

# **ITEM 4**

**Housing Finance HFA of Broward County  
October 18, 2023 – Board Meeting**

**Multifamily Bonds/Bonds The Palms of Deerfield Townhomes - Action Item**

- A. MOTION TO ACCEPT the Credit Underwriting Report for the Palms of Deerfield Townhomes.
- B. MOTION TO APPROVE a Resolution providing authorization and/or approval: a) to issue the HFA's Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Senior Bonds") and its Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the "Subordinate Note" and, together with the Senior Bonds, the "Bonds") in an aggregate amount not to exceed \$19,000,000, for the purpose of financing the acquisition, rehabilitation, and equipping of a multifamily residential rental development in Broward County, Florida known as The Palms of Deerfield Townhomes, b) of the parameters for the award of the sale and the terms of the Bonds, c) of the form, execution and delivery of the documents included as Exhibits A-J hereto, d) to execute certain additional agreements, instruments, certifications, and affidavits in connection with the issuance of the Bonds, e) of the negotiated sale of the Senior Bonds and appointment of a Bidding Agent pursuant to the Bond Purchase Agreement (as defined within the HFA Resolution), f) preparation, distribution and, as applicable, execution of a Preliminary and Final Official Statement, g) to appoint a Trustee, Paying Agent and Registrar of the Senior Bonds, h) of the negotiated sale of the Subordinate Note to The Palms of Deerfield Beach, LP pursuant to the Subordinate Loan Agreement (as defined within the HFA Resolution), i) to allow the Borrower (as defined within the HFA Resolution) to place subordinate financing on the Project (as defined within the HFA Resolution) and to execute such agreements as may be necessary for such subordinate financing, j) to waive the annual audit fee, k) partially waive the HFA's policy for mailing Preliminary Official Statements prior to receipt of Bond Issuance approval from the Broward County Board of County Commissioners, l) of the proper officers of the HFA to take other actions required to issue and deliver the Bonds, and m) for the establishment of an effective date.

**Background**

1. On December 20, 2022, the HFA received a multifamily bond application from The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, pertaining to the acquisition and rehabilitation of a 56-unit development, known as The Palms of Deerfield Townhomes (the "Development"). The Development is located at 407 – 431 NW 1<sup>st</sup> Terrace, Deerfield Beach, Florida. The application requested that the HFA issue bonds to support the Development in the amount of \$16,000,000. The application was revised on March 20, 2023 to increase the bond amount to \$19,000,000.
2. At its May 17, 2023 meeting the Board adopted Resolution No. 2023-003 (the "Inducement Resolution") declaring its official intent to issue bonds in an amount not to exceed \$19,000,000 (the "Bonds"), and (ii) authorizing the publishing of a TEFRA Hearing notice (the "TEFRA Notice") and holding a TEFRA Hearing (the "TEFRA Hearing").
3. 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. Borrower's request is addressed within the HFA Resolution (Exhibit 2).
2. Due to certain timing limitations and the need for additional affordable housing in Broward County, the Borrower has requested a partial waiver of the HFA Posting Policy (as defined within the HFA Resolution) as more specifically described within the recitals to and Section 19 of the HFA Resolution (Exhibit 2).
3. The TEFRA Notice reflecting an amount not to exceed \$19,000,000 was published in the Sun-Sentinel on June 7, 2023, and the TEFRA Hearing was held on June 15, 2023.
4. HFA approval of the draft Credit Underwriting Report ("CUR") is administrative and additional revisions may be required in conjunction with the issuance and delivery of the Bonds. Revisions to the CUR will be made pursuant to Section 22 of the Resolution (Exhibit 1).
5. The closing for the financing of this Development is presently scheduled for November 2023.

## **Recommendation**

Request the following Board actions:

1. Motion A - Acceptance of draft Credit Underwriting Report, and
2. Motion B - Approval of HFA Resolution providing:
  - (i) authorization and/or approval:
    - a) to issue the HFA's Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Senior Bonds") and the HFA's Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the "Subordinate Note" and, together with the Senior Bonds, the "Bonds") in an aggregate amount not to exceed \$19,000,000, for the purpose of financing the acquisition, rehabilitation, and equipping of a multifamily residential rental development in Broward County, Florida known as The Palms of Deerfield Townhomes,
    - b) of the parameters for the award of the sale and the terms of the Bonds,
    - c) of the form, execution and delivery of the documents included as Exhibits A-J hereto, d) to execute certain additional agreements, instruments, certifications, and affidavits in connection with the issuance of the Bonds,
    - e) of the negotiated sale of the Senior Bonds and appointment of a Bidding Agent pursuant to the Bond Purchase Agreement (as defined within the HFA Resolution),
    - f) preparation, distribution, and, as applicable, execution of a Preliminary and Final Official Statement,
    - g) to appoint a Trustee, Paying Agent, and Registrar of the Senior Bonds,
    - h) of the negotiated sale of the Subordinate Note to The Palms of Deerfield Beach, LP pursuant to the Subordinate Loan Agreement (as defined within the HFA Resolution),
    - i) to allow the Borrower (as defined within the HFA Resolution) to place subordinate financing on the Project (as defined within the HFA Resolution) and to execute such agreements as may be necessary for such subordinate financing,
    - j) to waive the annual audit fee,

- k) partially waive the HFA's policy for mailing Preliminary Official Statement prior to receipt of Senior Bond Issuance approval from the Broward County Board of County Commissioners,
- l) of the proper officers of the HFA to take other actions required to issue and deliver the Bonds, and
- m) for the establishment of an effective date.

**EXHIBITS**

- 1. Credit Underwriting Report
- 2. HFA Resolution
  - A. Form of Indenture
  - B. Form of Loan Agreement
  - C. Form of Land Use Restriction Agreement
  - D. Form of Bond Purchase Agreement
  - E. Form of Preliminary Official Statement
  - F. Form of Trustee Fee Agreement
  - G. Form of the Collateral Funds Agreement
  - H. Form of Subordinate Loan Agreement
  - I. Form of Subordinate Assignment
  - J. Form of Placement Agent Agreement



# **ATTACHMENT 1**

# **Housing Finance Authority of Broward County**

*Credit Underwriting Report*

## **The Palms of Deerfield Townhomes**

**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.***

*Final Report*

*October 9, 2023*

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THE PALMS OF DEERFIELD TOWNHOMES

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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”) issue tax-exempt multifamily mortgage revenue bonds (“MMRB”) in the amount of \$19,000,000 (see Additional Information section below) to The Palms of Deerfield Townhomes (the “Development”) for construction period financing.

**DEVELOPMENT & SET ASIDES**

Development Name: The Palms of Deerfield Townhomes

Address: 407-431 NW 1st Terrace

City: Deerfield Beach Zip Code: 33441 County: Broward County Size: Large

Development Category: Acquisition/Rehab Development Type: Townhomes

Construction Type: Wood Frame

Demographic Commitment:  
 Primary: Family for 100% of the Units

Unit Composition:  
 # of ELI Units: 0 ELI Units Are Restricted to      AMI, or less. Total # of units with PBRA? 45  
 # 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
2	1.5	11	1,065	60%			\$1,225	\$79	\$1,146		\$1,217	\$1,217	\$1,217	\$160,644
2	1.5	13	1,065	50%			\$1,021	\$79	\$942	\$2,233	\$2,233	\$2,233	\$2,233	\$348,348
3	2.5	32	1,141	50%			\$1,179	\$83	\$1,096	3,124	\$3,124	\$3,124	\$3,124	\$1,199,616
		56	62,072											\$1,708,608

Buildings: Residential - 12 Non-Residential - 1  
 Parking: Parking Spaces - 164 Accessible Spaces - 8

Program	% of Units	# of Units	% AMI	Term (Years)
MMRB	80.4%	45	60%	30
HC	100.0%	56	60%	30

Occupancy Rate at Stabilization: Physical Occupancy 99.00% Economic Occupancy 98.00%  
 Occupancy Comments Vacant during rehabilitation

DDA: No QCT: Yes Multi-Phase Boost: No QAP Boost: No  
 Site Acreage: 5.504 Density: 10.1744 Flood Zone Designation: AE  
 Zoning: RM-15; Multifamily Residential Flood Insurance Required?: Yes

DEVELOPMENT TEAM		
Applicant/Borrower:	The Palms of Deerfield Townhomes, LLC	% Ownership
Member	DBFE Townhomes, LLC	
Member	SHAG Palms of Deerfield Townhomes, LLC	
Member	Hunt Capital Partners, LLC or an affiliate	
Construction Completion Guarantor(s):	The Palms of Deerfield Townhomes, LLC	
CC Guarantor 1:	Deerfield Beach Family Empowerment, Inc.	
CC Guarantor 2:	DBFE Townhomes, LLC	
CC Guarantor 3:	SHAG Palms of Deerfield Townhomes, LLC	
CC Guarantor 4:	Deerfield Beach Family Empowerment, Inc.	
CC Guarantor 5:	SHAG Palms of Deerfield Townhomes Developer, LLC	
CC Guarantor 6:	Darren Smith	
CC Guarantor 7:	Timothy Henzy	
Operating Deficit Guarantor(s):	Deerfield Beach Family Empowerment, Inc.	
OD Guarantor 1:	DBFE Townhomes, LLC	
OD Guarantor 2:	SHAG Palms of Deerfield Townhomes, LLC	
OD Guarantor 3:	Deerfield Beach Family Empowerment, Inc.	
OD Guarantor 4:	SHAG Palms of Deerfield Townhomes Developer, LLC	
OD Guarantor 5:	Darren Smith	
OD Guarantor 6:	Timothy Henzy	
Bond Purchaser	Public Offering	
Developer:	SHAG Palms of Deerfield Townhomes Developer, LLC	
Principal 1	Darren Smith (68%)	
Principal 2	Timothy Henzy (32%)	
Co-Developer:	Deerfield Beach Family Empowerment, Inc.	
DEVELOPMENT TEAM (cont)		
General Contractor 1:	Affordable Group Construction, LLC	
Management Company:	Deerfield Beach Housing Authority	
Syndicator:	Hunt Capital Partners, LLC	
Bond Issuer:	Housing Finance Authority of Broward County	
Architect:	Gallo Herbert Architects, LLC	
Market Study Provider:	Walter Duke + Partners	
Appraiser:	Walter Duke + Partners	

PERMANENT FINANCING INFORMATION						
	1st Source	2nd Source	3rd Source			
Lender/Grantor	Citibank, N.A. / Broward County HFA	Deerfield Beach Housing Authority / Taxable Seller Note	Deerfield Beach Housing Authority / Tax-Exempt Seller Note			
Amount	\$6,400,000	\$13,247,477	\$5,000,000			
Underwritten Interest Rate	7.13%	6.25%	6.25%			
Loan Term	20.0	55.0	55.0			
Amortization	40.0	0.0	0.0			
Market Rate/Market Financing LTV	33.7%	103.5%	129.8%			
Loan to Cost - Cumulative	15.6%	47.9%	60.1%			
Debt Service Coverage	2.275	0.857	0.693			
Operating Deficit & Debt Service Reserves	\$285,111					
# of Months covered by the Reserves	6.1					
Deferred Developer Fee				\$429,997		
As-Is Land Value				\$1,680,000		
As-Is Value (Land & Building)				\$0		
Market Rent/Market Financing Stabilized Value				\$18,990,000		
Rent Restricted Market Financing Stabilized Value				\$27,300,000		
Projected Net Operating Income (NOI) - Year 1				\$1,137,265		
Projected Net Operating Income (NOI) - 15 Year				\$1,413,933		
Year 15 Pro Forma Income Escalation Rate				2.00%		
Year 15 Pro Forma Expense Escalation Rate				3.00%		
Housing Credit (HC) Syndication Price				\$0.90		
HC Annual Allocation - Qualified in CUR				\$1,603,222		
HC Annual Allocation - Equity Letter of Interest				\$1,637,738		

CONSTRUCTION/PERMANENT SOURCES:				
Source	Lender	Construction	Permanent	Perm Loan/Unit
Regulated Mortgage	Citibank N.A.	\$14,000,000	\$6,400,000	\$114,285.71
Seller Financing	Seller Note - Taxable	\$13,247,477	\$13,247,477	\$236,562.09
Seller Financing	Seller Note - Tax-Exempt	\$5,000,000	\$5,000,000	\$89,285.71
Other	Bond Collateral Interest	\$861,000	\$1,218,000	\$21,750.00
Operating Deficit	Developer	\$285,111	\$0	\$0.00
HC Equity	Hunt Capital Partners	\$2,210,947	\$14,739,644	\$263,207.93
Deferred Developer	Developer	\$5,430,583	\$429,997	\$7,678.52
<b>TOTAL</b>		<b>\$41,035,118</b>	<b>\$41,035,118</b>	<b>\$732,769.96</b>
<b>Cash Collateral Source(s):</b>				
Regulated Mortgage	Citibank N.A.	\$14,000,000.00		
Seller Financing	Deerfield Beach Housing Authority	\$5,000,000.00		
	<b>GRAND TOTAL</b>	<b>\$19,000,000.00</b>		

Financing Structure:

The Applicant submitted a Multifamily Housing Bond Program Application to the HFABC for \$16,000,000 of MMRB allocation, subsequently increased to \$19,000,000. A portion of the Bond will be short-term and collateral will be paid down at conversion to permanent financing. The MMRB will be marketed by Raymond James & Associates, Inc. ("RJA") through a public offering. Proceeds will be held under the Indenture with the Trustee. Concurrent with closing, the Applicant will also close on a \$14,000,000 construction loan with Citibank, N.A. ("Citi") and a \$5,000,000 tax-exempt Seller Note, as collateral for the bonds. As MMRB are drawn to pay for development costs, a like amount will be drawn from the construction loan and deposited with the Trustee ensuring that at all times the MMRB will be fully cash collateralized.

The Trustee will invest the MMRB proceeds in US Treasuries to offset debt payments on the MMRB. In the current market, it is anticipated that investment earnings will be in excess of the MMRB rate, resulting in no interest deposit at closing.

Additionally, Citibank will deliver forward commitments to the Borrower for permanent financing in the amount of \$6,400,000, which will become effective upon the Development meeting all conditions to convert to the permanent financing phase.

The local HFA Bond Collateral Interest, estimated by Applicant, will be available during the construction and permanent period. This amount is offset as bond interest expense in the development budget. SMG has utilized the same accounting assumptions utilized by the Applicant for purposes of estimating eligible basis and the annual HC allocation. The final accounting of these expenses will be determined through the cost certification process. Any reduction in eligible basis will result in less HC equity available to the transaction and any reduction will be offset by an increase to deferred Developer Fee.



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	2
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?		3
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. Changes in Sources of Funds:
  - a. Additional sources of funds include a Seller Note in the amount of \$18,247,477, Bond Collateral Interest Proceeds in the amount of \$5,000,000 and Operating Deficit Reserve funding in the amount of \$285,111.
2. As previously stated, the Lease Agreement needs to be assigned to the Applicant and amended to reflect a \$22,400,000 capital lease payment.

**3. Changes in Development Costs Listed in Application:**

- a. Development costs have increased from \$28,183,037 to \$41,035,118 (45.60%) since the application, primarily due to increases in construction costs and development costs.

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

Florida Housing's Past Due Report dated September 18, 2023 reflects no past due item(s).

The FHFC Asset Management Noncompliance Report dated May 24, 2023, reflects no non-compliant item(s).

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 Development will receive rental assistance for 45 units for a period of twenty years in the form of a Project Based Vouchers ("PBV") providing an extremely stable revenue stream for 80% of the total units. The contract amount is set at 110% Broward County, FL Metro Fair Market Rents, less a utility allowance. With the PBVs, the Development's gross potential income is increased by 91% or \$815,136 per year. The PBVs will be administered by the Deerfield Beach Housing Authority, 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 Development's submarket.
3. Based on strong average occupancies in the Development's submarket, WDP concludes a stabilized economic occupancy rate of 96.2%, confirming strong demand.
4. Although the Applicant, Non-Investor Member, Managing Member and Developer are newly-formed, principal owners of the Applicant, Non-Investor Member, Managing Member and Developer have sufficient experience and financial resources to develop and operate the Development.

**Waiver Requests/Special Conditions:**

Special Conditions include the following:

1. Receipt and satisfactory review of an executed Construction Contract consistent with the assumptions of this report. This is a condition to close.
2. Receipt and satisfactory review of an executed Management Agreement consistent with the assumptions of this report. This is a condition to close.
3. Receipt and satisfactory review of an executed Seller Note confirming the Tax-Exempt and Taxable portions of the funding. This is a condition to close.
4. Receipt and satisfactory review of an Amended and Restated Ground Lease reflecting the Applicant as Tenant and a capital lease payment of \$22,400,000. This is a condition to close.

Additional Information:

1. Per the Developer's budget, the Applicant will apply for 4% Housing Credits as a non-profit entity based on its ownership structure. Therefore, the FHFC Administration Fee is reduce from 9% to 5.50% of the annual Housing Credit recommendation amount and 25% of the total Developer Fee (\$1,490,129) shall be received by the non-profit, Deerfield Beach Family Empowerment, Inc. ("Deerfield") and confirmed at Cost Certification.
2. The Extended Low-Income Housing Agreement ("EUA") dated November 2, 2009, reflects not less than 21% of the units (12 units) shall be rented to persons or households whose incomes are 50% or less of the Area Medium Income ("AMI"). The Appraisal dated September 18, 2023, reflects 13 units will be rented at 50% AMI. Seltzer has utilized 13 units for credit underwriting purposes.
3. The designated General Contractor ("GC") proposed for this rehabilitation endeavor is Affordable Group Construction, LLC ("AGC"). AGC is affiliated with the Developer and is owned by Mr. Darren Smith, who is the Principal of the Developer, and Mr. Matthew Muldoon, a duly licensed General Contractor in the state of Florida. Mr. Muldoon, prior to his attainment of the Florida GC License CGC1532847, on October 7, 2022, has accrued experience in the role of a construction project manager. According to a GC Qualification Statement, Mr. Muldoon and AGC, under the GC License, have no construction projects currently underway and has no completed construction projects.

The First Mortgage Lender, Citibank, is in the process of evaluating the Developer's proposition for endorsing AGC as the official GC for the rehabilitation endeavor related to the Development.

The Bond Issuer, Broward HFA, serving solely as a conduit lender, has accorded approval to the Developer's choice of AGC, subject to the satisfaction of the subsequent conditions:

- The acquiescence of the First Mortgage Lender, Citibank
- The approval of the HC Syndicator, Hunt
- The procurement of a Payment and Performance Bond amounting to 100% of the GC Contract, with AGC designated as the Contractor of record.

This concurrence is contingent on the affirmation that all prerequisites and conditions are met, maintaining the integrity and compliance of the rehabilitation project.

4. The Deerfield Beach Housing Authority ("DBHA") has agreed to forgive the outstanding balance and accrued interest of an existing SHIP Loan. Broward County will receive \$489,982, which is 50% of the original SHIP Loan balance, at closing.
5. At closing, 50% of the original balance of the HOME Loan, estimated to be \$250,000, will be paid off along with \$57,500 of accrued interest. Broward County will forgive the remaining balance of principal and interest to satisfy two existing HOME Loans..
6. In previous acquisition/rehabilitation transactions, Seltzer has conducted underwriting for transactions that involved a ground lease coupled with a purchase and sale agreement pertaining to the improvements. This methodology was employed to secure Housing Credit (HC) acquisition basis on the said improvements. However, for the current transaction, the Applicant has conveyed to Seltzer that the transaction structure will diverge from past practices, comprising solely of a unified lease agreement that encompasses both the land and the improvements.

Regrettably, during the credit underwriting phase, no legal or tax opinion was furnished to validate the appropriateness of this singular approach, and as such, the legitimacy of this method remains unconfirmed. It's pertinent to mention that, based on our records, Seltzer has not previously underwritten a transaction incorporating acquisition basis for leased improvements.

