall promptly notify Borrower thereof and the Interest Rate applicable to the Loan shall be equal to ABR unless and until, in each case, Lender notifies Borrower that the circumstances giving rise to such determination no longer exist;

(b) any present or future law, governmental rule, regulation, policy, guideline, directive or similar requirement (whether or not having the force of law) imposes, modifies, or deems applicable any capital adequacy, capital maintenance or similar requirement which affects the manner in which Purchaser allocates capital resources to its commitments (including any commitments hereunder), and as a result thereof, in the opinion of Purchaser, the rate of return on Purchaser's capital with regard to the loan evidenced by this Note is reduced to a level below that which Purchaser could have achieved but for such circumstances, then in such case and upon notice from Purchaser to Borrower, from time to time, Borrower shall pay Purchaser such additional amount or amounts as shall compensate Purchaser for such reduction in Purchaser's rate of return. Such notice shall contain the statement of Purchaser with regard to any such amount or amounts which shall, in the absence of manifest error, be binding upon Borrower. In determining such amount, Purchaser may use any reasonable method of averaging and attribution that it deems applicable. For the avoidance of doubt, the foregoing provisions shall apply to all requests, rules, regulations, guidelines or directives concerning capital adequacy issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) or the United States financial regulatory authorities, regardless of the date adopted, issued, promulgated or implemented;

(c) after the date hereof, any (i) adoption of, or change in, United States federal, state or foreign laws, regulations or treaties, or any governmental or quasi-governmental rules, regulations, policies, guidelines, requests or directives (whether or not having the force of law), including the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives issued in connection therewith regardless of the date enacted, adopted or issued, or (ii) change in the interpretation, promulgation, implementation or administration of or under any United States federal, state or foreign laws, regulations or treaties, or any governmental or quasi-governmental rules, regulations, policies, guidelines, requests or directives (whether or not having the force of law), including the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives issued in connection therewith regardless of the date enacted, adopted or issued, by any court, governmental, quasi-governmental, central bank or comparable agency or monetary authority that is charged with the interpretation or administration thereof, shall:

(A) subject Purchaser to any tax of any kind whatsoever with respect to any loans made by it, or change the basis of taxation of payments to Purchaser in respect thereof (except for changes in the rate of tax on the overall net income of Purchaser);

(B) impose, modify, or hold applicable, any reserve, special deposit, compulsory loan, or similar requirement against assets held by, deposits or other liabilities in, or for the account of, advances, loans, or other extension of credit (including participations therein) by, or any other acquisition of funds by, any office of Purchaser which is not otherwise included in the determination of rate under this Note; or

(C) shall impose on such Purchaser any other condition; and the result of any of the foregoing is to materially increase the cost to Purchaser of making or maintaining the loan evidenced by this Note, or to reduce any amount receivable under this Note, or any other Loan Document,

then, in any such case, Borrower shall promptly pay Purchaser, upon its demand, any additional amounts necessary to compensate Purchaser for such additional costs or reduced amount receivable which Purchaser reasonably deems to be material as determined by Purchaser, with respect to the Loan. A certificate as to any additional amounts payable pursuant to this paragraph submitted by Purchaser to Borrower shall be presumptive evidence of such amounts owing. Purchaser agrees to use reasonable efforts to avoid, or to minimize, any amounts which might otherwise be payable pursuant to this paragraph provided however, that such efforts shall not cause the imposition on Purchaser of any additional costs or legal regulatory burdens deemed by Purchaser in good faith to be material.

Borrower understands that the interest rates provided under this Note are based on the assumption that interest income paid on this Note will be excludable from gross income for federal income tax purposes of the Purchaser. In the event that Borrower receives notice from Trustee or Purchaser that a Determination of Taxability (as such term is defined in the Trust Indenture) has occurred, then, notwithstanding any provision to the contrary contained herein, the Interest Rate under this Note shall be increased to a rate equal to the greater of: (i) the Benchmark plus the Margin or (ii) the maximum rate allowed by law. In addition, Borrower shall pay promptly upon demand, an amount equal to the difference between the amount of interest payable on this Note from the date on which such loss of tax exemption shall be applicable to the date on which the Interest Rate on this Note was increased and the amount of interest that would have been payable on this Note during such period had this Note borne interest during such period at such higher rate. The Borrower shall also indemnify, defend and hold Purchaser and Issuer harmless from any penalties, interest expense or other costs, including attorneys' fees and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Funding Loan and the interest payable to the Purchaser on the Funding Loan. The obligations of the Borrower under this paragraph shall survive the release of the Mortgage and repayment of the Principal Amount.

## Definitions

As used in this Note, the following terms have the meanings set forth below:

**ABR** - A variable alternative base rate index ("ABR") equal to the greater of: (a) the greater of zero (0%) percent and then current rate of interest published by The Wall Street Journal from time to time as the U.S. "Prime Rate" percent, and (b) the greater of zero (0%) percent and the then current weighted average of the rate of overnight Federal funds transactions with members of the

Federal Reserve System as published by the Federal Reserve Bank of New York (the “Federal Funds Effective Rate”), *plus* one half of one percent (0.5%). Any change in the ABR due to a change in the Prime Rate or the Federal Funds Effective Rate, as applicable, shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate respectively. ABR is not necessarily the lowest or best rate of interest offered by Lender to any borrower or class of borrowers.

**Available Tenor** - As of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Note as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (d) of the Section titled “Benchmark Replacement Setting”.

**Benchmark** – Initially, Term SOFR; provided that if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (a) of the Section titled “Benchmark Replacement Setting”.

**Benchmark Replacement** – With respect to any Benchmark Transition Event the sum of: (i) the greater of (x) the alternate benchmark rate that has been selected by Lender giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for U.S. dollar-denominated commercial credit facilities and (y) the Floor and (ii) the related Benchmark Replacement Adjustment.

**Benchmark Replacement Adjustment** -means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

**Benchmark Replacement Conforming Changes** - With respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of the Section titled “Benchmark Replacement Setting” and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Lender in a manner substantially consistent with market practice or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market

practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Note and the other Loan Document.

**Benchmark Replacement Date** - With respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**Benchmark Transition Event** - With respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such

component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

- (3) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, the “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**Benchmark Transition Start Date** – In the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, no earlier than the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, no earlier than five (5) days after the date of such statement or publication).

**Benchmark Unavailability Period** - With respect to any Benchmark, the period (if any) (i) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with the Section titled “Benchmark Replacement Setting” and (ii) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with the Section titled “Benchmark Replacement Setting”.

**Business Day** - Any day (other than Saturday, Sunday, federal holiday, or a day on which commercial banks in the State are required or permitted to close) on which Lender is open and conducting its customary banking transactions; provided that, when used in connection with SOFR, or any other calculation or determination involving SOFR, the term “Business Day” means a U.S. Government Securities Business Day.

**Default Rate** - a rate of interest equal to the Interest Rate provided herein plus six percent (6%) per annum, but in no event to exceed the maximum rate allowed by law.

**Floor** - a rate of interest equal to 0%.

**Interest Period**- a period commencing on the date of the Loan and ending on the numerically corresponding day in the calendar month that is one (and each) month thereafter; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) if any Interest Period would end on a day for which there is no numerically corresponding day in the calendar month, such Interest Period shall end on the last



Business Day of the relevant calendar month, (iii) no Interest Period shall extend beyond the Outside Conversion Date, if Conversion has not occurred, and the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section titled "Benchmark Replacement Setting" shall be available for specification in any advance request. For purposes hereof, the date of the Loan is the date on which such Loan is made.

**Interest Rate** – the variable per annum interest rate equal at all times to the Margin plus (a) the Benchmark or (b) if applicable hereunder, the Benchmark Replacement, or (c) if applicable hereunder, the ABR. The effective interest rate applicable to the Loan shall change as of the first day of each Interest Period (each an "Interest Determination Date") if there is a change in the applicable Interest Rate as of any such Interest Determination Date and Lender shall not be required to notify Borrower of any such adjustments. Interest on the Loan shall be calculated on the basis of a year of three hundred sixty (360) days but charged for the actual number of days elapsed. All interest hereunder on the Loan shall be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. The applicable ABR or Term SOFR Reference Rate shall be determined by Lender, and such determination shall be conclusive absent manifest error.

**Loan** - the loan evidenced by this Note.

**Margin** - Two and one half of one percent (2.50%) per annum.

**Maturity Date** – [\_\_\_\_\_].

**Reference Time** - With respect to any setting of the then-current Benchmark (1) if such Benchmark is Term SOFR, then 3:00 p.m. (New York City time) two (2) Business Days prior to such setting, and (2) if such Benchmark is not Term SOFR, then the time determined by Lender in accordance with the Benchmark Replacement Conforming Changes.

**Relevant Governmental Body** - The Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**SOFR** - A rate equal to the secured overnight financing rate as administrated by the SOFR Administrator.

**SOFR Administrator** - The Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**SOFR Administrator's Website** - The website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**State** - The State of Florida.

**Term SOFR** - The greater of (a) the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator and (b) the Floor; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination

Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day. Any change in the Term SOFR Reference Rate due to a change in Term SOFR shall be effective from and including the first day of each Interest Period without notice to Borrower.

**Term SOFR Administrator** – The CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

**Term SOFR Reference Rate** - The rate per annum determined by Lender as the forward-looking term rate based on SOFR.

**Unadjusted Benchmark Replacement**-the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**U.S. Government Securities Business Day** - Any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

### Other Provisions

In the event any payment provided for herein or in any other Loan Document (as defined in the Loan Agreement, as defined below) shall become overdue for a period in excess of fifteen (15) days, a late charge of six cents (\$.06) for each dollar (\$1.00) so overdue shall become immediately due and payable to Lender. Each such late charge shall be deemed to be part of the indebtedness and obligations secured by the Mortgage.

This Note is secured by, and the holder is entitled to the benefits and security of, that certain Construction Loan Agreement (the “**Loan Agreement**”) and Leasehold Construction Loan Mortgage and Security Agreement from Borrower, as mortgagor, to Issuer, as mortgagee, encumbering, among other things, certain real property and improvements described in the Leasehold Construction Loan Mortgage and Security Agreement (the “**Mortgage**”), each dated the date hereof, as they may be amended from time to time, all of the covenants, conditions and agreements of the Loan Agreement and Mortgage being made a part of this Note by this reference.