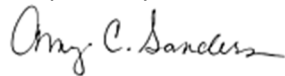
Consequently, Seltzer is placing reliance on the Applicant's due diligence and research and is also depending on the tax credit proficiency of the HC Syndicator to ensure the legality and tax compliance of this unconventional approach, in the absence of substantiated legal or tax affirmation.

Recommendation:

SMG recommends HFABC issue the MMRB in the amount of \$19,000,000 for the construction period with a reduction of \$7,580,000 to \$6,420,000 at conversion to the permanent period, with an annual HC allocation of \$1,637,738. 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.

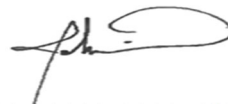
Prepared by:



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Amy C. Sanders  
Credit Underwriter

Reviewed by:



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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	Citibank, N.A. / Broward County HFA Deerfield Beach Housing Authority -	\$16,000,000	\$14,000,000	\$14,000,000	9.32%	\$1,396,136
Co-Second Mortgage	Taxable Seller Note Deerfield Beach Housing Authority / Tax-Exempt Seller	\$0	\$13,247,477	\$13,247,477	6.25%	\$885,925
Co-Second Mortgage	Note	\$0	\$5,000,000	\$5,000,000	6.25%	\$334,375
Bond Collateral Interest	Reinvestment Proceeds	\$0	\$861,000	\$861,000	0.00%	\$0
Operating Deficit Reserve	Developer	\$0	\$0	\$285,111	0.00%	\$0
HC Equity	Hunt Capital Partners	\$0	\$2,211,642	\$2,210,947		
Deferred Developer Fee	Developer	\$0	\$5,525,516	\$5,430,583		
<b>Total</b>		<b>\$16,000,000</b>	<b>\$40,845,635</b>	<b>\$41,035,118</b>		<b>\$2,616,436</b>

#### Proposed Bonds:

As evidenced by a Citi term sheet dated September 26, 2023, the Applicant anticipates receiving a \$14,000,000 construction period loan. Terms include a floating interest rate, monthly payments of interest only and a 24-month maturity, plus two as-of-right 6 month extension(s). The interest rate will be based on the 1-month Secured Overnight Financing Rate (“SOFR”), currently at 5.32%, plus a spread of 3.00% based on current market conditions. To account for market volatility, SMG has added an underwriting cushion of 1.00% resulting for an underwriting rate of 9.32%.

#### Seller Note:

Per an executed Seller Note commitment dated September 12, 2023, Deerfield Beach Housing Authority (“DBHA”) will provide a loan for the amount of \$18,747,477. The Applicant’s budget reflects \$13,247,477 of that amount to be taxable and the remaining \$5,000,000 is tax-exempt and will serve as collateral for a portion of the Bonds. Terms of the loan include a 6.25% compounding interest rate per annum and paid from 75% of the available cash flow, after debt service of the first mortgage and interest payments on any subordinate debt throughout the term of the loan. The loan is non-recourse and non-amortizing with a 55-year term. At maturity, the Borrower shall repay the loan balance in full.

#### Interest Income:

The local HFA Bond Collateral Interest, estimated by Applicant to be \$861,000, will be available during the construction period. This amount is offset as bond interest expense in the development budget.

#### Other Construction Sources of Funds:

Additional sources of funds for this Development during construction consist of Operating Deficit Reserves, Housing Credit equity and deferred Developer Fees. See the Permanent Financing section below for details.

Construction/Stabilization Period:

A draft AIA 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 reflects Affordable Group Construction LLC as the contractor. The Agreement calls for substantial completion of the Development's construction no later than 365 calendar days (approximately 12 months) from the date of commencement. The Development is fully stabilized and thus an absorption rate is not warranted.

**Permanent Financing Sources**

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Amort. Yrs.	Term Yrs.	Annual Debt
First Mortgage	Citibank, N.A. / Broward County HFA Deerfield Beach Housing Authority /	\$16,000,000	\$6,420,000	\$6,400,000	7.13%	40	20	\$484,528
Co-Second Mortgage	Taxable Seller Note	\$0	\$13,247,477	\$13,247,477	6.25%	0	55	\$827,967
Co-Second Mortgage	Deerfield Beach Housing Authority / Tax-Exempt Seller Note	\$0	\$5,000,000	\$5,000,000	6.25%	0	55	\$312,500
Bond Collateral Interest	Reinvestment Proceeds	\$0	\$1,218,000	\$1,218,000	0.00%			\$0
HC Equity	Hunt Capital Partners	\$0	\$14,744,277	\$14,739,644				
Def. Developer Fee	Developer	\$0	\$235,881	\$429,997				
<b>Total</b>		<b>\$16,000,000</b>	<b>\$40,865,635</b>	<b>\$41,035,118</b>				<b>\$1,624,996</b>

**First Mortgage Financing:**

The Applicant has provided a Citi term sheet dated September 26, 2023, for permanent loan financing. Terms of the financing include a fixed interest rate, a maturity of 20 years, and monthly principal and interest payments based on a 40-year amortization period. The interest rate will be a fixed rate equal to 7.00%. The rate will be committed at the time of closing of the construction phase financing and is subject to change.

The minimum debt service coverage ratio is 1.15 to 1.00 on the final underwriting net operating income ("NOI") for the Development, as determined by Citi, and a maximum loan to value of 85% of the As-Stabilized fair market value. The DSC calculation includes the HFA's ongoing Issuer Fee of 18 basis points and an annual Trustee Fee of \$3,750.

**Seller Note:**

For detail see Construction Financing Sources

Housing Credits Equity Investment:

The Borrower will apply to Florida Housing to receive 4% Housing Credits 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 an August 1, 2023 Letter of Intent, Hunt Capital Partners (“HCP”), 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	\$2,210,947	15.00%	at closing
2nd Installment	\$2,947,929	20.00%	at substantial completion
3rd Installment	\$2,947,929	20.00%	at completion
4th Installment	\$6,532,839	44.32%	at stabilization
5th Installment	\$100,000	0.68%	8609s
<b>Total</b>	<b>\$14,739,644</b>	<b>100.00%</b>	

Annual Tax Credits per Syndication Agreement: \$1,637,738

Total HC Available to Syndicator (10 years): \$16,375,742

Syndication Percentage (investor member interest): 99.990%

Calculated HC Exchange Rate (per dollar): \$0.900

Proceeds Available During Construction: \$2,210,947

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 and interest income have been received, the Developer will have to defer \$429,997 of Developer Fee.



## Uses of Funds

CONSTRUCTION COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Demolition			\$311,000	\$5,554	\$0
Rehab of Existing Common Areas				\$0	
Rehab of Existing Rental Units	\$4,562,328	\$4,735,025	\$4,424,029	\$79,001	
Site Work				\$0	\$0
Constr. Contr. Costs subject to GC Fee	\$4,562,328	\$4,735,025	\$4,735,029	\$84,554	\$0
General Conditions	\$638,725	\$284,100	\$284,100	\$5,073	
Overhead		\$94,701	\$94,701	\$1,691	
Profit		\$284,100	\$284,100	\$5,073	
Builder's Risk Insurance				\$0	
General Liability Insurance		\$47,822	\$47,822	\$854	
Payment and Performance Bonds		\$95,301	\$95,301	\$1,702	
Contract Costs not subject to GC Fee				\$0	
Total Construction Contract/Costs	\$5,201,053	\$5,541,049	\$5,541,053	\$98,947	\$0
Hard Cost Contingency	\$520,105	\$831,157	\$831,157	\$14,842	
PnP Bond paid outside Constr. Contr.				\$0	
FF&E paid outside Constr. Contr.	\$200,000	\$200,000	\$200,000	\$3,571	
Other:				\$0	
<b>Total Construction Costs:</b>	<b>\$5,921,158</b>	<b>\$6,572,206</b>	<b>\$6,572,210</b>	<b>\$117,361</b>	<b>\$0</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 September 5, 2023, in the amount of \$5,541,053. The contract provides for achievement of substantial completion within 365 days (12 months) from the date of commencement. Ten (10%) percent retainage will be withheld on all work performed up to 50% completion, then 5% thereafter.

### Allowances in the GMP Agreement

• Landscape and irrigation repairs	\$ 50,000
• Sidewalk repairs	\$ 25,000
• Insulation	\$ 50,000
• Stucco repairs	<u>\$ 50,000</u>
Total	\$175,000

Partner states that the allowances are above the 2% maximum threshold they typically recommend for a development. Partner recommends that the contract solicit firm pricing for the proposed work prior to execution of the contract to reduce the percentage of allowances to below 2% of total construction costs.

- 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.
- 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 inside the Contract.

GENERAL DEVELOPMENT COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit	HC Ineligible Costs	CUR
	Accounting Fees	\$40,000	\$40,000	\$40,000		\$714	\$20,000
Appraisal	\$15,000	\$20,000	\$20,000		\$357		
Architect's Fee - Site/Building Design	\$175,000	\$100,000	\$100,000		\$1,786		
Architect's Fee - Supervision					\$0		
Building Permits	\$112,000	\$112,000	\$112,000		\$2,000		
Builder's Risk Insurance	\$65,013	\$69,263	\$69,263		\$1,237		
Capital Needs Assessment/Rehab	\$10,000	\$20,000	\$20,000		\$357		
Engineering Fees					\$0		
Environmental Report	\$40,000	\$50,000	\$50,000		\$893		
Federal Labor Standards Monitoring					\$0		
FHFC Administrative Fees	\$61,273	\$90,104	\$88,178		\$1,575	\$88,178	
FHFC Application Fee	\$3,000	\$3,000	\$3,000		\$54	\$3,000	
FHFC Credit Underwriting Fee	\$19,329	\$19,329	\$13,859		\$247	\$13,859	
FHFC Compliance Fee	\$120,671	\$120,671	\$121,088		\$2,162	\$121,088	
Lender Inspection Fees / Const Admin	\$36,000	\$40,000	\$40,000		\$714		
Insurance		\$0			\$0		
Legal Fees - Organizational Costs	\$250,000	\$250,000	\$250,000		\$4,464	\$125,000	
Local Subsidy Underwriting Fee					\$0		
Market Study	\$15,000	\$20,000	\$20,000		\$357	\$20,000	
Marketing and Advertising		\$0			\$0	\$0	
Plan and Cost Review Analysis					\$0		
Property Taxes	\$143,404				\$0		
Survey	\$25,000	\$50,000	\$50,000		\$893	\$12,500	
Tenant Relocation Costs	\$280,000	\$280,000	\$280,000		\$5,000		
Title Insurance and Recording Fees	\$105,000	\$140,000	\$140,000		\$2,500	\$35,000	
Soft Cost Contingency	\$80,896	\$85,653	\$80,869		\$1,444		
Other:					\$0		
<b>Total General Development Costs:</b>	<b>\$1,596,586</b>	<b>\$1,510,020</b>	<b>\$1,498,257</b>		<b>\$26,755</b>	<b>\$438,625</b>	

*Notes to the General Development Costs:*

1. Architect's Fees are consistent on the Agreement between Owner and Gallo Herbert Architects, LLC, dated February 7, 2023, plus additional hourly fees for services outside of the Agreement.
2. In response to the Developer's indication that they will apply for 4% HCs as a non-profit applicant, the FHFC Administrative Fee is based on 5.5% 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 estimated 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 the RFA and Rules.
8. Other General Development Costs are based on the Applicant's estimates, which appear reasonable.

FINANCIAL COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit	HC Ineligible Costs	CUR
	Construction Loan Application Fee					\$0	
Construction Loan Underwriting Fee					\$0		
Construction Loan Origination Fee	\$105,000	\$140,000	\$140,000		\$2,500		
Construction Loan Commitment Fee					\$0		
Construction Loan Closing Costs	\$50,000				\$0		
Construction Loan Interest	\$1,269,987	\$1,627,437	\$1,627,437		\$29,061	\$652,400	
Construction Loan Servicing Fees					\$0		
Permanent Loan Application Fee		\$25,000	\$25,000		\$446	\$25,000	
Permanent Loan Underwriting Fee	\$105,000	\$105,000	\$105,000		\$1,875	\$105,000	
Permanent Loan Subsidy Layering Rev.					\$0	\$0	
Permanent Loan Commitment Fee					\$0	\$0	
Permanent Loan Origination Fee					\$0	\$0	
Permanent Loan Closing Costs	\$102,690	\$224,500	\$224,500		\$4,009	\$224,500	
Permanent Loan Interest					\$0	\$0	
Permanent Loan Servicing Fee	\$71,900				\$0	\$0	
Local HFA Application Bond Fee					\$0	\$0	
Local HFA Bond Underwriting Fee	\$16,000	\$16,000	\$16,000		\$286	\$16,000	
Local HFA Bond Cost of Issuance	\$284,400	\$281,400	\$415,118		\$7,413	\$415,118	
Local HFA Bond Closing Costs					\$0	\$0	
Local HFA Bond Interest	\$980,000	\$1,148,000	\$1,218,000		\$21,750	\$1,218,000	
Local HFA Bond Servicing Fee					\$0	\$0	
Local HFA Legal - Bond Counsel	\$75,000	\$75,000	\$75,000		\$1,339	\$75,000	
Local HFA Legal - Borrower's Counsel					\$0	\$0	
Local HFA Legal - Issuer's Counsel		\$35,000	\$35,000		\$625	\$35,000	
Local HFA Legal - Lender's Counsel	\$65,000	\$65,000	\$65,000		\$1,161	\$65,000	
Local HFA Legal - U/W's Counsel	\$50,000	\$50,000	\$50,000		\$893	\$50,000	
Legal Fees - Financing Costs	\$42,000				\$0	\$0	
Placement Agent/Underwriter Fee		\$7,000	\$7,000		\$125	\$7,000	
Initial TEFRA Fee	\$7,500	\$7,500	\$7,500		\$134	\$7,500	
Other: Syndicator Fees		\$70,000	\$70,000		\$1,250	\$70,000	
Other:					\$0		
<b>Total Financial Costs:</b>	<b>\$3,224,477</b>	<b>\$3,876,837</b>	<b>\$4,080,555</b>		<b>\$72,867</b>	<b>\$2,965,518</b>	
<b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b>	<b>\$10,742,221</b>	<b>\$11,959,063</b>	<b>\$12,151,022</b>		<b>\$216,983</b>	<b>\$3,404,143</b>	

*Notes to the Financial Costs:*

1. Construction Origination Fee is consistent with the Citi term sheet.
2. Construction Loan Interest is as discussed in the Construction Period Sources section.
3. Permanent Loan Application Fee and Application Fee is consistent with the Citi application.
4. Permanent Loan Closing costs include lender counsel and conversion fee.

- Local Bond HFA Cost of Issuance amount is based on an estimate provided by RJA and includes the following: fees and expenses of the Issuer, MMRB Underwriter, Bond Counsel and Fiscal Agent fees.
- Local HFA Bond Interest is based on the Applicants estimate and is off-set by Bond Reinvestment Proceeds.
- Other Financial Costs are based on the Applicant's estimates, which appear reasonable.

NON LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Brokerage Fees - Building			\$0	\$0	
Building Acquisition Cost		\$20,961,320	\$20,961,320	\$374,309	
Developer Fee on Non-Land Acq. Costs				\$0	
Other:				\$0	
<b>Total Non-Land Acquisition Costs:</b>	\$0	\$20,961,320	\$20,961,320	\$374,309	\$0

*Notes to the Non-Land Acquisition Costs:*

- Applicant provided an executed Ground Lease ("Lease") between Deerfield Beach Housing Authority, as Landlord, and The Palms of Deerfield Beach, LP, as current Lessee, reflecting a base rate of \$1.00 payable annually. The term of the Lease expires August 15, 2071. An Assignment to the Applicant, reflecting a capital lease payment of \$22,400,000 will be executed at Closing and is a condition to close.
- Per the appraisal dated September 18, 2023, the estimated "As-Is" Lease Value is \$7,150,000 and the "In Present Condition" market value is \$27,300,000.

DEVELOPER FEE ON NON ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Developer Fee - Unapportioned	\$4,031,239	\$5,967,739	\$5,960,221	\$106,433	
DF to fund Operating Debt Reserve				\$0	
Other:				\$0	
<b>Total Other Development Costs:</b>	\$4,031,239	\$5,967,739	\$5,960,221	\$106,433	\$0

*Notes to the Other Development Costs:*

- 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	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Land		\$1,438,680	\$1,438,680	\$25,691	\$1,438,680
Land Lease Payment	\$12,940,000		\$48	\$1	\$48
Land Carrying Costs				\$0	\$0
<b>Total Acquisition Costs:</b>	\$12,940,000	\$1,438,680	\$1,438,728	\$25,692	\$1,438,728

*Notes to the Land Acquisition Costs:*

- The "As-Is" Market Value of the land as-if vacant is \$1,680,000 per the appraisal.
- The Broward County Property Appraiser's website indicates a Land Value of \$1,438,680, which is considered to be reflective of the actual land value.

3. Based on FHFC's Land Allocation criteria, SMG has utilized the lesser of the appraised land value, land value per Broward County Property Appraiser and the Florida Housing allocation calculation. The Broward County Property Appraiser's Land Value was the lesser of the three.

RESERVE ACCOUNTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Operating Deficit Reserve (Lender)				\$0	\$0
Operating Deficit Reserve (Syndicator)	\$317,349	\$285,111	\$285,111	\$5,091	\$285,111
Reserves - Start-Up/Lease-up Expenses	\$28,000	\$84,000	\$84,000	\$1,500	\$84,000
Reserves - Working Capital				\$0	\$0
Other: Insurance Escrow	\$124,228	\$154,716	\$154,716	\$2,763	\$154,716
Other:				\$0	\$0
<b>Total Reserve Accounts:</b>	<b>\$469,577</b>	<b>\$523,827</b>	<b>\$523,827</b>	<b>\$9,354</b>	<b>\$523,827</b>

*Notes to Reserve Accounts:*

1. The Operating Deficit Reserves and Insurance Escrow is a requirement of Citi. The Start-Up/Lease-Up Reserve is estimated by the Applicant.

TOTAL DEVELOPMENT COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR	HOME Ineligible Costs CUR
<b>TOTAL DEVELOPMENT COSTS:</b>	<b>\$28,183,037</b>	<b>\$40,850,629</b>	<b>\$41,035,118</b>	<b>\$732,770</b>	<b>\$5,366,698</b>	<b>\$0</b>

*Notes to Total Development Costs:*

1. Since the time of application, anticipated Total Development Costs have increased \$12,852,081 (45.60%), due mainly to increases in construction costs, developer fees and financial costs.

## Operating Pro Forma

OPERATING PRO FORMA		ANNUAL	PER UNIT
INCOME	Gross Potential Rental Income	\$1,708,608	\$30,511
	Rent Subsidy (ODR)	\$0	\$0
	Other Income:		
	Miscellaneous	\$14,000	\$250
	Washer/Dryer Rentals	\$14,000	\$250
	Gross Potential Income	\$1,736,608	\$31,011
	Less:		
	Economic Loss - Percentage: 0.0%	\$0	\$0
	Physical Vacancy Loss - Percentage: 1.0%	(\$17,366)	(\$310)
	Collection Loss - Percentage: 1.0%	(\$17,366)	(\$310)
<b>Total Effective Gross Revenue</b>		\$1,701,876	\$30,391
EXPENSES	Fixed:		
	Ground Lease	\$1	\$0
	Real Estate Taxes	\$0	\$0
	Insurance	\$154,716	\$2,763
	Variable:		
	Management Fee - Percentage: 5.0%	\$85,094	\$1,520
	General and Administrative	\$67,200	\$1,200
	Payroll Expenses	\$95,200	\$1,700
	Utilities	\$78,400	\$1,400
	Marketing and Advertising	\$0	\$0
	Maintenance and Repairs	\$67,200	\$1,200
	Grounds Maintenance and Landscaping	\$0	\$0
	Reserve for Replacements	\$16,800	\$300
<b>Total Expenses</b>		\$564,611	\$10,082
<b>Net Operating Income</b>		\$1,137,265	\$20,308
<b>Debt Service Payments</b>			
DEBT SERVICE	First Mortgage - Citibank, N.A. / Broward County HFA	\$484,528	\$8,652
	Second Mortgage - Deerfield Beach Housing Authority / Taxable Seller Note	\$827,967	\$14,785
	Third Mortgage - Deerfield Beach Housing Authority / Tax-Exempt Seller Note	\$312,500	\$5,580
	All Other Mortgages -	\$0	\$0
	First Mortgage Fees - Citibank, N.A. / Broward County HFA	\$15,270	\$273
	Second Mortgage Fees - Deerfield Beach Housing Authority / Taxable Seller Note	\$0	\$0
	Third Mortgage Fees - Deerfield Beach Housing Authority / Tax-Exempt Seller Note	\$0	\$0
	All Other Mortgages Fees -	\$0	\$0
<b>Total Debt Service Payments</b>		\$1,640,266	\$29,290
<b>Cash Flow After Debt Service</b>		(\$503,001)	(\$8,982)
<b>Debt Service Coverage Ratios</b>			
	DSC - First Mortgage plus Fees	2.275	
	DSC - Second Mortgage plus Fees	0.857	
	DSC - Third Mortgage plus Fees	0.693	
	DSC - All Mortgages and Fees	0.693	
<b>Financial Ratios</b>			
	Operating Expense Ratio	33.2%	
	Break-Even Ratio	127.1%	

*Notes to the Operating Pro forma and Ratios:*

1. The Development will receive rental assistance for 45 units. The contract amount will be set at 110% of Broward County Metro Fair Market Rents, 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 Development's submarket.
2. The UAs are based on the Applicant paying for water, sewer, pest control, and trash pick-up, and the tenants paying for electricity.