Upon the occurrence of any Event of Default (as defined in the Loan Agreement), Lender may exercise any and all rights and remedies under the Loan Documents (including without limitation, rights to accelerate the Loan), or available at law or equity, or both. Borrower shall be obligated to reimburse Lender for all Expenses (as defined and provided for in the Loan Agreement), incurred by Lender. From and after the occurrence of any Event of Default, the interest rate of this Note shall be at the Default Rate.

In no event shall the total of all charges payable under this Note, the Loan Agreement and the Mortgage, and any other documents executed and delivered in connection herewith and therewith that are or could be held to be in the nature of interest exceed the maximum rate permitted to be charged by applicable law. Should Issuer receive any payment that is or would be in excess of that permitted to be charged under any such applicable law, such payment shall have been, and shall be deemed to have been, made in error and shall thereupon be applied to reduce the principal balance outstanding on this Note.

The Principal Amount of this Note may be prepaid in whole or in part, at any time without premium or penalty but with accrued but unpaid interest thereon through the date of prepayment; provided, however, that Borrower shall indemnify Purchaser, and hold Purchaser harmless from any loss, damages, liability, or expense which Purchaser may sustain or incur as a consequence of the making of a prepayment, whether by voluntary prepayment, acceleration or otherwise, on a day which is not the last day of an Interest Period with respect thereto. With respect to such prepayment, such indemnification shall equal the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid for the period from the date of such prepayment at the applicable rate of interest provided for herein over (ii) the amount of interest (as reasonably determined by Purchaser) which would have accrued to Purchaser on such amount by placing such amount on deposit for a comparable period with leading banks in the London interbank eurodollar market. This covenant shall survive the termination of this Note, and the payment of the entire outstanding Principal Amount, all other unpaid indebtedness secured by the Mortgage and is in any event in addition to any amount that may be payable in connection with termination of any Hedging Contract (as defined in the Loan Agreement).

Borrower waives demand, presentment for payment, notice of dishonor, protest and notice of protest of this Note.

Any notice, demand or request relating to any matter set forth in this Note shall be given in the manner provided for in the Loan Agreement. Time is of the essence as to all dates set forth herein.

This Note (a) may not be waived, changed, modified, terminated or discharged orally, and (b) except as otherwise specifically provided herein, may only be waived, changed, modified, terminated or discharged by an agreement in writing signed by the party against whom enforcement of any such waiver, change, modification, termination or discharge is sought.

**BORROWER, AND BY ITS ACCEPTANCE HEREOF, GOVERNMENTAL LENDER, EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST IN RESPECT OF ANY LITIGATION BASED ON THIS NOTE, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE CONSTITUTES A MATERIAL INDUCEMENT FOR BORROWER AND GOVERNMENTAL LENDER TO ENTER INTO THE TRANSACTIONS CONTEMPLATED HEREBY. GOVERNMENTAL LENDER AND FUNDING LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

**BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF LENDER ON THIS NOTE, ANY AND EVERY RIGHT BORROWER MAY HAVE (I) TO OBJECT TO THE JURISDICTION OR VENUE OF ANY STATE COURT SITTING IN PALM BEACH COUNTY OR ANY FEDERAL COURT LOCATED IN THE STATE, (II) TO INJUNCTIVE RELIEF, (III) TO INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (IV) TO HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. BORROWER HEREBY AGREES AND CONSENTS, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL TO SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON BORROWER BY MAIL AT THE ADDRESS SET FORTH IN THE LOAN AGREEMENT, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. THE FOREGOING WAIVERS ARE GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF ANY OR ALL OF THE FOREGOING WAIVERS.**

**BORROWER HEREBY** acknowledges and AGREES that, pursuant to the terms of the Bond Loan Agreement: (i) all consents, elections, approvals, waivers, acceptances and determinations to be provided hereunder and under the other Loan Documents (as defined in the Construction Loan Agreement) by the Trustee and Issuer shall be at the direction of Purchaser and shall not be valid unless directed by Purchaser, and that any action or right which shall or may be taken or exercised by Trustee and/or Issuer may be taken or exercised by Purchaser with the same force and effect as if taken by Trustee and/or Issuer, (ii) from time to time, Purchaser may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices hereunder or under the other Loan Documents, and to otherwise service the Loan, and (iii) unless Borrower receives written notice from Purchaser to the contrary, any action or right which shall or may be taken or exercised by Purchaser may be taken or exercised by such servicer with the same force and effect.

This Note and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State (without giving effect to the State's principles of conflicts of law).

This Note evidences a loan for business and commercial purposes, and not for personal, family or household purposes. No invalidity or unenforceability of any portion of this Note shall affect the validity or enforceability of the remaining portions hereof. This Note shall take effect as a sealed instrument, as of the date first set forth above, regardless of the actual date of execution and delivery.

**Borrower explicitly consents to the electronic delivery of the terms of the transaction evidenced by this instrument. Borrower agrees that its present intent to be bound by this instrument may be evidenced by transmission of digital images of signed signature pages via facsimile, email, SMS or other digital transmission and affirms that such transmission indicates a present intent to be bound by the terms of this instrument and is deemed to be valid execution and delivery as though an original ink or electronic signature. Borrower shall deliver original executed signature pages to Lender, but any failure to do so shall not affect the enforceability of this instrument. An electronic image of this instrument (including signature pages) shall be as effective as an original for all purposes.**

*[NO FURTHER TEXT ON THIS PAGE]*

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Note on the date first set forth above.

Address:

Golden Acres Senior Apartments, LLLP  
c/o Housing Authority of Pompano  
Beach  
321 W. Atlantic Blvd.  
Pompano Beach, FL 33060  
Attention: Executive Director

With a copy to:

Stearns Weaver Miller Weissler Alhadeff  
& Sitterson, P.A.  
150 West Flagler Street  
Suite 2200  
Attn: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email:bmcdonough@stearnsweaver.co  
m

**BORROWER:**

**GOLDEN ACRES SENIOR APARTMENTS, LLLP,**  
a Florida limited liability limited partnership

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

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

Name: Lennard N. Robinson

Title: Director

ENDORSEMENT PAGE TO MORTGAGE LOAN NOTE

PAY TO THE ORDER OF:

The Bank of New York Mellon Trust Company, N.A.,  
a national banking association, as Trustee under  
that certain Indenture of Trust dated as of  
\_\_\_\_\_, 1, 2023

WITHOUT RECOURSE

**HOUSING FINANCE AUTHORITY OF BROWARD  
COUNTY, FLORIDA**, a public body corporate and  
politic, duly organized and validly existing under the  
laws of the State of Florida

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

**EXHIBIT "E"**

**FORM OF ASSIGNMENT OF MORTGAGE AND LOAN DOCUMENTS**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Holland & Knight LLP  
1180 West Peachtree Street, NW  
Suite 1800  
Atlanta, GA 30309  
Attention: Drew H. Gandy

**ASSIGNMENT OF MORTGAGE  
AND LOAN DOCUMENTS**

KNOW ALL PERSONS BY THESE PRESENTS:

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 ("**Assignor**"), pursuant to that certain [\_\_\_\_\_], dated as of December 1, 2023 (the "[\_\_\_\_\_]"), among TD BANK, N.A., a national banking association, Assignor, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association ("**Assignee**"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign, without recourse or expressed or implied warranties, to Assignee all of Assignor's right, title and interest in and to[, subject to the Unassigned Rights (as defined in the [\_\_\_\_\_])], the instruments ("**Assigned Instruments**") described on Schedule 1 attached hereto.

TOGETHER with the Promissory 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 in this Assignment, 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.** Subject to the Unassigned Rights, in no event shall Assignor:

TD Bank / Provident Place  
Assignment of Mortgage and Loan Documents



(i) prosecute its action to a lien on the Project, as defined in that certain Loan Agreement by and among Assignor, Assignee and Golden Acres Senior Apartments, LLLP, a Florida limited liability limited partnership ("**Borrower**"), dated as of December 1, 2023 (the "**Bond Loan Agreement**") or Indenture of Trust by and between the Assignor and Trustee, dated as of December 1, 2023 (the "**Trust Indenture**"); or

(ii) take any action which may reasonably be expected to 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 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 Bond Loan Agreement or the Trust Indenture upon the occurrence of an event of default by Borrower under the Bond Loan Agreement or the Trust Indenture; or

(iv) take any action to accelerate or otherwise enforce payment (other than with respect to the Issuer Fee) or seek other remedies with respect to the Loan.

**Definitions.** All capitalized terms that are used and are not defined herein shall have the respective meanings ascribed to them in the Trust Indenture. 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 [December \_\_, 2023] (the foregoing date is for reference purposes only and this Assignment shall not be effective until the Delivery Date, as defined by the Trust Indenture).

*[signature page follows]*



**SCHEDULE 1**  
**TO**  
**ASSIGNMENT OF MORTGAGE**  
**AND LOAN DOCUMENTS**

**ASSIGNEE:**

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256

**ASSIGNED INSTRUMENTS:**

1. Mortgage Loan Note by Borrower to Assignor, dated [December \_\_, 2023], in the original principal amount of \$17,600,000.
2. Leasehold Construction Loan Mortgage and Security Agreement, dated as of [December \_\_, 2023], executed by Borrower for the benefit of Assignor securing the principal amount of \$17,600,000, which is being recorded immediately prior hereto in the County Recorder's Office of Broward County, Florida, and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A**.
3. Assignment of Leases and Rents, dated as of [December \_\_, 2023], executed by Borrower for the benefit of Assignor, which is being recorded in the County Recorder's Office of Broward County, Florida, and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A**.

**EXHIBIT A**

**LEGAL DESCRIPTION**

[To Be Inserted]

**EXHIBIT "F"**

**FORM OF TRUSTEE FEE AGREEMENT**

**TRUSTEE FEE AGREEMENT**

**Between**

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

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**

**DATED AS OF \_\_\_\_\_, 2023**

**PROVIDING FOR**

**A FEE SCHEDULE FOR SERVICES  
RENDERED BY TRUSTEE  
FOR**

**\$\_\_\_\_\_**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE BONDS PROVIDENT PLACE, SERIES 2023**

**TRUSTEE FEE AGREEMENT**

This is an Agreement 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 office in the City of Jacksonville, Florida and qualified to exercise trust powers under the laws of the State of Florida (“BNY”).