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
2	1.5	11	1,065	60%			\$1,225	\$79	\$1,146		\$1,217	\$1,217	\$1,217	\$160,644
2	1.5	13	1,065	50%			\$1,021	\$79	\$942	\$2,233	\$2,233	\$2,233	\$2,233	\$348,348
3	2.5	32	1,141	50%			\$1,179	\$83	\$1,096	3,124	\$3,124	\$3,124	\$3,124	\$1,199,616
		56	62,072											\$1,708,608

3. Miscellaneous income includes washer/dryer rentals and other miscellaneous fees.
4. The Developer utilized a vacancy/collection loss assumption of 5% and the Appraiser utilized a rate of 2%. SMG has utilized a rate of 2% for this report.
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 non-profit status of the Sole Member of the Non-Investor Member.
6. Management Fees are based on 5% of rental revenue, which is consistent with the Developer's assumption. The Appraiser utilized a rate of 4% in the appraisal. An executed Agreement is a condition to close.
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. The negative DSC is cash flow contingent.

**SMG**

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**Section B**

**Supporting Information and Schedules**

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**OCTOBER 9, 2023**



**Additional Development and Third Party Supplemental Information**

Appraised Value: The appraised value is \$18,990,000, as if completed and stabilized, based on market rents and market financing as reported in the full narrative appraisal dated September 18, 2023, with an effective date of July 11, 2023, performed by Walter Duke + Partners (“WDP”). The appraisal was performed by Walter Bryan Duke, III, MAI, CCIM, Certified General Appraiser License Number RZ375. Based on this market value of the property, the loan-to-value (“LTV”) ratio is 33.7%.

Restricted Rents/Market Financing

The appraised value as if completed and stabilized and based on HC/PBV restricted rents and market financing terms is estimated at \$27,300,000. The loan-to-value ratio for the first mortgage debt based on this value is 23.4%.

“As Is” Land Value

The appraisal also estimated an “As-Is” value for the vacant land to be \$1,680,000.

Market Study: A Market Study was prepared for the Development by WDP and dated May 30, 2023. WDP indicates the Development is an existing apartment complex that was originally constructed in 2008 and consists of 12, two-story townhome buildings housing 56 apartment units, situated on approximately 5.50 acres with a family demographic. According to the FEMA Flood Map Panel it’s located in flood zone “X”, “AE” and “AH”; therefore, mandatory flood insurance appears to apply.

The Market Study confirms that the Development is not located in a Difficult Development Area (“DDA”), but is located within Qualified Census Tract (“QCT”) 0103.07; therefore, 130% HC basis boost will be applied.

The Development is located at 407-431 NW 1<sup>st</sup> Terrace, Deerfield Beach, Broward County, Florida. WDP states that overall access and exposure are considered good for multifamily purposes. 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 Development and is where most of the demand will originate.

WDP states that there are seven existing LIHTC family developments located within the PMA, totaling 920 units. The weighted average occupancy of the affordable/restricted comparables is 96.20% (more than the 92% minimum required by Rule).

The capture rate for the Development is determined by WDP to be 0.80%. WDP states that there is ample demand for the Development's units, as evidenced by the extensive waiting lists at the existing properties.

The Market Study noted no Guarantee Fund developments are located within the 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 noted that the existing Development will remain stable throughout the foreseeable future and thus will have no impact on other existing or proposed developments in the market.

WDP projects that the Development will obtain maximum allowable 2022 HC rents for all units, later confirming maximum 2023 HC rents in the appraisal, are within the 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 42%-49% below the estimated market rents, thus meeting FHFC requirements.

WDP states the Development is fully stabilized and thus an absorption rate for the subject is not warranted.

Environmental Report:

AEI Consultants ("AEI") of Sacramento, California performed a Phase I Environmental Site Assessment ("ESA") in accordance with ASTM Standard E-1527-13 and E-1527-21. The ESA indicates a report issue date of April 3, 2023.

It was noted in the ESA that a data failure was identified. A data failure occurs when all of the standard historical sources that are reasonably ascertainable and likely to be useful have been reviewed and yet the objectives have not been met. AEI notes that the earliest historical resource obtained during this assessment was an aerial photograph from 1940 indicating that the subject property was developed with a residence. It is assumed that the subject property would have been previously used for residential purposes, if not undeveloped.

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

Soil Test Report:

The Development is an existing purchase/rehabilitation. There are no new structures being built as part of the planned rehabilitation; therefore, no soils test or borings are required.

Capital Needs Assessment:

SMG received and reviewed a draft Capital Needs Assessment ("CNA") from Partner Engineering and Science, Inc. ("Partner"), dated July 10,

2023. The CNA was performed in general accordance with ASTM E2018-15.

A site reconnaissance was conducted June 27, 2023. The objective of the physical inspection is to visually observe the Development to obtain information on the condition of the buildings and to identify any physical deficiencies and any unusual features for a reasonable determination of the Development's functionality and sustainability. The subject appears to be in overall good condition. Partner notes that the subject is 16 years in age, and based on conditions observed the estimated remaining useful life of the major building systems appears to correlate with normal routine maintenance.

Immediate repair items are considered life safety items that if left in the current condition, have the potential to cause injury, illness, or death. Partner identified the following immediate repairs.

- Repair concrete pavement at the entrance off NW 3<sup>rd</sup> Court - \$6,000
- Repair concrete sidewalk along the north side of the building - \$300

Critical repair items are items requiring immediate remediation to prevent additional substantial deterioration to a particular system, address an immediate need observed by Partner, or extend the life of a system critical to the operation of the subject. Partner identified the following critical repairs.

- Erosion control (seed/sod) - \$6,000

Deferred maintenance items are items that are material systems, components, or equipment that are approaching, have reached, or have exceeded their estimated useful life, and which have the potential to affect the Development's financial or operational performance if not remediated within 12 months. Partner identified the following deferred maintenance items:

- Asphalt seal coat and parking restriping - \$9,356
- Install gutters and downspouts - \$30,000

Partner identified the following accessibility compliance repair items:

- Provide a van accessible parking space at the leasing office - \$1,500
- Modify leasing office restroom - \$5,000
- Provide 5% mobility units - \$150,000
- Provide 2% sensory units - \$2,500
- Accessible trash disposal - \$1,500
- Accessible mailboxes - \$1,500

Partner provided a replacement reserve analysis in the CNA. Replacement reserve costs are typically defined as predictable and in some instances to be recurring within a specified future period. Based on the replacement reserve projection prepared by Partner, the property will need to fund reserves in the amount of \$104,649.01 or \$1,868.73 per unit per year in inflated dollars (3% per year inflation factor).

Pre-Construction Analysis: SMG has received a Plan and Cost Analysis (“PCA”) from Partner dated September 19, 2023 with an assessment date of July 10, 2023.

The PCA report states that the plans provided appear to be generally complete, presenting adequate information for review and coordination, regulatory review and pricing under the proposed contract model (negotiated Cost Plus a Fee with a Guaranteed Maximum Price). The Agreement for Services conforms to general industry standards.

The project scope consists of interior and exterior renovations to the existing residential buildings, including mechanical, electrical and plumbing upgrades and replacement, common areas and site improvements. The scope of interior renovations will generally include replacement of existing kitchen cabinetry, countertops, and bathroom fixtures, replacement of flooring throughout, new appliances, new light fixtures and new vertical blinds. The scope of exterior building improvements will generally include replacement of all windows with impact resistant windows, buildings repainted, and new building-mounting lighting. The scope of site work improvements will generally include repairs to existing sidewalks and the addition of an accessible concrete sidewalk route to the dumpster.

The total construction cost provided by Affordable Group Construction LLC equals \$5,541,054 (hard cost only and exclusive of hard cost contingency), or \$98,947 per unit (56 units). Partner’s estimated costs are \$5,603,333 or \$100,060 per unit, a variance of approximately -1.1%, which is within acceptable range.

Partner states that the allowances totaling \$175,000, or 3.2% of the construction cost total is above the 2% maximum threshold that Partner typically recommends. Partner recommends that the contractor solicit firm pricing for the proposed work prior to execution of the contract to reduce the percentage of allowances to below 2% of total construction costs.

Following a review of the scope of work, the construction schedule is 365 days, which appears achievable.

Site Inspection: Inspector  
Lina Arcila

Date Inspection Conducted

April 22, 2023

Description of Site

Family development consisting of 56 townhomes located in Broward County

Location of Site

407 – 431 NW 1st Terrace, Deerfield Beach, FL 33441

Proximity to Major Highways, Public Transportation, Airports

Interstate 95 is within 2 miles and the Florida Turnpike is within 6 miles from the site. The Pompano Beach Train Station is 6 miles and the Fort Lauderdale - Hollywood International airport is 22 miles from the site.

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

North of the site there are single-family homes, apartment homes, stores and churches. South of the site, a center for active aging is currently under construction. West of the site there are hotels, commercial business, restaurants, residential homes, golf clubs and water parks. East of the site there are super markets, country clubs, fishing piers, hotels and Deerfield Beach.

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

There are two affordable tax credit family communities (Lakes at Deerfield and Tallman Pines) and two elderly communities (Highland Gardens and Praxis of Deerfield Beach) within three miles to six miles 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: The Palms of Deerfield Townhomes, LLC (“Applicant” or “Borrower”)

Borrower Type: Florida Limited Liability Company

Contact Information: Darren Smith

Telephone (561) 859-8520

E-Mail: [dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)

Address: 1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444

Federal Employer ID: 92-0572267

Current Ownership Structure: Borrower is a Florida Limited Liability Company registered with the State of Florida on October 3, 2022. The current Certificate of Status was verified with the Secretary of State.

The Non-Investor Member of the Applicant is DBFE Townhomes, LLC (“DBFE”), a Florida Limited Liability Company that registered with the State of Florida on June 20, 2023 with 0.005% ownership interest. The Managing Member of the Applicant is SHAG Palms of Deerfield Townhomes, LLC (“SHAG”), with 0.005% ownership interest. The Managing Members of SHAG are Darren Smith (50%) and Timothy Henzy (50%). SHAG is a Florida Limited Liability Company that registered with the State of Florida on October 3, 2022. The Non-profit Member is Deerfield Beach Family Empowerment, Inc. (“Deerfield”), an affiliate of Deerfield Beach Housing Authority, with 100% ownership interest in DBFE.

Based upon a HC equity investment letter of intent dated August 1, 2023, Hunt Capital Partners, LLC (“HCP”) or an affiliate, will purchase a 99.99% interest in the Applicant concurrent with or prior to closing.

SHAG Palms of Deerfield Townhomes Developer, LLC (“SHAG Dev”) and Deerfield are Co-Developers of the Development. The Members of SHAG Dev are Darren Smith (68%) and Timothy Henzy (32%). Deerfield Beach is a Florida Not for Profit Corporation governed by the Officers and Directors of Corporation. The General Contractor will be Affordable Group Construction, LLC, and the Property Manager will be Deerfield Beach Housing Authority (“DBHA”).

Experience: The Applicant, DBFE, SHAG and SHAG Dev entities are either newly formed single-purpose entities or pass through entities and have no assets, liabilities, credit history, resumes, or references. Deerfield’s role is to serve as the non-profit Member in the ownership structure, and otherwise, will provide no experience, resources, etc. to the Development. The experience is derived from the Principals of SHAG,

Darren Smith and Timothy Henzy. Darren Smith and Tim Henzy, the owners of Smith & Henzy Advisory Group, have developed or preserved over 4,000 affordable housing units. Those developments together total \$174 million in tax credit equity, \$211 million in construction, and \$300 million in tax-exempt bond financing.

**Credit Evaluation:** The Applicant, DBFE, SHAG and SHAG Dev 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 Darren Smith dated September 27, 2023, reflects one recent collection transaction for \$470. All other transactions reported satisfactory credit histories. It is SMG's opinion that the recent reported collection does not affect the Borrower's financial strength.

Comprehensive credit reports for Timothy Henzy, dated September 27, 2023, reported satisfactory credit histories.

A Business Credit inquiry on September 27, 2023 for Deerfield reflected no significant adversities, no trade lines and 2 UCC-Filings.

**Business/Bank References:** The Applicant, DBFE, SHAG and SHAG Dev 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 Darren Smith reported satisfactory depository and payment relationships.

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

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

**Financial Statements:** The Applicant, DBFE, SHAG and SHAG Dev entities are either newly formed single-purpose entities and have no operating or credit history, financial statements, business references, or previous tax returns.

Darren Smith:

Cash and Equivalents:	\$6,552,849
Total Assets:	\$25,204,259
Total Liabilities:	\$1,880,842
Equity:	\$23,323,418

Financial data is from a July 31, 2023, personal financial statement, certified as true and correct by Darren Smith. Assets other than cash consist of securities, investments, retirement assets, real estate, and interests in partnerships. Liabilities consist of long-term debt. SMG

reviewed the 2020 and 2021 tax returns, as well as a copy of the 2022 extension, for Darren Smith.

Timothy Henzy:

Cash and Equivalents:	\$2,848,961
Total Assets:	\$18,895,952
Total Liabilities:	\$1,395,759
Equity:	\$17,500,193

Financial data is from a July 31, 2023, personal financial statement, certified true and correct by Timothy Henzy. Assets other than cash consist of securities, investments, retirement assets, real estate, and interests in partnerships. SMG reviewed the 2020 and 2021 tax returns, as well as a copy of the 2022 extension, for Timothy Henzy.

Deerfield Beach Family Empowerment, Inc.

Cash and Equivalents:	\$1,114
Total Assets:	\$1,114
Total Liabilities:	\$0.00
Total Equity:	\$1,114

The financial information is based upon an unaudited Financial Statement dated August 31, 2023.

Contingent Liabilities:

The Applicant, DBFE, SHAG and SHAG Dev 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 Darren Smith as of August 1, 2023. The Contingent Liability Schedule reflects outstanding debt in the low nine figures for nine properties.

SMG was provided with a Schedule of Contingent Liabilities for Timothy Henzy as of August 1, 2023. The Contingent Liability Schedule reflects outstanding debt in the low nine figures for nine properties.

Deerfield provided a Statement of Financial/Credit Affairs with no contingent liabilities reported.

Summary:

Based upon the information provided, Darren Smith and Timothy Henzy 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: Hunt Capital Partners, LLC (“HCP”) and or its affiliates

Contact Person: Dana Mayo

Telephone: (818) 380-6100

E-Mail: Dana.Mayo@huntcompanies.com

Address: 15910 Ventura Boulevard, Suite 1100  
Encino, CA 91436

Experience: HCP is the syndication division of Hunt Companies, Inc. (“Hunt”) and specializes in the syndication of Federal and State Low-Income Housing, Historic, and Solar Tax Credits. Founded in 1947, Hunt is a privately held company that invests in businesses focused in the real estate and infrastructure markets. Hunt’s affiliates and investees are involved in investment management, mortgage banking, direct lending, loan servicing, asset management, property management, development, construction, consulting and advisory services. Hunt bought back its syndication arm from Alden Capital Partners (“Alden”) in October 2017. Hunt will operate this arm under HCP. Hunt is working as the development partner with housing authorities across the country to deliver more than 6,600 units. The executive leadership at Alden remained as it transitioned to Hunt. Since the launch of its first LIHTC fund in 2011, HCP has raised more than \$1.5 billion in housing tax credit equity. The platform has 35 institutional investors and investments in 41 states, Puerto Rico, and the U.S. Virgin Islands. Alden partnered with Hunt on seven RAD developments involving over \$150 million in federal and state LIHTCs.

Financial Statements: *Hunt Capital Partners, LLC:*

Cash and Equivalents:	\$12,538,225
Total Assets:	\$83,198,221
Total Liabilities:	\$20,226,384
Shareholders’ Equity:	\$62,971,837

Financial information for HCP is based on a Consolidated Financial Statement and Independent Auditor’s Report dated March 14, 2023, for the year ending December 31, 2022, and prepared by KPMG, LLP. Assets other than cash and equivalents include investment in rental property, accounts receivable, notes receivable, goodwill, and intangible assets. Liabilities include accounts payable, accrued personnel costs, accrued expenses, notes payable, and mortgages payable.

Summary: HCP has demonstrated that it has the experience and financial strength to serve as the syndicator for this Development.

**General Contractor Information**

General Contractor Name: Affordable Group Construction, LLC ("AGC")

Type: A Florida Limited Liability Company

Contact Person: Matthew Muldoon, President

Telephone: (954) 553-0325  
Email: [mmuldoon@smithhenzy.com](mailto:mmuldoon@smithhenzy.com)

Address: 1100 NW 4th Avenue  
Delray Beach, FL 33444

Experience: AGC is a newly formed single-purpose entity and has no operating history, financial statements, business references, or previous tax returns. The managers of AGC are SHAG AGC, LLC ("SHAG AGC") and Candor Construction Group LLC ("CCG"). The Principal of SHAG AGC is Darren Smith, an affiliate of Applicant.

License: AGC submitted the license of Matthew Muldoon, who is a Florida Certified General Contractor with license number CGC1532847 and is valid through August 31, 2024.

Credit Evaluation: A September 27, 2023 Business Credit Report for AGC reflects 1 trade line and no UCC filings.

Business References: AGC is a newly formed entity with no business references.

Financial Statements: The GC is providing a Payment and Performance Bond equal to 100% of the GC Contract.

Surety: AGC provided a draft "bonding letter" from Berkshire Hathaway Specialty Insurance Company ("Berkshire") in the amount of \$5,541,053. Berkshire is rated "A++" with a Financial Size Category of "XV" (\$2 Billion or greater), as rated by A.M. Best Company.

Summary: Please see item #2 under the Additional Information in Section A.

**Property Manager Information**

Property Manager Name: City of Deerfield Beach d/b/a Deerfield Beach Housing Authority ("DBHA")

Type: A Florida Not For Profit Corporation

Contact Information: LaTonya Coley-McKenly, Executive Director  
Telephone (954) 425-8449

Address: 533 S. Dixie Highway, Suite 201  
Deerfield Beach, Florida 33441

Experience: DBHA was established in 1969 and is committed to advocating for and providing affordable housing for eligible individuals and families. DBHA works closely with HUD, the City of Deerfield Beach and area agencies and organizations to provide many services and opportunities to residents and the entire community.

DBHA currently owns and manages the Palms of Deerfield Beach Townhomes, Palms of Deerfield Beach Apartments, a designated senior community, and Stanley Terrace Apartments. Palms of Deerfield Beach Apartments features 100 one bedroom and efficiency units for individuals over the age of 52. Stanley Terrace provides a total of 96 walk up style units for eligible families.