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Issuer and BNY agree as follows:

**ARTICLE I  
PREAMBLE**

- 1.1 BNY did submit certain proposals to serve as Trustee for all financings of the Issuer during 2023, including the Issuer’s \$\_\_\_\_\_ Multifamily Housing Revenue Bonds Provident Place, Series 2023 (the “Series 2023 Bonds”). All terms used in capitalized form herein and not defined have the meanings ascribed to such terms in the Indenture (hereinafter defined).
- 1.2 Said proposals of BNY to serve as Trustee contain a description of the types of services to be provided, a schedule of fees for the various services to be provided to the Issuer, and a brief discussion of BNY’s corporate qualifications and capabilities.
- 1.3 BNY is willing to provide the services stated in its proposals at the rates set forth in said proposals, and the Issuer is willing to accept the services of BNY as set forth in its proposals at the stated rates. It is the interest of the parties hereto to establish the terms of the said proposals of BNY to serve as Trustee with respect to the Series 2023 Bonds.

**ARTICLE II  
SCOPE OF SERVICES AND FEES**

- 2.1 BNY hereby accepts all of the duties, responsibilities and obligations imposed on it as trustee under the terms of the Indenture of Trust dated as of \_\_\_\_\_, 2023 by and between the Issuer and BNY (the “Indenture”) and hereby confirms the accuracy of all representations and warranties of the Trustee contained in the Indenture. The terms of this Agreement attached hereto as Exhibit “A” are accepted, and adopted by reference by the parties to this Agreement. These terms include the scope of services to be

provided by BNY and the fees and costs charged by BNY for such services. The fees and charges indicated include all expenses incurred by BNY in connection with the sale and closing of the Series 2023 Bonds. Exhibit "A" contains one (1) page under the title of "PROPOSAL FORM FOR TRUSTEE SERVICES".

**ARTICLE III**  
**OTHER PROVISIONS**

3.1 This Agreement shall continue in full force and effect and be binding on both the Issuer and BNY for so long as the terms of the Indenture are effective.

IN WITNESS WHEREOF, the parties hereto have made and executed this Trustee Fee Agreement as of the date first above written.

[SEAL]

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

ATTEST: \_\_\_\_\_  
Milette T. Manos, Secretary

By: \_\_\_\_\_  
Name: Scott Ehrlich  
Title: Chair

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.**

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



EXHIBIT "A"

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

PROPOSAL FORM FOR TRUSTEE SERVICES

\$ \_\_\_\_\_

MULTIFAMILY HOUSING REVENUE BONDS PROVIDENT PLACE  
SERIES 2023

(1) Acceptance Fee:

Acceptance and assumption of fiduciary responsibilities and duties as Trustee under the Indenture of Trust dated as of \_\_\_\_\_, 2023 (the "Indenture") by and between the Housing Finance Authority of Broward County, Florida (the "Issuer"), and The Bank of New York Mellon Trust Company, N.A. ("BNY"), complete study and consideration of the Indenture and all supporting documents, meetings with interested parties, consultations with counsel, attendance at closing, authentication of securities, establish and implement procedures and tickler system necessary to perform duties under the Indenture.

ALL INCLUSIVE ACCEPTANCE FEE AND INITIAL ANNUAL ADMINISTRATIVE FEE TO BE PAID TO TRUSTEE AT BOND CLOSING: \$\_\_\_\_\_.

(2) Annual Administration Fee:

The charge for normal administration functions includes: continuing fiduciary responsibilities, maintenance of administrative records, contact compliance monitoring, trustee, dissemination agent, registrar/transfer agent, paying agent and monthly reports, duties in connection with the Indenture provisions, and various normal administrative questions.

ANNUAL ADMINISTRATION FEE - \$\_\_\_\_\_ PAYABLE SEMI-ANNUALLY IN ADVANCE ON EACH JUNE 1 AND DECEMBER 1 WITH THE FIRST FEE PAYABLE ON THE CLOSING DATE OF THE SERIES 2023 BONDS.

(3) Rebate Analyst Fee:

**EXHIBIT "G"**

**FORM OF PLACEMENT AGENT AGREEMENT**

**PLACEMENT AGENT AGREEMENT**

THIS PLACEMENT AGENT AGREEMENT dated as of \_\_\_\_\_, 2023 (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 Golden Acres Senior Apartments, LLLP, 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 Mortgage Revenue Bonds Provident Place, Series 2023 (the “Bond”) to provide financing to the Borrower for the constructing and equipping of a multi-family residential housing development in Pompano Beach, Broward County, Florida (the “County”) known as Provident Place Apartments (the “Project”).

The Note will initially be acquired directly by TD Bank, N.A.(the “Funding Lender”) pursuant to the requirements of the Issuer’s administrative code and policies (herein, collectively the “Issuer’s Requirements”). The Note will be held as a loan in the Funding Lender’s portfolio. The Agents had no role in the solicitation of the Funding Lender or negotiations between the Borrower and Funding Lender concerning the terms or structure of the Note.

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 Project.
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 \$\_\_\_\_\_, 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 Bonds, 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 the laws of the State of Florida 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 FOR PLACEMENT AGENT AGREEMENT  
(PROVIDENT PLACE APARTMENTS)

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**

(SEAL)

By: \_\_\_\_\_  
Name: Scott Ehrlich  
Title: Chair

SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT  
(PROVIDENT PLACE APARTMENTS)

**RAYMOND JAMES & ASSOCIATES, INC.**

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

Name: Tim Wranovix

Title: Director

SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT  
(PROVIDENT PLACE APARTMENTS)

**RBC CAPITAL MARKETS, LLC**

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

Name: Helen Hough Feinberg

Title: Managing Director



SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT  
(PROVIDENT PLACE APARTMENTS)

**GOLDEN ACRES SENIOR APARTMENTS,  
LLLP**, a Florida limited liability limited partnership

By: HAPB-Golden Acres Senior Apartments GP  
Corp., a Florida Non-Profit Corporation, its  
General Partner

By: \_\_\_\_\_  
Name: Lennard N. Robinson  
Title: Director

**EXHIBIT "H"**

**TERM SHEET**



March 21, 2023

Ms. Elena Adames  
Golden Acres Senior Apartments, LLLP  
c/o Ambar3, LLC  
3030 Hartley Road, Suite 310  
Jacksonville, FL 32257

**Re: Provident Place, f/k/a Golden Acres Senior Apartments Apartments Financing Request**

Dear Elena:

Pursuant to your loan request presented to T.D. Bank, N.A, please accept this Letter of Intent ("LOI") outlining the terms for an up to \$17,600,000 Senior Secured Construction Loan ("Loan" or "Facility") for a 100-unit Senior apartment project known as Golden Acres Senior Apartments, Pompano Beach, Broward County, Florida.

Please be aware that this LOI should not be construed as a commitment to provide or fund any Loan, but merely outlines the terms and conditions under which the Bank would consider a Loan. This letter does not summarize all of the terms, conditions, covenants, representations, warranties and other provisions, which would be contained in a formal Loan Documents. This proposal is subject to the final negotiation of the terms as well as completion of due diligence by TD Bank, and final internal credit approval.

**Sponsor:** Ambar3/Vestcor

**Borrower:** Golden Acres Senior Apartments, LLLP

**Lender:** TD Bank N.A.

**Property:** First Leasehold Mortgage on property and improvements, and assignment of all construction related contracts and leases/rents for the 100-unit apartment project located in West Palm Beach, Florida.

**Purpose:** To finance the construction of the Property.

**Loan Amount:** The maximum loan amount (the "**Loan Amount**" or the "**Loan**") shall be the lesser of:

Construction Loan:

1. \$17,600,000;
2. Maximum 65% of appraised "as stabilized" and "as restricted" value plus the value of the tax credits as determined by a FIRREA conforming appraisal addressed and satisfactory to the Lender. The appraisal shall be paid for by the Borrower.
3. 65% Loan to project cost ratio during construction (excluding deferred development fee)

## Sources and Uses

Final budget to be submitted for final underwriting with minimum hard cost contingency of 5% and minimum soft cost contingency of 3%. Cash equity (including soft debt proceeds) equal to at least 10% of the total development costs must be advanced to the Borrower either at closing or before any loan disbursements will be permitted. Cash Development Fee payments must be agreed-upon by the Lender and must include a reasonable holdback until completion and conversion, at the discretion of the Bank. Budgeted Interest Reserve to be sufficient for a minimum of 24 months, and Lender shall have a right to require replenishment of the Interest Reserve based on its determination of expected usage through maturity.

**Facility Term:** 24 months

**Extension Option:** Borrower shall be granted a six (6) month extension option at the end of the initial term provided (i) substantial completion evidenced by TCO or CO, (ii) payment of 12.5 bps extension fee (iii) an interest reserve sufficient to cover anticipated loan interest through the extension period (iv) 50% of the units are leased; (v) no defaults and (vi) all financing commitments in place and extending co-terminously..

**Completion Date:** Up to 18 months. On the Completion Date, subject to customary extension rights for force majeure, Borrower will be required to substantially complete the construction and obtain either a temporary certificate of occupancy or a permanent certificate of occupancy allowing for the occupancy of the residential units.

**Origination Fee:** 100 basis points on the final loan amount

**Interest Rate:** 1-Month Term SOFR plus 250bps

**SOFR Floor:** 0.00%

**Payments:** Loan shall be interest only for the first 30 months (inclusive of extension period). Consecutive monthly payments of accrued unpaid interest on the outstanding principal balance as of the monthly statement date and paid from an established interest reserve within the construction budget until such time as subject reserve is exhausted. Borrower's final payment will be for all principal, accrued interest and all other applicable fees and expenses, if any, not yet paid.

**Guarantors:** **TVC Development, Inc. and the Housing Authority of Pompano Beach**, who will be required to maintain a minimum \$1,000,000 of unrestricted, bank-verified liquid assets and \$10,000,000 of net worth, tested on an annual basis. Any Guaranty from the Housing Authority shall be acceptable directly from the Authority or an Affiliate. Any guaranty from the Housing Authority (or its affiliate) should be expressly limited to Non-Federal Funds.

**Recourse:** Completion Guaranty: The Guarantor shall provide an unconditional guaranty of lien-free completion with respect to the due, prompt and punctual construction completion of the Project substantially in accordance with the plans and specifications by the Completion Date, inclusive of the payment of all hard costs incurred in connection with such completion, and all obligations, liabilities, soft costs and expenses incurred in connection with such completion.

Interest and Carry Guaranty: The Guarantor shall provide a Carry Guaranty, which is inclusive of interest payments, real estate taxes, and any other expense required to reasonably operate the Project, penalties, late charges, including all costs of collection

under the Guaranty. The Interest and Carry Guaranty shall expire upon the extension into the Permanent Loan.