DBHA is governed by seven members of the Board of Commissioners appointed by the Mayor of Deerfield Beach. Current Board members are Chairman Anthony Pelt, Vice Chairman Pastor Toney Guadagnino, Gayle Battle, Diane Chisholm and Annette Mitchell. The Executive Director is LaTonya Coley-McKenly.

Management Agreement: The Applicant submitted a draft Management Agreement between the Applicant and DBHA. The Agreement states that the commencement date for the services shall be for the period beginning when leasing operations commence and ending five years 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 120 days before the end of the term. A management fee is equal to 5.00% of effective gross income per year.

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

Summary: The Asset Management Department of FHFC will need to approve the selection of DBHA for Palms of Deerfield Townhomes prior to the commencement of lease-up activity. Continued approval will be contingent upon ongoing satisfactory performance.

**EXHIBIT 1**  
**The Palms of Deerfield Townhomes**  
**15 Year Income and Expense Proforma**

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>																
Gross Potential Rental Income		\$1,708,608	\$1,742,780	\$1,777,636	\$1,813,188	\$1,849,452	\$1,886,441	\$1,924,170	\$1,962,654	\$2,001,907	\$2,041,945	\$2,082,784	\$2,124,439	\$2,166,928	\$2,210,267	\$2,254,472
Other Income:																
Miscellaneous		\$14,000	\$14,280	\$14,566	\$14,857	\$15,154	\$15,457	\$15,766	\$16,082	\$16,403	\$16,731	\$17,066	\$17,407	\$17,755	\$18,110	\$18,473
Washer/Dryer Rentals		\$14,000	\$14,280	\$14,566	\$14,857	\$15,154	\$15,457	\$15,766	\$16,082	\$16,403	\$16,731	\$17,066	\$17,407	\$17,755	\$18,110	\$18,473
Gross Potential Income		\$1,736,608	\$1,771,340	\$1,806,767	\$1,842,902	\$1,879,760	\$1,917,356	\$1,955,703	\$1,994,817	\$2,034,713	\$2,075,407	\$2,116,915	\$2,159,254	\$2,202,439	\$2,246,488	\$2,291,417
Less:																
Economic Loss - Percentage:																
Physical Vacancy Loss - Percentage: 1.0%		(\$17,366)	(\$17,713)	(\$18,068)	(\$18,429)	(\$18,798)	(\$19,174)	(\$19,557)	(\$19,948)	(\$20,347)	(\$20,754)	(\$21,169)	(\$21,593)	(\$22,024)	(\$22,465)	(\$22,914)
Collection Loss - Percentage: 1.0%		(\$17,366)	(\$17,713)	(\$18,068)	(\$18,429)	(\$18,798)	(\$19,174)	(\$19,557)	(\$19,948)	(\$20,347)	(\$20,754)	(\$21,169)	(\$21,593)	(\$22,024)	(\$22,465)	(\$22,914)
<b>Total Effective Gross Revenue</b>		<b>\$1,701,876</b>	<b>\$1,735,913</b>	<b>\$1,770,632</b>	<b>\$1,806,044</b>	<b>\$1,842,165</b>	<b>\$1,879,008</b>	<b>\$1,916,589</b>	<b>\$1,954,920</b>	<b>\$1,994,019</b>	<b>\$2,033,899</b>	<b>\$2,074,577</b>	<b>\$2,116,069</b>	<b>\$2,158,390</b>	<b>\$2,201,558</b>	<b>\$2,245,589</b>
<b>EXPENSES</b>																
Fixed:																
Ground Lease		\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$1	\$2
Insurance		\$154,716	\$159,357	\$164,138	\$169,062	\$174,134	\$179,358	\$184,739	\$190,281	\$195,990	\$201,869	\$207,925	\$214,163	\$220,588	\$227,206	\$234,022
Variable:																
Management Fee - Percentage: 5.0%		\$85,094	\$86,796	\$88,532	\$90,302	\$92,108	\$93,950	\$95,829	\$97,746	\$99,701	\$101,695	\$103,729	\$105,803	\$107,920	\$110,078	\$112,279
General and Administrative		\$67,200	\$69,216	\$71,292	\$73,431	\$75,634	\$77,903	\$80,240	\$82,648	\$85,127	\$87,681	\$90,311	\$93,021	\$95,811	\$98,685	\$101,646
Payroll Expenses		\$95,200	\$98,056	\$100,998	\$104,028	\$107,148	\$110,363	\$113,674	\$117,084	\$120,597	\$124,214	\$127,941	\$131,779	\$135,732	\$139,804	\$143,999
Utilities		\$78,400	\$80,752	\$83,175	\$85,670	\$88,240	\$90,887	\$93,614	\$96,422	\$99,315	\$102,294	\$105,363	\$108,524	\$111,780	\$115,133	\$118,587
Marketing and Advertising		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Maintenance and Repairs		\$67,200	\$69,216	\$71,292	\$73,431	\$75,634	\$77,903	\$80,240	\$82,648	\$85,127	\$87,681	\$90,311	\$93,021	\$95,811	\$98,685	\$101,646
Reserve for Replacements		\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$16,800	\$17,304	\$17,823	\$18,358	\$18,909	\$19,476
<b>Total Expenses</b>		<b>\$564,611</b>	<b>\$580,194</b>	<b>\$596,228</b>	<b>\$612,726</b>	<b>\$629,700</b>	<b>\$647,166</b>	<b>\$665,138</b>	<b>\$683,630</b>	<b>\$702,657</b>	<b>\$722,236</b>	<b>\$742,886</b>	<b>\$764,135</b>	<b>\$786,001</b>	<b>\$808,502</b>	<b>\$831,656</b>
<b>Net Operating Income</b>		<b>\$1,137,265</b>	<b>\$1,155,719</b>	<b>\$1,174,404</b>	<b>\$1,193,319</b>	<b>\$1,212,465</b>	<b>\$1,231,842</b>	<b>\$1,251,451</b>	<b>\$1,271,291</b>	<b>\$1,291,362</b>	<b>\$1,311,663</b>	<b>\$1,331,691</b>	<b>\$1,351,934</b>	<b>\$1,372,389</b>	<b>\$1,393,056</b>	<b>\$1,413,933</b>
<b>Debt Service Payments</b>																
First Mortgage - Citibank, N.A. / Broward County HF		\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528	\$484,528
Second Mortgage - Deerfield Beach Housing Authority		\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967	\$827,967
Third Mortgage - Deerfield Beach Housing Authority		\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500	\$312,500
<b>Total Debt Service Payments</b>		<b>\$1,640,266</b>	<b>\$1,640,213</b>	<b>\$1,640,157</b>	<b>\$1,640,096</b>	<b>\$1,640,031</b>	<b>\$1,639,962</b>	<b>\$1,639,887</b>	<b>\$1,639,806</b>	<b>\$1,639,720</b>	<b>\$1,639,627</b>	<b>\$1,639,528</b>	<b>\$1,639,421</b>	<b>\$1,639,306</b>	<b>\$1,639,183</b>	<b>\$1,639,051</b>
<b>Cash Flow After Debt Service</b>		<b>(\$503,001)</b>	<b>(\$484,494)</b>	<b>(\$465,753)</b>	<b>(\$446,778)</b>	<b>(\$427,567)</b>	<b>(\$408,119)</b>	<b>(\$388,436)</b>	<b>(\$368,516)</b>	<b>(\$348,358)</b>	<b>(\$327,964)</b>	<b>(\$307,837)</b>	<b>(\$287,488)</b>	<b>(\$266,918)</b>	<b>(\$246,127)</b>	<b>(\$225,118)</b>
<b>Debt Service Coverage Ratios</b>																
DSC - First Mortgage plus Fees		2.275	2.313	2.350	2.388	2.427	2.466	2.506	2.546	2.587	2.628	2.668	2.710	2.751	2.793	2.836
DSC - Second Mortgage plus Fees		0.857	0.870	0.885	0.899	0.913	0.928	0.943	0.958	0.973	0.988	1.004	1.019	1.034	1.050	1.066
DSC - Third Mortgage plus Fees		0.693	0.705	0.716	0.728	0.739	0.751	0.763	0.775	0.788	0.800	0.812	0.825	0.837	0.850	0.863
<b>Financial Ratios</b>																
Operating Expense Ratio		33.2%	33.4%	33.7%	33.9%	34.2%	34.4%	34.7%	35.0%	35.2%	35.5%	35.8%	36.1%	36.4%	36.7%	37.0%
Break-Even Ratio		127.1%	125.5%	123.9%	122.3%	120.8%	119.4%	118.0%	116.6%	115.2%	113.9%	112.6%	111.4%	110.2%	109.1%	107.9%

## COMPLETENESS AND ISSUES CHECKLIST

DEVELOPMENT NAME: The Palms of Deerfield Townhomes

DATE: October 9, 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 REQUIRED ITEMS:	STATUS	NOTE
	Satis. /Unsatis.	
1. The Development's final "as submitted for permitting" plans and specifications. 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.	1
4. Pre-construction analysis ("PCA").	Satis.	
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.	

## NOTES AND APPLICANT'S RESPONSES:

1. Receipt and satisfactory review of the Permits or Permit ready letter consistent with the assumptions of this report and is a condition to close.
2. Receipt and satisfactory review of the executed Management Contract consistent with the assumptions of this report and is a 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 and is a condition to close.

**HC Allocation Calculation**

Section i: Qualified Basis Calculation	
Development Cost	\$41,035,118
Less Land Cost	(\$1,438,728)
Less Federal Funds	\$0
Less Other Ineligible Cost	(\$3,927,970)
Less Disproportionate Standard	\$0
Acquisition Eligible Basis	\$20,961,320
Rehabilitation Eligible Basis	\$14,707,100
Total Eligible Basis	\$35,668,420
Applicable Fraction	100.0%
DDA/QCT Basis Credit	130.00%
Acquisition HC Percentage	4.00%
Rehabilitation HC Percentage	4.00%
Annual HC on Acquisition	\$838,453
Annual HC on Rehabilitation	\$764,769
Annual Housing Credit Allocation	\$1,603,222

*Notes to the Qualified Basis Calculation:*

- Other Ineligible Costs primarily include a portion of accounting fees, legal fees, title insurance fees, construction loan interest, permanent loan origination and application fees, Costs of Issuance, Placement Agent fee, FHFC administrative, application, and underwriting fees, market study, and reserves.
- The Borrower committed to a set aside of 100%. Therefore, SMG has utilized an Applicable Fraction of 130.00%.
- The Development is not located in a Difficult Development Area (“DDA”); however, is in a Qualified Census Tract, 0103.07. Accordingly, 130% basis credit has been applied to the Eligible Basis.
- 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 II: Gap Calculation</b>	
Total Development Cost (Including Land and Ineligible Costs)	\$41,035,118
Less Mortgages	(\$24,647,477)
Less Grants	\$0
Equity Gap	\$16,387,641
Percentage to Investment Partnership	99.99%
HC Syndication Pricing	\$0.900
HC Required to Meet Gap	\$18,208,288
Annual HC Required	\$1,820,829

*Notes to the Gap Calculation:*

1. Mortgages include the Citi mortgages and a Seller Note.
2. HC Syndication Pricing and Percentage to Investment Partnership are based upon the HCP LOI.

<b>Section III: Tax-Exempt Bond 50% Test</b>	
Total Depreciable Cost	\$35,668,420
Plus Land Cost	\$1,438,728
Aggregate Basis	\$37,107,148
Tax-Exempt Bond Amount	\$19,000,000
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	\$19,000,000
Proceeds Divided by Aggregate Basis	51.20%

*Notes to 50% Test:*

1. SMG estimates the Tax-Exempt MMRB amount to be 51.20% 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.

Section IV: Summary	
HC per Qualified Basis	\$1,603,222
HC per Gap Calculation	\$1,820,829
Annual HC Recommended	\$1,603,222

*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 the offices of the Housing Finance Authority of Broward County, Florida, 110 Northeast Third Street, Suite 201, in the City of Fort Lauderdale, Florida.

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

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

\* \* \* \* \*

Thereupon, the following resolution was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (THE "HOUSING FINANCE AUTHORITY") AUTHORIZING THE ISSUANCE IN THE AGGREGATE AMOUNT NOT TO EXCEED \$19,000,000 OF ITS MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2023 (THE PALMS OF DEERFIELD TOWNHOMES) (THE "SENIOR BONDS") AND ITS SUBORDINATE MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2023 (THE PALMS OF DEERFIELD TOWNHOMES) (THE "SUBORDINATE NOTE" AND, TOGETHER WITH THE SENIOR BONDS, THE "BONDS") FOR THE PURPOSE OF FINANCING THE ACQUISITION, REHABILITATION, AND EQUIPPING OF THE PALMS OF DEERFIELD TOWNHOMES LOCATED IN BROWARD COUNTY, FLORIDA (THE "PROJECT"); ESTABLISHING PARAMETERS FOR THE AWARD OF THE SALE THEREOF AND ESTABLISHING CRITERIA FOR DETERMINING THE TERMS THEREOF, INCLUDING INTEREST RATES, INTEREST PAYMENT DATES, MATURITY SCHEDULE, AND OTHER TERMS OF SUCH BONDS; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FOLLOWING DOCUMENTS IN CONNECTION WITH (I) THE SENIOR BONDS: (A) A TRUST INDENTURE BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE (THE "TRUSTEE"); (B) A LOAN AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND THE PALMS OF DEERFIELD TOWNHOMES, LLC (THE "BORROWER"); (C) A**

LAND USE RESTRICTION AGREEMENT BY AND AMONG THE HOUSING FINANCE AUTHORITY, THE TRUSTEE, AND THE BORROWER (THE "LAND USE RESTRICTION AGREEMENT"); (D) A BOND PURCHASE AGREEMENT BY AND AMONG THE HOUSING FINANCE AUTHORITY, THE BORROWER, AND RAYMOND JAMES & ASSOCIATES, INC. ("RAYMOND JAMES") AND RBC CAPITAL MARKETS, LLC ("RBC"), AS BOND PURCHASER (COLLECTIVELY, THE "PURCHASER") (THE "BOND PURCHASE AGREEMENT"); (E) A TRUSTEE FEE AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND THE TRUSTEE (THE "TRUSTEE FEE AGREEMENT"); AND (F) A COLLATERAL FUNDS AGREEMENT BY AND AMONG THE HOUSING FINANCE AUTHORITY, THE BORROWER, THE TRUSTEE, AND CITIBANK, N.A., AS CONSTRUCTION LENDER, AND (II) THE SUBORDINATE NOTE: (A) A SUBORDINATE LOAN AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND THE BORROWER; (B) THE LAND USE RESTRICTION AGREEMENT; (C) AN ASSIGNMENT OF SUBORDINATE MORTGAGE AND SUBORDINATE LOAN DOCUMENTS BY THE HOUSING FINANCE AUTHORITY TO THE PALMS OF DEERFIELD BEACH, LP (THE "LEASEHOLD OWNER"); (D) A PLACEMENT AGENT AGREEMENT BY AND BETWEEN THE HOUSING FINANCE AUTHORITY AND RAYMOND JAMES AND RBC, AS PLACEMENT AGENTS AND CONSENTED TO BY THE BORROWER; AND (E) THE FISCAL AGENT FEE AGREEMENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE HOUSING FINANCE AUTHORITY OF CERTAIN ADDITIONAL AGREEMENTS, INSTRUMENTS, CERTIFICATIONS, AND AFFIDAVITS NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AUTHORIZING THE NEGOTIATED SALE OF THE SENIOR BONDS TO THE PURCHASER PURSUANT TO THE BOND PURCHASE AGREEMENT; AUTHORIZING THE APPOINTMENT OF A BIDDING AGENT PURSUANT TO THE BOND PURCHASE AGREEMENT; AUTHORIZING THE PREPARATION AND DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT FOR THE SENIOR BONDS AND AUTHORIZING THE PREPARATION, DISTRIBUTION, AND EXECUTION OF A FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE OFFERING AND SALE OF THE SENIOR BONDS; AUTHORIZING THE NEGOTIATED SALE OF THE SUBORDINATE NOTE TO THE LEASEHOLD OWNER PURSUANT TO THE SUBORDINATE LOAN AGREEMENT;

**AUTHORIZING THE APPOINTMENT OF A TRUSTEE, PAYING AGENT, AND REGISTRAR OF THE BONDS; AUTHORIZING THE HOUSING FINANCE AUTHORITY TO CONSENT TO THE BORROWER PLACING SUBORDINATE FINANCING ON THE PROJECT AND APPROVING THE EXECUTION OF SUCH AGREEMENTS AS MAY BE NECESSARY IN CONNECTION WITH SUCH CONSENT; WAIVING THE FEE FOR SERVICES RELATED TO THE HOUSING FINANCE AUTHORITY'S ANNUAL AUDIT OF THE PROJECT; PARTIALLY WAIVING ARTICLE IV, SECTION F OF THE HOUSING FINANCE AUTHORITY'S POLICIES AND PROCEDURES FOR MULTI-FAMILY HOUSING BOND PROGRAM PERTAINING TO MAILING PRELIMINARY OFFICIAL STATEMENTS TO PERMIT THE POSTING OF THE PRELIMINARY OFFICIAL STATEMENT PRIOR TO RECEIPT OF SENIOR BOND ISSUANCE APPROVAL FROM THE BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS; AUTHORIZING THE PROPER OFFICERS OF THE HOUSING FINANCE AUTHORITY 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 "Housing Finance Authority") is empowered under (i) the laws of the State of Florida, including the Florida Housing Finance Authority Law, Florida Statutes, Sections 159.601 through 159.623, as amended (the "Act"), and (ii) Ordinance 79-41 enacted by the Board of County Commissioners (the "Board") of Broward County, Florida (the "County") on June 20, 1979 (the "Ordinance"), as amended, to issue multifamily housing revenue bonds and notes; and

**WHEREAS**, the Housing Finance Authority is authorized under the Act to issue its revenue bonds and notes for the purpose of paying the cost of a "qualifying housing development" within the meaning of the Act which includes the acquisition and rehabilitation of multifamily housing developments; and

**WHEREAS**, the Housing Finance Authority desires to issue multifamily housing revenue bonds and/or notes in one or more series in an aggregate amount not to exceed \$19,000,000 (collectively, the “Bonds”, which shall be comprised of those certain Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “Senior Bonds”) and the Housing Finance Authority of Broward County, Florida Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the “Subordinate Note”)) for the purpose of financing the acquisition, rehabilitation, and equipping of a 56-unit multifamily residential rental housing development located on land in Deerfield Beach, Broward County, Florida (the “Land”), and known as The Palms of Deerfield Townhomes (the “Project”); and

**WHEREAS**, The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), has requested the Housing Finance Authority to issue its Bonds, the proceeds of which (i) Senior Bonds will be used to make a senior loan (the “Senior Loan”) to the Borrower to finance the acquisition, rehabilitation, and equipping of the Project, and (ii) Subordinate Note will be used to provide purchase money financing for the Borrower (the “Subordinate Loan”) for a portion of the costs of the acquisition of the Borrower’s leasehold interest in the Project; and

**WHEREAS**, in connection with the Senior Bonds, the Housing Finance Authority desires to enter into a Trust Indenture between The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee, paying agent, and registrar (the “Trustee”) and the Housing Finance Authority (the “Indenture”), in substantially the form attached hereto as Exhibit “A”, for the purpose of setting forth the terms, conditions, and covenants (i) upon which the Housing Finance Authority will issue the Senior Bonds, the proceeds of which shall be used in order for the Housing Finance

Authority to make the Senior Loan to finance the acquisition, rehabilitation, and equipping of the Project, and (ii) that are necessary to secure the Senior Bonds and protect the rights of the holder of the Senior Bonds; and

**WHEREAS**, in connection with the Senior Bonds, the Housing Finance Authority desires to enter into a Loan Agreement between the Housing Finance Authority and the Borrower (the “Loan Agreement”), in substantially the form attached hereto as Exhibit “B”, to evidence the terms and conditions of the Senior Loan; and

**WHEREAS**, in connection with the Bonds, the Housing Finance Authority desires to enter into a Land Use Restriction Agreement among the Housing Finance Authority, the Borrower, and the Trustee (the “Land Use Restriction Agreement”), in substantially the form attached hereto as Exhibit “C”, to evidence the terms and conditions upon which the Borrower shall maintain and operate the Project; and

**WHEREAS**, in connection with the Senior Bonds, the Housing Finance Authority desires to enter into a Bond Purchase Agreement among the Housing Finance Authority, Raymond James & Associates, Inc. (“Raymond James”) and RBC Capital Markets, LLC (“RBC”), as Purchaser of the Senior Bonds (collectively, the “Purchaser”), and the Borrower (the “Bond Purchase Agreement”), in substantially the form attached hereto as Exhibit “D”, to evidence the terms and conditions upon which (i) the Purchaser shall purchase the Senior Bonds, and (ii) Raymond James shall act as Bidding Agent for certain Eligible Investments (as defined in the Indenture) to be purchased with amounts on deposit in certain funds and/or accounts under the Indenture; and

**WHEREAS**, in connection with the Senior Bonds, the Housing Finance Authority desires to (i) prepare or cause to be prepared, and distribute or cause to be distributed, a Preliminary Official



Statement (the "Preliminary Official Statement"), and (ii) prepare or cause to be prepared, distribute or cause to be distributed, and execute and deliver a final Official Statement (the "Official Statement"), each in connection with the offering and sale of the Senior Bonds. The Preliminary Official Statement will be in substantially the form attached hereto as Exhibit "E"; and

**WHEREAS**, in connection with the Bonds, the Housing Finance Authority desires to enter into a Trustee Fee Agreement by and between the Housing Finance Authority and the Trustee (the "Trustee Fee Agreement"), in substantially the form attached hereto as Exhibit "F", to evidence the Trustee's obligations and responsibilities in connection with the issuance of the Bonds and the fees payable to Trustee for its performance thereunder; and

**WHEREAS**, in connection with the Senior Bonds, the Housing Finance Authority desires to enter into a Collateral Funds Agreement by and among the Housing Finance Authority, the Borrower, the Trustee and Citibank, N.A., as construction lender (the "Collateral Funds Agreement"), in substantially the form attached hereto as Exhibit "G", to set forth the manner and method of disbursing proceeds on deposit in the Collateral Fund and the Project Fund (as each such term is defined in the Indenture), as the case may be; and

**WHEREAS**, in connection with the Subordinate Note, the Housing Finance Authority desires to enter into a Subordinate Loan Agreement (the "Subordinate Loan Agreement") by and between the Housing Finance Authority and the Borrower, in substantially the form attached hereto as Exhibit "H", for the purpose of setting forth the terms, conditions, and covenants (i) upon which the Housing Finance Authority will issue the Subordinate Note to The Palms of Deerfield Beach, LP, a Florida limited partnership, and owner of the leasehold interest in the Project (the "Leasehold Owner"), in order to provide purchase money financing to the Borrower for a portion of the costs of

the acquisition of the Borrower's leasehold interest in the Project, (ii) in connection with the Subordinate Loan, and (iii) that are necessary to secure the Subordinate Note and protect the rights of the holder of the Subordinate Note; and

**WHEREAS**, in connection with the Subordinate Note, the Housing Finance Authority desires to enter into an Assignment of Subordinate Mortgage and Subordinate Loan Documents (the "Subordinate Assignment") made by the Housing Finance Authority to and in favor of the Leasehold Owner, in substantially the form attached hereto as Exhibit "I", pursuant to which the Housing Finance Authority will assign to the Leasehold Owner its rights in the subordinate mortgage securing the Project and various other documents securing the Subordinate Loan; and

**WHEREAS**, in connection with the Subordinate Note, the Housing Finance Authority desires to enter into a Placement Agent Agreement by and between the Housing Finance Authority and Raymond James and RBC, as placement agents (collectively, the "Placement Agents"), in substantially the form attached hereto as Exhibit "J", to evidence the Placement Agents' responsibilities and obligations to the Housing Finance Authority in connection with the issuance of the Subordinate Note; and

**WHEREAS**, within the County there is a shortage of housing available at prices or rentals which many persons and families can afford and a shortage of capital for investment in such housing. This shortage constitutes a threat to the health, safety, morals, and welfare of the residents of the County, deprives the County of an adequate tax base, and causes the County to make excessive expenditures for crime prevention and control, public health, welfare and safety, fire and accident protection, and other public services and facilities; and

**WHEREAS**, the shortage of capital and housing cannot be relieved except through the encouragement of investment by private enterprise and the stimulation of construction of housing through the use of public financing; and

**WHEREAS**, the Project and the financing thereof will assist in alleviating the shortage of housing in the County and of capital for investment therein, will serve the purposes of the Act, and the Project will constitute a “qualified housing development” under the Act; and

**WHEREAS**, Article IV, Section F of the Housing Finance Authority’s Policies and Procedures for Multi-Family Housing Bond Program requires that, prior to the posting of the Preliminary Official Statement, the Housing Finance Authority receive a certificate executed by the Borrower stating, among other things, that there are no unresolved issues relating to the subject project or the bond issuance that would prevent the Borrower from closing the subject transaction (collectively, the “HFA Posting Policy”); and

**WHEREAS**, based on the current timeline, the subject transaction would need to post the Preliminary Official Statement prior to receiving Board approval for the issuance of the Senior Bonds; and

**WHEREAS**, given the need for additional affordable housing in the County, the Borrower has requested a waiver of the HFA Posting Policy solely to permit the posting of the Preliminary Official Statement prior to receipt of Board approval; and

**WHEREAS**, additional disclosure has been included in the form of the Preliminary Official Statement attached hereto as Exhibit “E” to the effect that the issuance of the Senior Bonds is subject to Board approval; and

**WHEREAS**, the Housing Finance Authority desires to authorize the execution and delivery of any other documents, instruments, certificates, and affidavits to be executed in connection with the issuance of the Bonds; and

**WHEREAS**, the Housing Finance Authority is not obligated to pay the (i) Senior Bonds except from the proceeds derived from the repayment of the Senior Loan and other payments received from the Borrower or from other security pledged therefor pursuant to the Indenture, or (ii) Subordinate Note except from the proceeds derived from the repayment of the Subordinate Loan and other payments received from the Borrower or from other security pledged therefor pursuant to the Subordinate Loan Agreement. Neither the faith and credit nor the taxing power of the Housing Finance Authority, the County, or the State of Florida (the "State") or any other political subdivision thereof is pledged to the payment of the principal of or the interest on the Bonds; and

**WHEREAS**, the Housing Finance Authority intends to negotiate the sale of (i) the Senior Bonds with the Purchaser as provided in the Bond Purchase Agreement, and (ii) the Subordinate Note with the Leasehold Owner as hereinafter provided. Additionally, prior to the sale of the Subordinate Note, the Leasehold Owner shall provide to the Trustee and the Housing Finance Authority, an executed investor letter in the form required by and attached to the Subordinate Loan Agreement; and

**WHEREAS**, a notice of public hearing inviting written and oral comments and discussions concerning the issuance of the Bonds (the "TEFRA Notice") was published in the *Sun Sentinel*, a newspaper of general circulation, on June 7, 2023, at least 7 days prior to the date of such hearing, all as required by Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

**WHEREAS**, on June 15, 2023, a public hearing concerning the issuance of the Bonds in an aggregate principal amount not to exceed \$19,000,000 to finance the Project (the “TEFRA Hearing”) was held by the Housing Finance Authority, as required by Section 147(f) of the Code; and

**WHEREAS**, the Housing Finance Authority received from the State of Florida Division of Bond Finance an allocation of 2021 private activity bond volume cap in the amount of \$176,327,678.22 (the “2021 Volume Cap”), which has been carried forward pursuant to Section 145(f) of the Code and designated for the issuance of bonds or notes for qualified residential rental projects; and

**WHEREAS**, approximately \$88,210,467.32 of the 2021 Volume Cap remains available, and is anticipated to be sufficient, to finance the acquisition, construction/rehabilitation and equipping of the Project; and

**WHEREAS**, the Ordinance requires that all contracts of the Housing Finance Authority in connection with the issuance of the Bonds be approved by the Board.

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

Section 1. Declaration of Findings. The Housing Finance Authority hereby finds, determines and declares the matters hereinabove set forth.

Section 2. Authorization of the Bonds. The Housing Finance Authority hereby authorizes, under the authority of the Act and the Ordinance, and subject to the terms as hereinafter set forth, the issuance of the Bonds in one or more series to be designated “Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes)” and “Housing Finance Authority of Broward County, Florida

Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes)” in an aggregate principal amount not to exceed \$19,000,000. The Housing Finance Authority also hereby authorizes the Chair or Vice Chair of the Housing Finance Authority to change one or both of the above designations of the Bonds with the advice of and as Bond Counsel and the County Attorney (each as hereinafter defined) may deem necessary and appropriate.

Section 3. Details of Bonds. The Senior 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 Senior Bonds shall be applied as provided in the Indenture, and the Senior Bonds shall mature in the amounts and at the times, bear interest at such rates, be subject to redemption at the prices and upon the terms, and shall have such other characteristics as shall be provided in the Indenture and the Bond Purchase Agreement; provided, that (i) the interest rate on the Senior Bonds shall not exceed 8.0% per annum, and (ii) the Senior Bonds shall finally mature not later than 40 years from the date of issuance thereof. The Senior Bonds shall be executed, authenticated and delivered by the officers of the Housing Finance Authority authorized below in substantially the form set forth in the Indenture in fully registered form.

The Subordinate Note shall be issued under and secured by the Subordinate Loan Agreement, by which reference is hereby incorporated into this Resolution as if set forth in full herein. The proceeds of the Subordinate Note shall be applied as provided in the Subordinate Loan Agreement, and the Subordinate Note shall mature in the year and in the amount, bear interest at such rate, be subject to redemption, and shall have such other characteristics as shall be provided in the Subordinate Loan Agreement. The Subordinate Note shall be executed, authenticated and

delivered by the officers of the Housing Finance Authority authorized below in substantially the form set forth in the Subordinate Loan Agreement.

Given the current interest rate environment and the need for additional affordable housing in the County, the Housing Finance Authority hereby delegates to the Executive Director the authority to close the subject transaction with an interest rate on the Senior Bonds in excess of 8.0% per annum, if after consultation with the Purchaser, the Executive Director determines that the higher interest rate is solely attributable to (i) volatility in the then-current financial markets, or (ii) the then-current interest rate environment, and is not attributable to other circumstances surrounding the subject transaction.

Section 4. The Bonds are Special Obligations of the Housing Finance Authority. The Bonds are special obligations of the Housing Finance Authority which are payable solely from moneys derived under the Indenture, the Loan Agreement and/or the Subordinate Loan Agreement, as applicable. The Bonds, together with the interest thereon, are limited obligations of the Housing Finance Authority and neither the Housing Finance Authority, the County, the State, nor any political subdivision thereof, shall be obligated to pay the Bonds or the interest thereon or other costs or payments incident thereto, except from the aforementioned revenues and receipts and neither the faith and credit nor the taxing power of the County or the State or any political subdivision thereof is pledged to the payment of the Bonds or the interest thereon or other costs or payments incident thereto. The Housing Finance Authority has no taxing power. The Bonds and obligations arising thereunder do not create or reflect liability of the Housing Finance Authority or any member, official, or employee thereof, except as otherwise described in this Section 4 with respect to the Housing Finance Authority.

Section 5. Execution of Bonds. The Chair or Vice Chair and Secretary or Assistant Secretary of the Housing Finance Authority are hereby authorized and directed to execute by manual or facsimile signature, and place the seal of the Housing Finance Authority, in manual or facsimile form, on the Bonds. The Bonds shall be in substantially the form set forth in the Indenture and/or the Subordinate Loan Agreement, as applicable, with such changes, modifications, and deletions as the officers executing the Bonds, with the advice of Nabors, Giblin & Nickerson, P.A. (“Bond Counsel”) and the County Attorney’s Office of Broward County (the “County Attorney”), may deem necessary and appropriate, and as are not inconsistent with the Indenture, the Subordinate Loan Agreement and/or this Resolution. The execution and delivery of the Bonds by the aforementioned persons shall be conclusive evidence of the Housing Finance Authority’s approval and authorization thereof.

Section 6. Authentication and Delivery of the Bonds. Upon the execution of the Senior Bonds, the Housing Finance Authority shall deliver the Senior Bonds to the Trustee for authentication, and the Trustee is hereby authorized and directed to authenticate and deliver said Senior Bonds to the Purchaser, subject to the terms and conditions for delivery set forth in the Indenture.

Upon the execution of the Subordinate Note, the Housing Finance Authority shall deliver the Subordinate Note to the Leasehold Owner, subject to the terms and conditions for delivery set forth in the Subordinate Loan Agreement.

Section 7. Approval of Indenture. The form and content of the Indenture, attached hereto as Exhibit “A”, is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver



the Indenture, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 8. Approval of Loan Agreement. The form and content of the Loan Agreement, attached hereto as Exhibit "B", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Loan Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 9. Approval of the Land Use Restriction Agreement. The form and content of the Land Use Restriction Agreement, attached hereto as Exhibit "C", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Land Use Restriction Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 10. Approval of the Bond Purchase Agreement; Appointment of Bidding Agent.

The form and content of the Bond Purchase Agreement, attached hereto as Exhibit "D", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Bond Purchase Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority. Raymond James is hereby appointed to act as Bidding Agent under the Bond Purchase Agreement for certain Permitted Investments (as defined in the Indenture) to be purchased with amounts on deposit in certain funds under the Indenture.

Section 11. Approval of the Preliminary Official Statement. The form and content, and the preparation and distribution, of the Preliminary Official Statement relating to the Senior Bonds, attached hereto as Exhibit "E", is hereby authorized and approved by the Housing Finance Authority, together with such changes, modifications, and deletions as the Chair or Vice Chair of the Housing Finance Authority, with the advice of Bond Counsel and the County Attorney, may deem necessary and appropriate. The Housing Finance Authority also hereby approves and authorizes the preparation and distribution of a final Official Statement relating to the Senior Bonds, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and

deliver the Official Statement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, 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 Housing Finance Authority.

Section 12. Appointment of Trustee, Paying Agent and Registrar. The Bank of New York Mellon Trust Company, N.A., having its designated corporate trust office in Jacksonville, Florida, is hereby appointed Trustee, Paying Agent, and Registrar under the Indenture, and the Housing Finance Authority approves the form and content of the Trustee Fee Agreement, attached hereto as Exhibit "F". The Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Trustee Fee Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in substantially the form presented at this meeting, with such changes, modifications, deletions, and insertions as the Chair or Vice Chair, with the advice of 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 Housing Finance Authority.

Section 13. Approval of the Collateral Funds Agreement. The form and content of the Collateral Funds Agreement, attached hereto as Exhibit "G", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Collateral Funds Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and

deletions as they, with the advice of 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 Housing Finance Authority.

Section 14. Approval of the Subordinate Loan Agreement. The form and content of the Subordinate Loan Agreement, attached hereto as Exhibit "H", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Subordinate Loan Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 15. Approval of the Subordinate Assignment. The form and content of the Subordinate Assignment, attached hereto as Exhibit "I", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Subordinate Assignment, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 16. Approval of the Placement Agent Agreement. The form and content of the Placement Agent Agreement, attached hereto as Exhibit "J", is hereby authorized and approved by the Housing Finance Authority, and the Chair or Vice Chair of the Housing Finance Authority is hereby authorized to execute and deliver the Placement Agent Agreement, and the Secretary or Assistant Secretary is hereby authorized to place the Housing Finance Authority's seal thereon and attest thereto, in the form presented at this meeting, together with such changes, modifications, and deletions as they, with the advice of 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 Housing Finance Authority.

Section 17. Subordinate Financing. The Housing Finance Authority hereby acknowledges that the Borrower intends to secure subordinate financing for the Project in the form of (i) the Subordinate Loan, which shall be evidenced by a tax-exempt note issued by the Housing Finance Authority to the Leasehold Owner, in the approximate principal amount of \$5,000,000, the proceeds of which will be used to provide purchase money financing for the Borrower for a portion of the costs of the acquisition of the Borrower's leasehold interest in the Project, and (ii) a separate subordinate loan, which shall be evidenced by a taxable note made by the Borrower to the Leasehold Owner, in the approximate principal amount of \$13,247,477, the proceeds of which will be used to provide purchase money financing for the Borrower for the remaining portion of the costs of the acquisition of the Borrower's leasehold interest in the Project (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 Housing Finance Authority hereby determines that it is in the public interest to

consent to such Subordinate Financing in this instance. Accordingly, the Housing Finance Authority (i) authorizes the Chair or Vice Chair of the Housing Finance Authority to consent to such Subordinate Financing and to execute and deliver any agreements that may be necessary in connection with such consent, with the advice of and in such form as 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 18. Waiver of Audit Fee. The Ordinance no longer requires an audit of multifamily developments. Accordingly, the Borrower has requested a waiver of the fee required to be paid by the Borrower for the services of the Housing Finance Authority's auditor to audit the Project and the Bonds annually. The Housing Finance Authority waives such audit fee in connection with the Project.

Section 19. Partial Waiver of HFA Posting Policy. Given the need for additional affordable housing in the County, the Housing Finance Authority, pursuant to the Borrower's request, hereby waives the HFA Posting Policy solely to permit the posting of the Preliminary Official Statement prior to receipt of Board approval for the issuance of the Senior Bonds.

Section 20. Sale of Senior Bonds. It is hereby found and determined that due to the characteristics of the financing and the prevailing and anticipated market conditions, it is in the best interest of the Housing Finance Authority to negotiate the sale of the Senior Bonds. The negotiated sale of the Senior Bonds, upon substantially the terms and conditions set forth in the Bond Purchase Agreement, is hereby approved. The Senior Bonds shall be sold (subject to such terms and

conditions) in the amounts, at the prices and upon the final terms set forth in the Bond Purchase Agreement as may be approved by the Chair or Vice Chair and, if required, attested to by the Secretary; provided, that (a) the purchase price of the Senior Bonds shall be not less than 100% of the original principal amount thereof, and (b) the gross underwriting spread or compensation to be paid to the Purchaser shall not exceed 1.00% of the principal amount of the Senior Bonds.

Section 21. Sale of Subordinate Note. It is hereby found and determined that due to the characteristics of the financing and the prevailing and anticipated market conditions, it is in the best interest of the Housing Finance Authority to negotiate the sale of the Subordinate Note. The negotiated sale of the Subordinate Note to the Leasehold Owner, upon substantially the terms and conditions set forth in the Subordinate Loan Agreement, is hereby approved. The purchase of the Subordinate Note shall constitute a "loan to a lending institution" within the meaning of Section 159.608(5), Florida Statutes. Additionally, the Subordinate Note shall constitute "Bonds" for purposes of, and as defined under, the Act.

Section 22. Further Actions and Ratification of Prior Actions. The officers, agents, and employees of the Housing Finance Authority and the officers, agents, and employees of the 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 Bond Purchase Agreement, the Preliminary Official Statement, the Official Statement, the Trustee Fee Agreement, the Collateral Funds Agreement, the Subordinate Loan Agreement, the Placement Agent Agreement, the Subordinate Assignment (collectively, the "Bond Documents") and this Resolution, and to execute and deliver any and all additional documents, instruments, certificates, and affidavits necessary or advisable to effectuate the foregoing. All actions heretofore undertaken

by the officers, agents, and employees of the Housing Finance Authority with respect to (i) the provisions of the Bonds and the Bond Documents, and (ii) the issuance of the Bonds, are hereby ratified and approved.

Section 23. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Indenture, the Loan Agreement and the Subordinate Loan Agreement, as applicable.