Repayment Guaranty: Repayment guaranty equal to 100% of principal.

**ADA and  
Environmental  
Indemnification:**

Borrower and Guarantor shall, on a joint and several basis, indemnify Lenders from any costs, claims or liabilities associated with any adverse environmental conditions within the Property, including the presence or removal of any hazardous wastes and toxic materials (including mold) now or hereafter existing within the Property or being in the possession of the Borrower, and any non-compliance with American with Disabilities Act. The indemnity (the "**Environmental Indemnity**") will survive repayment of the Loan.

**Operating Account:**

Borrower will be required to establish an operating account and deposit all tenant security deposits with Lender. Lender shall also hold any long-term "operating deficit" or replacement reserve accounts required to be funded, unless otherwise required by Limited Partner or permanent lender.

**Security:**

Security for the Loan shall include, without limitation, the following:

- a) First priority leasehold mortgage on the Property acceptable to Lender;
- b) A first security interest in all fixtures, furnishings and equipment and other personal property used in connection with the premises and improvements and owned by Borrower;
- c) A first collateral assignment and pledge of all leases (including any collateral or security for such leases), subleases, rents (including any rental subsidy contracts, operating accounts, collateral account maintained for reserves and profits for the Property;
- d) Assignment of the proceeds from the sale or syndication of Low-Income Housing Tax Credits (LIHTC) due to the Borrower;
- e) Assignment of all permits, licenses, contracts and agreements associated with the development, ownership and operation of the Property;
- f) Customary collateral assignments of any other rights or property used in connection with the ownership or operation of the Property and deemed commercially reasonably prudent by the Lender, including, without limitation, a collateral assignment and subordination of any non-TD loan commitments (if applicable).

**Insurance:**

Borrower shall at all times maintain insurance policies, in amounts and from insurers reasonably satisfactory to Lender in all respects, including an "All Risk Peril" policy (including terrorism, flood (if the property is located in a special flood hazard area), earthquake coverage (if applicable), and storm damage coverage) for 100% of the replacement cost of the Property, Builders Risk, business interruption/rental loss coverage, worker's compensation coverage, pollution and remediation insurance, and general and excess liability coverage, each of which shall name Lender, as lender's Loss Payee or Additional Insured, as applicable.

Hurricane and Wind Insurance are required for Florida. This coverage may be included in the standard property insurance or it may be a separate policy

Lender shall have the right to require additional types and amounts of coverage in Lender's reasonable discretion.

**Conditions Precedent  
to Closing:**

Borrower shall be required to satisfy conditions prior to closing, including, without limitation, the following, unless waived by the Lender in its reasonable discretion:

- a) Written satisfactory FIRREA appraisal addressed and satisfactory to the Lender. The appraisal shall be paid for by the Borrower.
- b) Receipt and satisfactory review by Lender of financials, trade references and bonding information for General Contractor.
- c) Certified organizational chart showing all beneficial ownership interests in Borrower;
- d) Completion of a phase I environmental site assessment and phase II, if required, (cost of which is to be borne by Borrower), confirming that (i) there is no indication that the Property is the subject of a release or threat of release of oil and/or hazardous material that would cause Borrower to incur any liability under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or any other Federal, state or local statutes, ordinances, rules, regulations and the like addressing similar issues, and (ii) that the Property does not contain any asbestos or, in the case of residential property, lead paint. The site assessment shall also address the presence of asbestos and, in the case of residential property, lead paint. The Borrower shall also provide a written representation and warranty that no such oil or hazardous waste materials have been deposited on the Property. The Lender may require further investigation based upon the recommendation of the engineering firm in which event the Lender will require written authorization from Borrower for such testing.
- e) Satisfactory receipt and review of General Contractor's Agreement, Architect's Agreement and Engineer's Agreement
- f) Certification by the architect of record for the Project that the final plans and specifications comply with all applicable zoning, environmental protection; land use and building laws, permits, approvals, ordinances and regulations.
- g) Final building plans and construction cost breakdown to be reviewed by the Lender's construction consultant;
- h) Current survey in standard ALTA form, certified to the Lender and to the title company by a licensed professional engineer or surveyor acceptable to the Lender
- i) Satisfactory review by Lender's construction consultant of a full plan and cost budget, contracts, approvals, permits and construction schedule;
- j) Establishment of an operating/project demand deposit account at TD Bank into which approved advances will be deposited;
- k) Title insurance and Lender required endorsements from a title insurer acceptable to the Lender and shall be written by counsel or an agent acceptable to the Bank. The title shall contain no exceptions which, in the opinion of counsel to the Lender, may have an adverse effect upon the use of all or any portion of the Property.
- l) Title search, UCC searches, judgment, state/federal tax lien, litigation, bankruptcy searches and other searches reasonably acceptable to Lender and its counsel;
- m) Review and determination by the Lender and its counsel that all contracts and agreements, including all reciprocal easement agreements, pertaining to the Borrower and Property, are reasonably satisfactory

- n) Satisfactory evidence of a commitment for rental subsidy for no less than seventy (70) units with a minimum initial term of 5 years.
- o) Receipt and satisfactory review of a fully executed ground lease between Borrower and ground lessor.
- p) Receipt of all permits necessary to complete construction, or evidence satisfactory to the Bank that permits are fully approved and available to the project at the time of closing, pending payment.
- q) Commitment for a permanent loan in the amount of \$11,800,000 from Grandbridge Real Estate Capital, or alternative permanent lender acceptable to the Bank, at a forward locked, fixed rate of interest for a term to be at least co-terminus with the subject loan.
- r) Commitment for a subsidy loan of \$3,500,000 from the Broward County Housing Finance Agency with a term to be at least co-terminus with the subject loan.
- s) Legal and other professional opinions and certificates addressing matters customary in transactions of this type, including due formation, authorization, execution and enforcement from Borrower's counsel;
- t) Reasonable determination by Lender that the transaction will not result in any violation of the Patriot Act or other applicable law;
- u) Loan and security documentation reasonably satisfactory to Lender and, its counsel; An opinion of Borrower's Counsel, or other evidence satisfactory to Lender, that improvements on the Property, and the use thereof, are in compliance with all applicable zoning codes and that all required certificates of occupancy have been issued;
- v) **As applicable**, all documentation, as required, for any SWAP entered into by Borrower in relation to the Loan;
- w) Evidence and documentation supporting the allocation of Low-Income Tax Credits associated with the project. Bank approval of Investment Member of the Borrower. Investment Member to contribute sufficient equity as reflected in pro forma provided. Equity installments shall be funded based on the following schedule as per the Raymond James Tax Credit Funds, Inc. investment letter of intent dated June 20, 2022:

Installment Payment of Estimated RJTCF Fund Total Capital:

- i. \$1,744,063 (15%) at Closing, of which \$25,000 shall be paid directly to RJTCF in payment of its due diligence fee.
  - ii. \$1,162,709 (10%) at later of August 1, 2024 or 95% construction completion.
  - iii. \$1,162,709 (10%) at later of November 1, 2024 or 100% Construction Completion
  - iv. \$7,457,604 (64%) at later of May 1, 2025 or Stabilized Operations ("Stabilization Capital Contribution"),
  - v. \$100,000 (1%) when all required tax filing information and Forms 8609 are received and audited financials for the year of Breakeven Operations are available
- x) Borrower will pay all reasonable third-party costs associated with the Loan, whether or not the Loan closes, including but not limited to legal, appraisal,

environmental reports, budget and property condition report/engineering review, construction inspections, etc.

- y) Any other documentation which Lender may reasonably require.

**Funding Conditions:** The following conditions, without limitation, must be satisfied for disbursement of Loan proceeds:

- a) Borrower must evidence that all required upfront cash equity and approved subordinated financing (if applicable) was funded into the Project prior to Lender funding the first advance.
- b) Funds will be advanced for in-place improvements only, with a to-be-determined cap for on-site approved stored materials, as verified by the Lender's inspector. The cost of inspections to be the responsibility of the Borrower.
- c) Upon receipt and approval of certification from the title company of record that the Lender's mortgage continues to be a first lien position, the approved construction disbursement will be directly deposited into the Borrower's project account previously established with the Lender.
- d) Loan must remain "in balance" at all times.
- e) Retainage shall be held at 10% of hard costs and reduced to 5% upon achievement of 50% completion as verified by the Lender's inspector. However, no retainage shall be held on GL Insurance or Payment & Performance Bond. The final retainage disbursement shall require temporary certificate of occupancy, conditional lien waivers that tie to the notice to owner, and an affidavit from the GC affirming payments upon receipt of funds. Unconditional lien waivers shall be provided within a reasonable timeframe after said disbursement.

**General Contract:**

- 1) Guaranteed maximum price contract
- 2) Minimum 65% of general contract to be bought out prior to loan funding.
- 3) Full payment & performance bonding of the General Contractor will be required

**Financial Reporting:** Borrower shall furnish to Lender financial information upon request certified by a responsible officer of Borrower or Guarantor, as applicable, as being materially correct.

All financial information shall be prepared in accordance with generally accepted accounting principles, tax basis, or other sound accounting standard consistently applied, or as may otherwise be required herein. Financial statements shall include a balance sheet, statement of operations and contingent liability schedule, if any.

As applicable, Guarantors/Borrowers shall additionally submit to Lender a copy of their federal income tax returns within 30 days of filing. If tax returns are extended, a copy of the extension form must be provided within 30-days of filing.

**Personal Financial Statements not on TD Bank's standard form must be submitted with the "TD Personal Financial Statement Coversheet", fully executed by each individual Borrower and/or Guarantor.**



**Florida Law:** This document and all subsequent loan documentation shall be governed and construed in accordance with the Laws of the State of Florida.

Please understand that this LOI does not represent an offer or a commitment by the Lender, or any of its affiliates, for the proposed financing, nor does it define all of the terms and conditions of any commitment, but is a framework upon which a loan request may be submitted for final credit approval. Issuance of any commitment is subject to, among other things, the approval of your loan request in accordance with the bank's internal policies and procedures.

Please contact Mario Facella at 561-361-1622 if you have any further questions regarding this matter.

By: 

Accepted by: Lennard Robinson

Title: Secretary of HAPB-Golden Acres Senior Apartments GP Corp., General Partner of Golden Acres Senior Apartments, LLLP

Date: 3/29/2023