Section 24. Resolution Effective. This Resolution shall take effect immediately upon its adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



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

Resolution was adopted by the following votes:

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

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

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

Nabors, Giblin & Nickerson, P.A., Bond Counsel

STATE OF FLORIDA            )  
  )ss:  
COUNTY OF BROWARD        )

I, MILETTE 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 those certain (i) Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes), and (ii) Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes), all 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 18<sup>th</sup> day of October, 2023.

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

By: \_\_\_\_\_  
MILETTE MANOS, Secretary

(SEAL)

**EXHIBIT "A"**  
**FORM OF**  
**INDENTURE**  
**[ATTACHED]**

**EXHIBIT "B"**

**FORM OF**

**LOAN AGREEMENT**

**[ATTACHED]**

**EXHIBIT "C"**

**FORM OF**

**LAND USE RESTRICTION AGREEMENT**

**[ATTACHED]**

**EXHIBIT "D"**

**FORM OF**

**BOND PURCHASE AGREEMENT**

**[ATTACHED]**

**EXHIBIT "E"**

**FORM OF**

**PRELIMINARY OFFICIAL STATEMENT**

**[ATTACHED]**

**EXHIBIT "F"**

**FORM OF**

**TRUSTEE FEE AGREEMENT**

**[ATTACHED]**



**EXHIBIT "G"**

**FORM OF**

**COLLATERAL FUNDS AGREEMENT**

**[ATTACHED]**

**EXHIBIT "H"**

**FORM OF**

**SUBORDINATE LOAN AGREEMENT**

**[ATTACHED]**

**EXHIBIT "I"**

**FORM OF**

**SUBORDINATE ASSIGNMENT**

**[ATTACHED]**

**EXHIBIT "J"**

**FORM OF**

**PLACEMENT AGENT AGREEMENT**

**[ATTACHED]**

**EXHIBIT "A"**  
**FORM OF**  
**INDENTURE**  
**[ATTACHED]**

**TRUST INDENTURE**

**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 November 1, 2023**

---

**[\$14,000,000]  
Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

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## TRUST INDENTURE

THIS TRUST INDENTURE is entered into as of November 1, 2023 (this “**Indenture**”), by and between the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**, a public body corporate and politic duly organized and existing under the laws of the State of Florida (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 and authorized to conduct business in the State of Florida, with its designated corporate office located in Jacksonville, Florida, as trustee (together with any successor trustee thereunder, the “**Trustee**”).

## RECITALS

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

B. The Legislature of the State of Florida (the “**State**”) has enacted the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended (the “**Act**”), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic, to be known as a housing finance authority of the county for which it was created, for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority.

C. Pursuant to the Act, the Board of County Commissioners of Broward County, Florida (the “**County**”), enacted Ordinance No. 79-41 on June 20, 1979 (the “**Ordinance**”), creating the Housing Finance Authority of Broward County, Florida to carry out and exercise all powers and public and governmental functions set forth in and contemplated by the Act.

D. The Act authorizes the Issuer: (a) to make loans to any person, or to purchase loans, including federally insured mortgage loans, in order to provide financing for residential rental developments located within the Issuer’s area of operation, which are to be occupied by persons of low, moderate or middle income; (b) to issue its revenue bonds pursuant to the Act, for the purpose of obtaining money to make or to purchase such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, and receipts to be received by the Issuer from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds.

E. Pursuant to, and in accordance with the Act, the Issuer has determined to issue and sell its \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “**Bonds**”), and use the proceeds thereof to make a loan to The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “**Borrower**”), upon the terms and conditions of a promissory note dated the Closing Date from the Borrower to the Issuer in the original principal amount of \$[14,000,000] (the “**Note**”) and the Loan Agreement dated as of the same date as this Indenture between the Issuer and the Borrower (the “**Loan Agreement**”), for purposes of funding a portion

of the costs of acquiring, rehabilitating and equipping a multifamily rental housing project located in the State known as The Palms of Deerfield Townhomes, which, upon completion, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related uses (the “**Project**”).

F. The Borrower has delivered the Note to the Issuer, evidencing the Borrower’s obligation to repay the Loan. The Issuer has made the Loan to the Borrower, subject to the terms and conditions of the Loan Agreement and this Indenture, including the terms and conditions thereof and hereof governing the disbursement of advances and the investment earnings thereon, and the Note has been endorsed by the Issuer to the Trustee.

G. The obligations of the Borrower under the Loan Agreement and the Note will be secured by the Trust Estate established hereunder.

H. Citibank, N.A., a national banking association, in its capacity as construction lender (the “**Mortgage Lender**”), has agreed to provide a construction loan (the “**Mortgage Loan**”) to the Borrower, the proceeds of which shall be advanced pursuant to the Mortgage Loan Documents and used to finance a portion of the costs of the acquisition, rehabilitation and equipping of the Project. The Mortgage Lender will administer the Mortgage Loan during the Construction Phase in accordance with the Mortgage Loan Documents.

I. Citibank, N.A., a national banking association, in its capacity as funding lender (“**Citi**”), has entered into a [Forward Commitment Agreement with the Borrower and the Mortgage Lender] dated as of [November 1], 2023 (the “**Citi Forward Commitment**”), whereby Citi has committed, subject to the satisfaction on or before the Termination Date (as defined in the Citi Forward Commitment) of the Conditions to Conversion set forth in the Citi Forward Commitment, to facilitate the financing of the Project in the Permanent Phase.

J. Upon the satisfaction of the Conditions to Conversion set forth in the Citi Forward Commitment, Conversion will occur on the Conversion Date and, on such Conversion Date, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds hereunder), (iii) a portion of the principal amount of the Bonds shall be cancelled such that the principal amount outstanding equals the Permanent Loan Amount (as determined by Citi at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted to a physical Governmental Lender Note (in the form attached to the Funding Loan Agreement) which shall be purchased by Citi, (v) the Funding Loan Agreement attached hereto as Appendix C and the Borrower Loan Agreement attached hereto as Appendix D shall be delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Citi Purchase Price, along with other funds of the Borrower, shall be deposited into the Mortgage Loan Prepayment Fund, and (vii) the Mortgage Loan shall be paid in full with amounts on deposit in the Mortgage Loan Prepayment Fund and all security related to the Mortgage Loan shall be released or assigned to Citi. If the Conditions to Conversion are not satisfied on or before the Termination Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and Citi will not have any obligation with respect to the purchase of the Governmental Lender Note.

K. With respect to the Construction Phase, the issuance, sale and delivery of the Bonds and the execution and delivery of this Indenture and the Loan Agreement have been in all respects duly and validly authorized in accordance with the Act, and, with respect to the Permanent Phase, the issuance, sale and delivery of the Governmental Lender Note and the execution and delivery of the Funding Loan Agreement and the Borrower Loan Agreement have been in all respects duly and validly authorized in accordance with the Act.

## AGREEMENTS

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

### I.

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

### II.

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

### III.

All moneys (including the Eligible Funds received by the Trustee for deposit into the Collateral Fund provided that Mortgage Loan proceeds become part of the Trust Estate concurrently with the Trustee's corresponding disbursement of Bond proceeds to or at the direction of the Mortgage Lender in accordance with Section 4.08 hereof) which are at any time or from time to time on deposit in any fund or account created under this Indenture (excluding funds in the Costs of Issuance Fund (but only to the extent such moneys are not proceeds of the Bonds), the Expense Fund, the Mortgage Loan Prepayment Fund and the Rebate Fund);

IV.

All right, title and interest of the Issuer in and to, and remedies under, the Loan Agreement;  
and

V.

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

*PROVIDED, HOWEVER*, that there shall be excluded from the granting clauses of this Indenture all the Reserved Rights of the Issuer, including all amounts paid or collected by the Issuer in connection therewith, all amounts on deposit in the Rebate Fund (including any accounts thereof), which shall be held for the sole benefit of the United States of America;

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

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

*PROVIDED, HOWEVER*, that if the Issuer shall well and truly pay, or cause to be paid, the principal of the Bonds issued hereunder, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, and shall cause the payments to be made into the Bond Fund as required under Article VIII hereof or by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture and all other of the Issuer's Obligations to be kept, performed and observed by it, the Rebate Amount shall be paid in full and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payment, as further provided in Section 8.01 hereof, and the termination of the Loan Agreement, this Indenture and the rights hereby granted shall cease, terminate and be void; otherwise, this Indenture shall remain in full force and effect.

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

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

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

**“Act”** shall have the meaning assigned to such term in the Recitals above.

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

**“Agreement”** or **“Loan Agreement”** means the Loan Agreement dated as of the same date as this Indenture, between the Issuer and the Borrower and any and all Supplements thereto.

**“Authorized Denomination”** means \$5,000, or any integral multiple of \$1,000 in excess thereof.

**“Authorized Member”** means SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

**“Bond Counsel”** means Nabors, Giblin & Nickerson, P.A. or other counsel selected by the Issuer and nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

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

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

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, dated November \_\_, 2023, among the Issuer, the Borrower and Underwriter.

**“Bond Service Charges”** means, pursuant to the Loan Agreement, payments made by the Borrower to the Issuer in amount sufficient to pay the principal of and interest on the Bonds when due to the extent that amounts otherwise available for such payment are insufficient therefor.

**“Bond Year”** has the meaning as set forth in the Tax Certificate.

**“Bonds”** means the Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) of the Issuer issued, authenticated and delivered under this Indenture, which are identified as such in Section 2.01(a) hereof.

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

**“Borrower”** means The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, and its successors and assigns.

**“Borrower Documents”** means the Loan Agreement, the Note, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Borrower’s Tax Certificate dated the Closing Date and executed and delivered by the Borrower, the Arbitrage Rebate Agreement dated as of November 1, 2023, by and among the Issuer, the Borrower and the Trustee, the Operating Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Guarantor Documents and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan evidenced by the Loan Agreement, but excluding the Mortgage Loan Documents.

**“Borrower Loan Agreement”** means the Borrower Loan Agreement attached hereto as Appendix D, which Borrower Loan Agreement shall be executed, delivered and become effective on the Conversion Date.

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

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

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

**“Cash Flow Projection”** means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Underwriter and the Rating Agency, establishing, to the satisfaction of the Underwriter and the Rating Agency, the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges due on the Bonds, the Issuer Fees, and Trustee Fees and Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.03, (iii) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund, as provided in Section 4.02 hereof, and (iv) the sale or other disposition by the Trustee of Eligible Investments prior to maturity at a price below par as permitted hereunder; or (v) the optional redemption of the Bonds as provided in Section 3.05 hereof.

**“Certificate of Occupancy”** means the temporary or final certificate of occupancy, as the case may be, issued by the City of Deerfield Beach for the multifamily units in the Project, or if certificates of occupancy are not required or provided for multifamily units, then evidence of all final inspection approvals needed to occupy the multifamily units.

**“Citi”** means Citibank, N.A., a national banking association, and its successors and assigns.

**“Citi Forward Commitment”** means the [Forward Commitment Agreement among the Borrower, the Mortgage Lender and Citi], pursuant to which Citi has agreed to purchase the Governmental Lender Note on the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

**“Citi Purchase Price”** means an amount equal to the Permanent Loan Amount to be funded by Citi on the Conversion Date.

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

**“Closing Memorandum”** means the closing memorandum attached to the initial Requisition delivered on the Closing Date.

**“Code”** means the Internal Revenue Code of 1986, including applicable final, temporary and proposed regulations and revenue rulings applicable thereto.

**“Collateral Fund”** means the Collateral Fund created in Section 4.01 hereof.

**“Completion Certificate”** means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in Section 3.05 of the Loan Agreement, which shall be in form and substance acceptable to the Issuer and the Trustee.



**“Completion Date”** means the date upon which the Completion Certificate and the Certificate of Occupancy are delivered by the Borrower to the Issuer and the Trustee.

**“Conditions to Conversion”** shall have the meaning given to such term in the Citi Forward Commitment.

**“Confirmation of Rating”** means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

**“Construction Draw Schedule”** means the schedule of the disbursement of the proceeds of the Bonds, as provided in Exhibit D attached to the Loan Agreement, as the same may be amended from time to time with the consent of the Issuer.

**“Construction Phase”** means the rehabilitation phase of the Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of November 1, 2023, among the Borrower, the Trustee and the Dissemination Agent, as the same may be amended, restated, supplemented or modified from time to time.

**“Conversion”** means the conversion of the Loan from the Construction Phase to the Permanent Phase on the Conversion Date pursuant to the provisions of the Citi Forward Commitment.

**“Conversion Date”** means the date Citi purchases the Governmental Lender Note upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by Citi in the Notice of Conversion; provided, however, the Conversion Date shall occur hereunder no earlier than December 1, 2025.

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

**“Costs of Issuance”** means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds.

**“Costs of Issuance Deposit”** means the deposit set forth in the Closing Memorandum.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund created pursuant to Section 4.01 of this Indenture.

**“County”** means Broward County, Florida.

**“Default”** means any Default under the Loan Agreement as specified in and defined by Section 7.01 thereof.

**“Designated Office”** of the Trustee or the Underwriter means, respectively, the office of the Trustee or the Underwriter at the respective Notice Address set forth in Section 1.01 hereof or at such other address as may be specified in writing by the Trustee or the Underwriter, as applicable, as provided in Section 12.06 hereof.

**“Determination of Taxability”** means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes (other than an Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); *provided*, that no such decree, judgment, or action will be considered final for this purpose unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

**“Dissemination Agent”** means initially The Bank of New York Mellon Trust Company, N.A., or any dissemination agent subsequently appointed in accordance with the Continuing Disclosure Agreement.

**“Documents”** means and shall include (without limitation), with respect to the Bonds, this Indenture, the Loan Agreement, the Note, the Tax Regulatory Agreement, the Tax Certificate, the Guarantor Documents and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Issuer’s Obligations or the Borrower’s Obligations, or any part thereof, or in connection therewith, and any and all Supplements thereto, but excluding the Mortgage Loan Documents and the Subordinate Loan Documents.

**“Eligible Funds”** means, as of any date of determination, any of:

- (a) the proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase price thereof by the Underwriter);
- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee representing advances to the Borrower (or an Affiliate) of funds from other third parties representing loans of money earmarked for the Project including: proceeds of the Mortgage Loan;
- (d) remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase and or remarketing price thereof by the Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of any refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section

362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, *provided* that no Act of Bankruptcy has occurred during such period;

(g) proceeds of the Citi Purchase Price received from Citi in connection with Citi's purchase of the Governmental Lender Note on the Conversion Date; and

(h) investment income derived from the investment of the money described in subsections (a) through (g) hereof.

### **“Eligible Investments”**

means, subject to the provisions of Section 6.01 hereof, any of the following investments that mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture, to the extent the same are at the time legal for investment of the Issuer's funds (written direction of the Issuer or the Borrower to invest funds shall be conclusive evidence that the directed investment is at the time a legal investment of the Issuer's funds):

(a) Governmental Obligations; and

(b) To the extent permitted herein, shares or units in any money market mutual fund (i) which is then rated “Aaa-mf” by Moody's (or if no fund is available at that rating category, the highest rating category then available for that category of fund by Moody's, or if Moody's is not the Rating Agency or a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

**“Event of Default”** or **“Default”** means, when used in this Indenture, those events of default or defaults specified in Section 9.01 hereof and, when used in the Loan Agreement, those events of default or defaults specified in Section 7.01 thereof.

**“Expense Fund”** means the Expense Fund created pursuant to Section 4.01 of this Indenture.

**“Extension Payment”** means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.03 hereof, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

**“Funding Loan Agreement”** means the Funding Loan Agreement attached hereto as Appendix C, which Funding Loan Agreement shall be executed, delivered and become effective on the Conversion Date.

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

**“Governmental Lender Note”** means the Governmental Lender Note attached as Exhibit A to the Funding Loan Agreement, which Governmental Lender Note shall be executed, delivered and become effective on the Conversion Date.

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

**“Guarantor”** and **“Guarantors”** means, individually and collectively, the Borrower, [the Authorized Member], \_\_\_\_\_, and \_\_\_\_\_, individually.

**“Guarantor Documents”** means, collectively, the Absolute and Unconditional Guaranty of Completion, the Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, the Absolute and Unconditional Guaranty of Operating Deficits and the Environmental Indemnity Agreement, each made by the Guarantors for the benefit of the Issuer and the Trustee.

**“Hazardous Materials”** means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; radon; mold; toxic or mycotoxin spores; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance (whether or not naturally occurring) now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “solid waste”, “pesticide”, “contaminant,” or “pollutant”, or

otherwise classified as hazardous or toxic by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law.

**“Hazardous Materials Laws”** means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, rule of common law (including, without limitation, nuisance and trespass), consent order, administrative rulings and court judgments and decrees or other government directive in effect now or in the future and including all amendments, that relate to Hazardous Materials or to the protection or conservation of the environment or human health and apply to Borrower or to the Mortgaged Property, including, without limitation, those relating to industrial hygiene, or the use, analysis, generation, manufacture, storage, discharge, release, disposal, transportation, treatment, investigation, or remediation of Hazardous Materials. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Clean Air Act, the Occupational Safety and Health Act, and their state analogs.

**“Indenture”** means this Trust Indenture, dated as of November 1, 2023, by and between the Issuer and the Trustee, and any and all Supplements thereto.

**“Independent”** means any person not an employee or officer of the Borrower or its affiliates.

**“Initial Deposit”** means Eligible Funds in the amount of \$\_\_\_\_\_.

**“Initial Interest Rate”** means \_\_\_\_%.

**“Initial Mandatory Tender Date”** means the earlier of (i) the Conversion Date, and (ii) December 1, 2026.

**“Initial Remarketing Date”** means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.03 hereof are satisfied.

**“Interest Payment Date”** means (a) June 1 and December 1 of each year beginning June 1, 2024, and (b) each Mandatory Tender Date.

**“Interest Period”** means, initially, the period from the Closing Date to but not including first Interest Payment Date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

**“Interest Rate”** means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, as applicable, and thereafter the applicable Remarketing Rate; provided, however, commencing on the Conversion Date the Interest Rate shall be as set forth in the Funding Loan Agreement.

**“Investor Member”** means HCP-ILP, LLC, a Nevada limited liability company, in its capacity as investor member in Borrower, its permitted successors and assigns.

**“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, and any successor to its powers and duties under the Act.

**“Issuer Closing Fee”** means the (i) Issuer’s one (1) time initial issuance fee in the amount equal to fifty basis points (0.50%) of the original aggregate principal amount of the Loan and the Subordinate Tax-Exempt Loan, as evidenced by the Note and the Subordinate Note, respectively, for a total of \$95,000, (ii) Issuer’s indemnification fee of \$20,000, and (iii) Issuer’s counsel fee of \$5,000, all of which shall be payable to the Issuer by the Trustee on the Closing Date from amounts on deposit in the Costs of Issuance Fund pursuant to (a) Section 4.07 of this Indenture, and (b) Section 5.02 of the Subordinate Loan Agreement.

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

**“Issuer Fee”** means, collectively, (i) the Issuer Closing Fee, (ii) the Ongoing Issuer Fee and (iii) Late Reporting Fees and/or Issuer’s Compliance Fees, as applicable, pursuant to the Tax Regulatory Agreement.

**“Issuer’s Obligations”** means the obligations of the Issuer under the Bonds, this Indenture, and the other Documents to (a) pay the principal of and interest on the Bonds (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bonds, this Indenture, or any of the other Documents, to perform and observe.

**“Loan”** means the loan by the Issuer to the Borrower in the principal amount of \$[14,000,000] made by the Issuer to the Borrower evidenced by the Note, described in the Loan Agreement and made in connection with the issuance of the Bonds.

**“Loan Agreement”** means the Loan Agreement dated as of November 1, 2023, between the Issuer and the Borrower and any and all Supplements thereto.

**“Loan Payments”** means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.02 of the Loan Agreement.

**“Local Time”** means Eastern time (daylight or standard, as applicable) in the State.

**“Mandatory Tender Date”** means each date on which all Outstanding Bonds are subject to mandatory tender as set forth in Section 3.01(b) hereof.

**“Maturity Date”** means December 1, 2056.

**“Maximum Interest Rate”** means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable law.

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, acceptable to the Remarketing Agent, that assigns credit ratings.

**“Mortgage Lender”** means Citibank, N.A., and any successors or assigns.

**“Mortgage Loan”** means the mortgage loan to be made by the Mortgage Lender to the Borrower in the principal amount of \$[14,000,000] with respect to the Project, as described and provided for in the Mortgage Loan Documents.

**“Mortgage Loan Documents”** means the Mortgage Loan Security Instrument, the mortgage note, and all other documents required by the Mortgage Lender in connection with the Mortgage Loan.

**“Mortgage Loan Prepayment Amount”** means an amount necessary to prepay in full the outstanding principal amount of the Mortgage Loan, together with accrued interest to, but not including, the Conversion Date, as set forth in a payoff statement submitted by the Mortgage Lender to the Trustee on or prior to the Conversion Date.

**“Mortgage Loan Prepayment Fund”** means the Mortgage Loan Prepayment Fund created in Section 4.01 hereof.

**“Mortgage Loan Security Instrument”** means the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing which will secure the Mortgage Loan, as the same may be amended, supplemented or restated.

**“Negative Arbitrage Account”** means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

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

**“Notice Address”** means, unless otherwise designated pursuant to Section 12.06 hereof:

(a) As to the Issuer:

Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director  
Telephone: (954) 357-4900

With copies to:

Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Facsimile: (954) 357-5728

(b) As to the Trustee:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Broward HFA Relationship Manager  
Facsimile: (904) 886-1125

With copies to:

Akerman, LLP  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Attention: Timothy J. Bramwell, Esq.  
Telephone: (904) 798-3700  
Email: [tim.bramwell@akerman.com](mailto:tim.bramwell@akerman.com)

(c) As to the Borrower:

Palms of Deerfield Townhomes, LLC  
c/o SHAG Palms of Deerfield Townhomes Developer, LLC  
1100 N.W. 4<sup>th</sup> Avenue  
Delray Beach, Florida 33444  
Attention: Darren Smith  
Email: [dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)

With copies to:

Shutts & Bowen LLP  
200 S. Biscayne Blvd., Suite 4100  
Miami, Florida 33131  
Attention: Robert Cheng  
Email: [RCheng@shutts.com](mailto:RCheng@shutts.com)

and

Deerfield Beach Family Empowerment, Inc.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, Florida 33441



(d) As to the Mortgage Lender:

Citibank N.A

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

With copies to:

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

and

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

(e) As to the Underwriter and Remarketing Agent:

Raymond James & Associates, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Tim Wranovix  
Telephone: (727) 567-5671  
Email: [tim.wranovix@raymondjames.com](mailto:tim.wranovix@raymondjames.com)

(f) As to the Rating Agency:

Moody's Investors Service, Inc.  
7 World Trade Center  
250 Greenwich Street, 16<sup>th</sup> Floor  
New York, New York 10007  
Attention: Public Finance Group – Housing Team  
Email: [Housing@moodys.com](mailto:Housing@moodys.com)

(g) As to the Investor Member:

HCP-ILP, LLC  
c/o Hunt Capital Partners

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_

(h) As to Citi:

Citibank, N.A.  
388 Greenwich Street, Trading 4<sup>th</sup> Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Telephone: (561) 347-3231  
Facsimile: (212) 723-8209  
Deal ID No. \_\_\_\_\_

**“Notice of Conversion”** means a written notice to be delivered not less than ten (10) days (or such shorter period as agreed to in writing by all the notice parties) prior to the Conversion Date by Citi to the Issuer, the Trustee, the Borrower and the Mortgage Lender (i) stating that the Conditions to Conversion have been satisfied on or before the Termination Date or, if any Condition to Conversion has not been satisfied on or before the Termination Date, stating that such Condition to Conversion has been waived in writing by Citi (if a waiver is permitted and is granted by Citi, in its sole and absolute discretion) on or before the Termination Date and (ii) confirming the Conversion Date.

**“Official Statement”** means the Official Statement dated November \_\_, 2023, relating to the Bonds.

**“Ongoing Issuer Fee”** means the annual program administration fee of the Issuer, payable in advance by the Borrower to the Trustee for deposit to the Expense Fund for payment to the Issuer in the amount of eighteen basis points (0.18%) per annum of the outstanding aggregate principal amount of the Loan and the Subordinate Tax-Exempt Loan (calculated on the Business Day prior to any principal reduction of the Loan and/or the Subordinate Tax-Exempt Loan). The first payment of the Ongoing Issuer Fee shall be payable to the Issuer on the Closing Date, from funds on deposit in the Costs of Issuance Fund, for the period beginning on the Closing Date and ending on [November 31, 2024]. Thereafter, the Ongoing Issuer Fee shall be payable in semi-annual installments on each [June] 1 and [December] 1, with the first semi-annual payment due and payable on [June] 1, 2024; provided, however, that such fee does not include amounts due, if

any, for extraordinary services and expenses of the Issuer, the Trustee, Bond Counsel, the Issuer's counsel, or the Trustee's counsel to be paid by the Borrower pursuant to the Loan Agreement or the Subordinate Loan Documents.

**“Operating Agreement”** means the Amended and Restated Operating Agreement of the Borrower, dated November \_\_, 2023, as it may be amended in accordance with the Borrower Documents and the Mortgage Loan Documents.

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

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

- (a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;
- (b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with Article VIII; or
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Indenture.

**“Permanent Loan Amount”** has the meaning set forth in the Citi Forward Commitment.

**“Permanent Phase”** means the permanent phase of the Loan, which time period shall commence on the Conversion Date and remain in effect through the Maturity Date.

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

**“Project”** means the multifamily rental housing project located in Deerfield Beach, Florida, known as The Palms of Deerfield Townhomes, which, upon completion of rehabilitation, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses.

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

**“Qualified Project Costs”** means any expenditures which (a) are incurred not more than 60 days prior to the date on which the Issuer first declared its “official intent” (within the meaning of Treasury Regulation Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding 20% of the aggregate principal amount of the Bonds); (b) are made exclusively to provide facilities and improvements that constitute part of a “qualified residential rental project” within the meaning of Section 142(d) of the Code; and (c) are properly chargeable to the Project's capital account under general federal income tax principles or that would be so chargeable with a proper election or but for a proper election by the Borrower to deduct such expenditure. However, “Qualified Project Costs” do not include (i) issuance costs of the Bonds (within the meaning of Section 147(g) of the Code) or (ii) any fee, charge or profit payable to the Borrower or a “related person” (within the meaning of

Section 144(a)(3) of the Code) of the Borrower. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to the commencement of rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to commencement of rehabilitation of the Project.

“**Rating Agency**” means any national rating agency then maintaining a rating on the Bonds, and initially means Moody’s.

“**Rating Category**” means one of the generic rating categories of the Rating Agency.

“**Rebate Amount**” means the amount, if any, which is to be paid to the United States of America pursuant to the Section 148(f) of the Code and Section 4.06 hereof.

“**Rebate Analyst**” means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Trustee to calculate the Rebate Amount. The initial Rebate Analyst will be [Dufresne CPA Services, P.A].

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

“**Record Date**” means the 15th day of the month preceding any Interest Payment Date or 45 days prior to any Mandatory Tender Date.

“**Remarketing Agent**” means Raymond James & Associates, Inc. or any successor as Remarketing Agent designated in accordance with Section 10.24 hereof.

“**Remarketing Agent's Fee**” means the fee of the Remarketing Agent for its remarketing services.

“**Remarketing Agreement**” means the Remarketing Agreement, dated as of November 1, 2023 by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

“**Remarketing Date**” means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.03 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

“**Remarketing Expenses**” means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other

costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

**“Remarketing Notice Parties”** means the Borrower, the Investor Member, the Issuer, the Trustee, the Remarketing Agent, the Authorized Member and the Mortgage Lender.

**“Remarketing Period”** means the period beginning on a Remarketing Date and ending on the earlier of (i) the last day of the term for which Bonds are remarketed pursuant to Section 3.03, (ii) the Conversion Date or (iii) the final Maturity Date of the Bonds.

**“Remarketing Proceeds Account”** means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

**“Remarketing Rate”** means the interest rate or rates established pursuant to Section 2.01 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

**“Requisition”** means the written request to make a disbursement from (i) the Project Fund in substantially the form attached as **Appendix B** hereto submitted in the manner provided pursuant to Section 5.02 hereof, or (ii) the Costs of Issuance Fund in substantially the form attached as **Appendix B-1** hereto submitted in the manner provided pursuant to Section 4.07 hereof.

**“Reserved Rights of the Issuer”** shall mean (a) all rights which the Issuer and its officers, officials, directors, agents and employees may have under this Indenture, the Loan Agreement and the Tax Regulatory Agreement to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its officers, officials, directors, agents or employees; (b) the right of the Issuer to give and receive notices, reports, certifications, or other information hereunder, under the Loan Agreement and under the Tax Regulatory Agreement; (c) the right of the Issuer to receive its fees and expenses; (d) the Issuer’s approval rights; (e) the rights of the Issuer with respect to inspections; (f) the rights of the Issuer with respect to publicity and signage; (g) the notification, indemnification and enforcement rights of the Issuer in Section 6.02 of the Loan Agreement; (h) the rights of the Issuer with respect to limited liability; (i) all rights of the Issuer to enforce the covenants and agreements and to take action for the breach of any representation or warranty of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or any requirements imposed by the Issuer with respect to the Project, or necessary to assure that interest on the Bonds is excluded from gross income for federal income tax purposes, as are set forth in any of the Documents, including any certificate or agreement executed by the Borrower; (j) all rights of the Issuer in connection with any amendment to or modification of any of this Indenture and the Loan Agreement, or the Tax Regulatory Agreement insofar as any such amendment or modification would affect the Reserved Rights of the Issuer; (k) all approval rights of the Issuer relating to rent increases as provided in the Tax Regulatory Agreement; and (l) all enforcement rights with respect to the foregoing. All of the foregoing rights of the Issuer under this Indenture, the Tax Regulatory Agreement and the Loan Agreement are reserved to the Issuer, as none of these rights under this Indenture, the Tax Regulatory Agreement or the Loan Agreement are being assigned by the Issuer to the Trustee, the Mortgage Lender or Citi.

**“Revenues”** means (a) the Loan Payments, (b) the Eligible Funds received by the Trustee for deposit into the Collateral Fund, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Special Funds, and (e) all income and profit from the investment of the foregoing moneys. The term *“Revenues”* does not include any money or investments in the Rebate Fund, the Costs of Issuance Fund (but only to the extent such moneys are not proceeds of the Bonds), the Expense Fund or the Subordinate Loan Account of the Project Fund, amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer.

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

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

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

**“Subordinate Lender”** means, with respect to the Subordinate Loan, The Palms of Deerfield Beach, LP, a Florida limited partnership, and prior owner of the leasehold interest in the Project, which leasehold interest was assigned to Borrower on the Closing Date

**“Subordinate Loan”** means, collectively, (i) the tax-exempt loan made to Borrower by the Subordinate Lender in the principal amount of \$[5,000,000] (the **“Subordinate Tax-Exempt Loan”**), and (ii) the taxable loan made to Borrower by the Subordinate Lender in the principal amount of \$[13,247,477], each pursuant to the Subordinate Loan Documents, the proceeds of which have been used to provide purchase money financing for the Borrower for a portion of the costs of the acquisition of the Borrower’s leasehold interest in the Project.

**“Subordinate Loan Account”** shall mean the Subordinate Loan Account within the Project Fund established pursuant to Section 4.01 hereof.

**“Subordinate Loan Agreement”** means that certain Subordinate Loan Agreement dated as of the date hereof, between the Issuer and the Borrower, as amended, supplemented or restated from time to time, setting forth the terms and conditions of the issuance of the Subordinate Note and the Subordinate Loan.

**“Subordinate Loan Documents”** means any loan agreement, financing agreement, security agreement and all other documents pursuant to which the Subordinate Loan is funded or secured, including the Subordinate Loan Agreement.

**“Subordinate Note”** means the Issuer’s Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) issued pursuant to the Subordinate Loan Documents.

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

**“Tax Certificate”** means, collectively, (i) the Certificate as to Arbitrage and Certain Other Tax Matters dated the Closing Date and executed by the Issuer, and (ii) the Borrower’s Tax Certificate dated the Closing Date and executed and delivered by the Borrower, and (iii) the Arbitrage Rebate Agreement by and among the Issuer, the Borrower and the Trustee, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

**“Tax Regulatory Agreement”** means the Land Use Restriction Agreement dated as of the same date as this Indenture by and among the Issuer, the Trustee and the Borrower relating to the Bonds, and any and all modifications thereof, amendments and Supplements thereto and substitutions therefor.

**“Term of Agreement”** means the term of the Loan Agreement as specified in Section 8.01 of the Loan Agreement.

**“Termination Date”** means \_\_\_\_\_ 1, [2026], subject to extension by Citi as provided in the Citi Forward Commitment.

**“Title Company”** means Old Republic National Title Insurance Company.

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

**“Trustee”** means The Bank of New York Mellon Trust Company, N.A., a national banking association, organized and existing under the laws of the United States and authorized to conduct business in the State, and its successor or successors in the trust created by this Indenture.

**“Trustee’s Fee”** means the Trustee’s initial acceptance fee and expenses of \$2,500.00 plus fees, costs and expenses of its counsel in conjunction with the delivery of the Bonds and the ongoing compensation and expenses payable to the Trustee as follows:

(a) the annual administration fees of the Trustee, for the ordinary services of the Trustee rendered under this Indenture during each twelve-month period and shall be \$3,750.00 per annum, payable in advance in semiannual installments of \$1,875.00 on the Closing Date and each June 1 and December 1 thereafter; beginning June 1, 2024;

(b) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Indenture as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Trustee shall have been made; and

(c) for purposes of the Loan Agreement, indemnification of the Trustee by the Borrower; and

(d) when the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

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

**“Undelivered Bond”** means any Bond that is required under this Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

**“Underwriter”** means, collectively, Raymond James & Associates, Inc. and RBC Capital Markets, LLC.

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

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

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

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

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

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

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

Any direction, consent, approval or similar action required hereunder shall be in writing and signed by an authorized representative of the party providing such direction, consent, approval or similar action.



**Section 1.03 Determinations.** The Issuer has determined that the issuance of the Bonds under this Indenture is necessary to achieve a valid public purpose of the Issuer under the Act: to increase the housing supply for families of limited income, to alleviate the shortage of adequate safe and sanitary housing of families of low and moderate income and to promote community development.

The Issuer is issuing the Bonds with the intent and expectation that the income from the Bonds will be generally excludable from the Bondholder's gross income under the Code as determined by the Issuer and pursuant to an opinion of Bond Counsel (subject to customary limitations).

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

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

(a) *Authorization of Bonds.* The Issuer hereby authorizes for issuance under this Indenture, bonds in the original aggregate principal amount of \$[14,000,000], which shall be designated "Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes)," to be issued as hereinafter provided.

(b) *Registered Form; Numbering.* The Bonds shall be issuable only as fully registered Bonds in Authorized Denominations, substantially in the form, appropriately completed, attached hereto as Appendix A and made a part hereof. The Bonds shall be lettered "R," and shall be numbered separately from "1" consecutively upward.

(c) *Date, Denominations, Dates from Which Interest Payable, Interest Rate and Maturity.* The Bonds shall be dated the Closing Date, shall be issued in Authorized Denominations, and shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to Mandatory Tender for purchase as set forth in Section 3.01 hereof.

(d) *Initial Interest Rate.* From the Closing Date to, but not including, the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.01 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

(e) *Establishment of Remarketing Rate.* The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.01. Not less than ten (10) Business Days preceding each

Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.03 hereof, and shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than a scheduled Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; *provided* that if the rate of interest so determined for such period would exceed the maximum interest rate per annum permitted by applicable law, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the maximum interest rate permitted by applicable law. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate permitted by applicable State law, the Bonds Outstanding shall not be remarketed.

(f) *Notice of Remarketing Rate.* The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or telecopy, promptly confirmed in writing within ten (10) Business Days, to the Trustee, the Issuer, the Borrower and the Investor Member. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

(g) *Book-Entry Form.* Initially, the Bonds shall be in Book-Entry Form by issuing a single bond in the amount of \$[14,000,000], registered in the name of Cede & Co. (defined below), as nominee for DTC (defined below). In the event DTC discontinues its service with respect to the Bonds and the Book-Entry System is terminated, replacement Bonds shall be issued in Authorized Denominations.

(h) *Medium and Place of Payment.* Principal of and interest on the Bonds shall be payable in lawful money of the United States of America which, at the respective times of payment, is legal tender for the payment of public and private debts, but only from the Revenues and any other monies made available to the Issuer for such purpose. Principal of the Bonds shall be payable at the Trust Office upon presentation and surrender of the Bonds as the same become due, and upon the request of any registered Owner of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, such principal shall be paid by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee. Interest on the Bonds shall be payable to each registered Owner of the Bonds by check or draft mailed to such Owners at their addresses as they appear on registration books kept by the Trustee as Bond Registrar, or, upon the request of any registered Owner of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such Owner in writing to the Trustee at least three (3) Business Days prior to the applicable payment date.

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

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

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

**Section 2.03 *Execution of Bonds.*** The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of an authorized officer of the Issuer, and the seal of the Secretary or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the manual or facsimile signature of an authorized officer of the Issuer. In case any authorized officer of the Issuer whose signature or a facsimile of whose signature shall appear on any of the Bonds shall cease to be an authorized officer of the Issuer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such authorized officer of the Issuer had remained in office until delivery. Furthermore, it shall not be necessary that the same authorized officer of the Issuer sign all of the Bonds that may be issued hereunder at any one time or from time to time.

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

**Section 2.05 *Authentication and Delivery of Bonds.*** The Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the purchaser or purchasers as may be directed by the Issuer as provided in this Section.

Prior to the authentication by the Trustee of the Bonds, there shall have been filed with the Trustee:

(a) A copy, certified by the Chair or Vice Chair of the governing body or the Executive Director of the Issuer, of all resolutions adopted and proceedings had by the Issuer relating to the Bonds, authorizing the execution, delivery and performance of this Indenture and the Loan Agreement;

(b) A fully executed copy of this Indenture;

(c) A copy of the fully executed Loan Agreement, the Tax Regulatory Agreement, the Tax Certificate, the Guarantor Documents and a copy of the fully executed Note, along with written evidence that the original, fully executed Note has been sent to the Trustee for delivery;

(d) An opinion of Bond Counsel with respect to the exclusion from gross income for federal and State income tax purposes of interest payable on the Bonds and the Governmental Lender Note;

(e) Opinions of Counsel addressed to the Issuer and the Trustee, of a law firm or law firms (who may be independent counsel) to the effect that the Bonds and the Documents have been duly executed and delivered by each of the parties thereto and constitute valid and binding obligations of each such party, and are enforceable against each such party in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

(f) A request and authorization signed by an authorized officer of the Issuer authorizing the Trustee to authenticate and to deliver the Bonds to the purchaser or purchasers therein identified upon payment to the Trustee for the account of the Issuer of the amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery; and

(g) The Initial Deposit.

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

**Section 2.06 *Temporary Bonds.*** Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, typewritten or photocopied Bonds in temporary form, substantially of the tenor of the Bonds herein described, and with appropriate omissions, variations and insertions. Such Bond or Bonds in temporary form shall be delivered in denominations authorized by this Indenture, may be numbered using the prefix "T" before any number thereon as authorized by this Indenture, and may bear a legend thereon setting forth the terms for the exchange thereof for Bonds in definitive form. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be

entitled to the benefit of this Indenture. The Issuer shall, without unreasonable delay (unless the Holders of the Bonds issued in temporary form agree otherwise), prepare, execute and deliver to the Trustee, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in a definitive authorized form in Authorized Denominations, of the same maturity or maturities, bearing the same interest rate or rates and for the same aggregate principal amount as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Issuer at the Borrower's expense and without making any charge to the Holders of the Bonds therefor.

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

**Section 2.08 *Registration, Negotiability, Transfer and Exchange of Bonds.*** All of the Bonds issued under this Indenture shall be negotiable, subject to the provisions for registration and transfer contained in this Indenture and in the Bonds. So long as any of the Bonds shall remain outstanding, the Issuer shall maintain and keep at the Trust Office, books for the registration and transfer of Bonds; and, upon presentation thereof for such purpose at such office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as the Issuer or the Trustee may prescribe, any Bond entitled to registration or transfer.

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

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

For every exchange or transfer of Bonds, whether temporary or definitive, the Issuer or the Trustee may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. Notwithstanding any other provision of this Indenture to the contrary, any expenses of the Issuer or the Trustee incurred in connection therewith (except any applicable tax or other governmental charge) shall be paid by the Borrower as required by the Loan Agreement. The Issuer shall not be obligated to make any such exchange or transfer of Bonds during the fifteen (15) days next preceding an interest payment date on the Bonds. The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Section 6045 of the Code. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

**Section 2.09 *Obligation of Issuer Limited.*** The Bonds, together with interest thereon, do not constitute an indebtedness to which the faith and credit of the Issuer or the State are pledged but are special limited obligations of the Issuer payable solely from (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in any fund or account created under this Indenture, other than amounts held in the Rebate Fund and the Costs of Issuance Fund, and (c) from any other moneys held pursuant to the Trust Estate, and shall be a valid claim of the respective Holders thereof only against the Trust Estate, which is hereby assigned for the equal and ratable payment of the Bonds and the interest thereon and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture.

THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THIS INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

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

## **Section 2.11 *Book-Entry System.***

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

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

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

(ii) The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of DTC with respect to the Bonds if the Issuer determines that: (1) DTC is unable to discharge its responsibilities with respect to the Bonds or (2) a continuation of the requirement that all of the Outstanding Bonds be registered in the registration books kept by the Trustee in the name of Cede, as nominee of DTC, is not in the best interest of the Beneficial Owners of the Bonds. In the event that no substitute securities depository is found by the Issuer,

or restricted registration is no longer in effect, Bond certificates will be delivered as described in this Indenture.

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

In connection with any proposed transfer outside the Book-Entry System, the Issuer, the Borrower or DTC shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Section 6045 of the Code. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

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

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

### **Section 2.12 *Conversion.***

(a) If the Notice of Conversion is issued in the timeframe required under the Citi Forward Commitment and all conditions with respect thereto and with respect to the purchase of the Governmental Lender Note are satisfied, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued or all conditions with respect thereto and with respect to the funding of the Funding Loan are not so satisfied, then Conversion will not occur and Citi will not have any obligations with respect to the purchase of the Governmental Lender Note or otherwise with respect to the Loan or the Project.

(b) Upon the satisfaction of the Conditions to Conversion set forth in the Citi Forward Commitment, (i) the Bonds shall be subject to mandatory tender in accordance with Section 3.01 hereof, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and/or other Eligible Funds hereunder), (iii) a portion of the principal amount of the Bonds shall be cancelled such that the principal amount outstanding equals the Permanent Loan Amount



(as determined by Citi at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted into a physical Governmental Lender Note (in the form attached to the Funding Loan Agreement) which shall be purchased by Citi, (v) the Funding Loan Agreement attached hereto as Appendix C and the Borrower Loan Agreement attached hereto as Appendix D shall be delivered by the respective parties and become effective and shall supersede this Indenture and the Loan Agreement, respectively, (vi) the proceeds of the Citi Purchase Price, along with other funds of the Borrower, shall be deposited into the Mortgage Loan Prepayment Fund, and (vii) the Mortgage Loan shall be paid in full with amounts on deposit in the Mortgage Loan Prepayment Fund and all security related to the Mortgage Loan shall be released or assigned to Citi. If the Conditions to Conversion are not satisfied on or before the Termination Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and Citi will not have any obligation with respect to the purchase of the Governmental Lender Note.

(c) Provided all Conditions to Conversion are satisfied, the Issuer and Trustee agree to execute and deliver the Funding Loan Agreement, the Governmental Lender Note and the Borrower Loan Agreement and any other Funding Loan Documents (as defined in the Funding Loan Agreement) to be executed in connection with Citi's purchase of the Governmental Lender Note on the Conversion Date.

(d) The Governmental Lender Note shall mature on the Maturity Date, subject to earlier prepayment as provided in the Funding Loan Agreement. The unpaid principal balance of the Governmental Lender Note shall be paid on the dates and in the amounts set forth in the initial Borrower Note.

(e) In addition to the Conditions to Conversion set forth in the Citi Forward Commitment, Conversion shall be conditioned upon the delivery of the items set forth in Section 6.1 of the Funding Loan Agreement.

### **ARTICLE III MANDATORY TENDER AND REMARKETING OF BONDS**

#### **Section 3.01 *Mandatory Tender.***

(a) All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date. Notwithstanding the foregoing, if the Notice of Conversion has not been delivered establishing the Conversion Date and resulting Mandatory Tender Date the Bonds must be remarketed on such Mandatory Tender Date subject to meeting the requirements set forth below.

(b) The Mandatory Tender Dates shall consist of (i) the earlier of (A) the Initial Mandatory Tender Date and (B) the Conversion Date, and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower, with the consent of the Investor Member, and with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 3.03 hereof.

(c) While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

(d) Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.01 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

(e) The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts representing proceeds of remarketed Bonds deposited in the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase, (ii) amounts on deposit in the Collateral Fund (and/or other Eligible Funds hereunder), to pay the principal amount of Bonds tendered for purchase, (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase, (iv) any available interest earnings on amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower, with the consent of the Issuer.

(f) Bonds shall be deemed to have been tendered for purposes of this Section 3.01 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

### **Section 3.02 *Mandatory Tender Notice.***

(a) Not less than thirty (30) days preceding a Mandatory Tender Date [(or 8 days in connection with a Mandatory Tender Date that is the Conversion Date)], the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Investor Member, and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

(i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase no later than 12:00 Noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

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

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

(b) In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 20<sup>th</sup> day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

(c) Neither failure to give or receive any notice described in this Section 3.02, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.02.

(d) Notice delivered as required in this Section 3.02 with respect to a mandatory tender pursuant to Section 3.01(b) hereof may be rescinded and annulled on or before the tender date set forth in such notice if Conversion does not occur by the Conversion Date.

### **Section 3.03 *Remarketing of Bonds.***

(a) No later than 11:00 a.m. Local Time on the 35<sup>th</sup> day prior to each Mandatory Tender Date (or the [8<sup>th</sup> day] in connection with a Mandatory Tender Date due to the Conversion Date), the Trustee shall give notice to the Borrower, the Investor Member, and the Remarketing Agent by telephone or telecopy, confirmed on the same day in writing, which states the Mandatory Tender Date and that all of the Bonds are to be tendered or deemed to be tendered on the Mandatory Tender Date pursuant to Section 3.01 hereof.

(b) No later than 11:00 a.m. Local Time on the 15<sup>th</sup> day prior to the Mandatory Tender Date then in effect (excluding a Mandatory Tender Date in connection with a Conversion Date), the Borrower may give notice to the Remarketing Notice Parties by telephone or telecopy, confirmed on the same day in writing, that it elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(i) Notice by the Borrower to the Issuer, the Investor Member, the Remarketing Agent and the Trustee of the Remarketing Period pursuant to and in accordance with Section 4.05 of the Loan Agreement;

(ii) Delivery to the Issuer, the Trustee and the Remarketing Agent of a preliminary Cash Flow Projection with respect to the proposed Remarketing Period; and

(iii) The Borrower shall have notified the Trustee in writing that it has approved as to form and substance any disclosure document or offering materials which, in the Opinion of Counsel to the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(c) Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the Remarketing Agent shall give notice, by telephone or telecopy, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall remarket any Bond tendered pursuant to Section 3.01 hereof; *provided, however*, that no such Bond shall be remarketed at a price less than 100% of the principal amount thereof plus accrued interest (if any) without the prior written consent of the Borrower and the Authorized Member; and *provided, further*, that the purchase price of any Bond paid to the tendering Holder allocable to such discount shall be paid with Eligible Funds made available by the Borrower therefor and on deposit with the Trustee prior to the remarketing of such Bonds. The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.01 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Bankruptcy Code.

(d) If, not less than four (4) or two (2) Business Days, as applicable, preceding the Remarketing Date:

(i) if, not less than four (4) Business Days preceding the Remarketing Date, the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) and other Eligible Funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Remarketing Proceeds Account;

(ii) if, not less than four (4) Business Days preceding the Remarketing Date, the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received a Confirmation of Rating from the Rating Agency, together with a copy of such Confirmation of Rating from the Rating Agency;

(iii) if, not less than two (2) Business Days preceding the Remarketing Date, there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the Extension Payment set forth in the Cash Flow Projection for deposit to the Negative Arbitrage Account of the Bond Fund with respect to the payment of interest and principal during the new Remarketing Period;

(iv) if, not less than two (2) Business Days preceding the Remarketing Date, there shall either (A) be on deposit with the Trustee in the Costs of Issuance Fund an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee by the Borrower, or (B) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent;

then the Trustee shall immediately give notice, by telephone or telecopy, which notice shall be immediately confirmed in writing, to the Remarketing Agent, the Borrower the Investor Member that (a) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (b) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee's notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Remarketing Proceeds Account of the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(e) If, not less than four (4) or two (2) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.03 has not been satisfied, then, unless the Outstanding Bonds are otherwise purchased on the Remarketing Date, the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(f) No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(g) On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to this Section 3.03 hereof and the purchase price, and, unless the Bonds are then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to this Section 3.03 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed by the recipient thereof.

### **Section 3.04 *Mandatory Redemption.***

The Bonds are subject to mandatory redemption, in whole, on any Mandatory Tender Date other than the Conversion Date, upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to Section 3.03 hereof and Section 4.05 of the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in Section 3.03(b) or Section 3.03(d) have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable redemption date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund, and the Project Fund.

### **Section 3.05 *[Optional Redemption]***

[The Bonds are subject to optional redemption prior to their maturity, at the direction of the Borrower, either in whole or in part on any date on or after the later to occur of (i) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (ii) the initial Mandatory Tender Date, at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the Redemption Date. Bonds subject to redemption in accordance with this Section 3.05 shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Bond Fund, other than funds in the Negative Arbitrage Account therein, (iii) amounts on deposit on the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.]

### **Section 3.06 *Cancellation of Bonds.***

The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bonds; provided, however, on the Conversion Date only a portion of the Bonds shall be cancelled such that the outstanding principal amount is equal to the Permanent Loan Amount (which remaining outstanding principal balance of the Bonds in the amount of the Permanent Loan Amount shall be converted into the Governmental Lender Note in accordance with Section 2.12 hereof).

## **ARTICLE IV REVENUES AND FUNDS**

**Section 4.01 *Creation of Funds.*** The following trust funds are hereby created by the Issuer and ordered established with the Trustee, to be maintained in the custody of the Trustee each as a separate bank account, to be used for the purposes as hereinafter provided in this Indenture:

(a) **Bond Fund.** The Bond Fund, and within the Bond Fund, the “**Negative Arbitrage Account**” and the “**Remarketing Proceeds Account**”.

(b) **Project Fund.** The Project Fund, and within the Project Fund an “**Excess Earnings Account**” and a “**Subordinate Loan Account**”, which fund shall be administered in accordance with the provisions of Section 4.08 and Section 5.02 of this Indenture. Moneys held in the Subordinate Loan Account of the Project Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(c) **Rebate Fund.** The Rebate Fund, which fund shall be administered in accordance with the provisions of Section 4.06 of this Indenture. Moneys held in the Rebate Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(d) **Costs of Issuance Fund.** Moneys held in the Costs of Issuance Fund that are not proceeds of the Bonds are not held for the benefit of the Owners and are not part of the Trust Estate. Any moneys held in the Costs of Issuance Fund that are proceeds of the Bonds are held for the benefit of the Owners and are part of the Trust Estate.

(e) **Collateral Fund.** The Collateral Fund, which fund shall be administered in accordance with the provisions of Section 4.08 of this Indenture. Moneys held in the Collateral Fund are held for the benefit of the Owners and are part of the Trust Estate.

(f) **Mortgage Loan Prepayment Fund.** The Mortgage Loan Prepayment Fund shall not be pledged to the payment of the Bonds and shall not be part of the Trust Estate.

(g) **Expense Fund.** The Expense Fund, which fund shall be administered in accordance with the provisions of Section 4.10 of this Indenture. Moneys held in the Expense Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

The Trustee may create one or more accounts or subaccounts within any fund authorized by this Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of this Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund.

In the event certain moneys are deposited with the Trustee prior to the Closing Date, whether or not pursuant to one or more letters of instruction from the provider or providers of such moneys, such moneys shall be held by the Trustee subject to the terms and conditions of this Indenture, in addition to the terms of any such letter(s) of instruction. For such purpose, the standards of care, any provisions governing the responsibilities and indemnification and other provisions relating to the Trustee contained in this Indenture and in the Loan Agreement (the “Effective Provisions”) shall be effective as of the first date of receipt by the Trustee of such moneys. The Effective Provisions shall be deemed incorporated into any such letter(s) of instructions.

**Section 4.02 Deposits into and Use of Moneys in the Bond Fund.** On the Closing Date, the Trustee shall deposit the Initial Deposit, if any, in the Negative Arbitrage Account of the Bond Fund; the Bond Fund and amounts on deposit in the Bond Fund are to be invested pursuant to Section 6.01 hereof. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.03 hereof shall also be deposited into the Negative Arbitrage Account. The Trustee is authorized to release funds in the Negative

Arbitrage Account to the Borrower upon receipt of updated Cash Flow Projections and a Rating Agency Confirmation.

On each Interest Payment Date, any available interest earnings in the Project Fund, up to an amount equal to the interest due on the Bonds on such Interest Payment Date, shall be transferred to the Bond Fund to make a payment of interest on the Bonds on such Interest Payment Date. Further, to the extent that available interest earnings on the Project Fund transferred to the Bond Fund in accordance with the preceding sentence are insufficient to make necessary interest payments on each Interest Payment Date, interest on the Bonds, when due and payable, shall be paid (a) in the first instance from money on deposit in the Bond Fund (excluding the Negative Arbitrage Account therein), (b) next from money on deposit in the Negative Arbitrage Account of the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Principal on the Bonds, when due and payable, shall be paid (a) in the first instance from the money on deposit in the Bond Fund, (b) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (c) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Except as provided in Section 4.05 hereof, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due.

**Section 4.03 *Custody of the Bond Fund.*** The Bond Fund shall be in the custody of the Trustee but in the name of the Issuer, and the Issuer hereby authorizes and directs the Trustee (a) to withdraw sufficient funds from the Bond Fund to pay the principal of and interest on the Bonds as the same become due and payable, and (b) to make such funds so withdrawn available to the Trustee, as paying agent, for the purpose of paying such principal and interest, which authorization and direction the Trustee accepts.

**Section 4.04 *Non-Presentation of Bonds.*** Subject to the provisions of Section 10.21 hereof, in the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, if funds sufficient to pay such Bonds shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on its part under this Indenture or on, or with respect to, such Bond. Any such Bonds shall cease to bear interest on the specified maturity and such Bonds or portions thereof shall no longer be protected by or subject to the benefit or security of this Indenture and shall not be deemed to be outstanding under the provisions of this Indenture.

**Section 4.05 *Payment to Borrower of Excess Moneys in Bond Fund.*** Any amounts remaining in the Bond Fund (except for amounts then held by the Trustee for payment of principal of, or interest on any of the Bonds) after payment in full of the purchase price of the Bonds on the Conversion Date, and other costs associated with the conversion of the Bonds, and payment in full of any outstanding fees and expenses of the Paying Agent, the Issuer and the Trustee and any other



fees and expenses due under the Documents, shall, upon written instruction to the Trustee from the Borrower, be deposited into the Loan Payment Fund established under the Funding Loan Agreement or for any other purpose *provided* that the Trustee is furnished with an opinion of Bond Counsel to the effect that such investment or purpose will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

**Section 4.06 *Rebate Fund; Rebate Amount.*** The Trustee shall deposit into the Rebate Fund amounts paid by the Borrower pursuant to the Tax Certificate.

(a) The determination of the Rebate Amount shall be made in accordance with the Tax Certificate and the Rebate Amount shall be paid at such times and in such installments as provided therein. As further provided in the Tax Certificate, the Borrower shall be responsible for calculating or causing to be calculated and paying the Rebate Amount.

(b) Neither the Issuer nor the Trustee shall be obligated to pay any portion of the Rebate Amount (except from funds on deposit in the Rebate Fund). In addition, neither the Issuer nor the Trustee shall have any responsibility with respect to the calculation of the Rebate Amount, *provided* that the rebate calculations are subject to the Issuer's approval.

(c) Any moneys held as part of the Rebate Fund and not immediately required to be paid to the United States pursuant to the Tax Certificate shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof, having maturities consonant with the need for moneys as reasonably estimated by the Borrower. In connection with the investment of moneys held as part of the Rebate Fund (as provided in Section 6.01 hereof), interest and other income received on the investment of moneys held as part of the Rebate Fund shall be credited to the Rebate Fund.

(d) As provided in the Tax Certificate, the Borrower is required to (i) obtain a rebate calculation with respect to the Rebate Amount upon the redemption or final maturity of the Bonds and either (ii) (a) pay to the Trustee for deposit into the Rebate Fund an amount of money as determined by such calculation within thirty (30) days of such calculation or (b) provide the Trustee with written notice (signed by the Borrower Representative and the Rebate Analyst) that (1) no deposit is required or (2) the amount in the Rebate Fund is in excess of the amount required to be on deposit as determined by the most recent rebate calculation, in which case the Trustee shall, with the prior written consent of the Issuer, pay such excess over to the Borrower. If the Trustee does not receive either of the items required in (ii)(a) or (ii)(b) above within 30 days after the completion of rehabilitation of the Project, the Trustee shall notify the Issuer; *provided, however*, that the Trustee shall not incur any liability if it should fail to provide such notice.

**Section 4.07 *Costs of Issuance Fund.*** On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit in the Costs of Issuance Fund to pay the Costs of Issuance from amounts available therein, which Costs of Issuance shall not exceed the amounts set forth in a certificate of

the Issuer. The Trustee shall disburse funds on deposit in the Costs of Issuance Fund upon receipt by the Trustee of Requisitions substantially in the form attached as **Appendix B-1** hereto. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance (excluding, without limitation, \$0 deposited on the Closing Date to be transferred to the Costs of Issuance Fund under the Funding Loan Agreement upon Conversion to pay costs of issuance relating to the Governmental Lender Note, which amount shall not be returned to the Borrower), shall be returned to the Borrower, to the extent such funds are not Bond proceeds or otherwise restricted funds. If such remaining funds are Bond proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

**Section 4.08 Collateral Fund; Project Fund.** [The Subordinate Lender shall, from time to time, deposit or cause to be deposited with the Trustee proceeds of the Subordinate Loan into the Subordinate Loan Account of the Project Fund.]

To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund (other than from the Subordinate Loan Account of the Project Fund) to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date. Other than in connection with the disbursement of moneys from the Subordinate Loan Account of the Project Fund, upon the receipt of requests for disbursement from the Project Fund pursuant to Section 5.02 hereof and the receipt of Eligible Funds in amounts equal to or greater than such requests, the Trustee shall concurrently take the following steps:

- (i) deposit such Eligible Funds into the Collateral Fund; and
- (ii) disburse Bond proceeds from the Project Fund in an amount equal to the Eligible Funds received and deposited pursuant to subparagraph (i) above, in accordance with Article V hereof; provided to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee shall not sell or otherwise terminate such Eligible Investments prior to their stated maturity date and instead the Trustee is hereby instructed to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (a) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund, and (b) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund to be disbursed in accordance with subparagraph (ii).

Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions hereof.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer or the Borrower, after the Project has been completed and a certificate of payment of all costs is filed as provided herein, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower.

When the aggregate principal amount on deposit in the Collateral Fund, together with the scheduled investment earnings thereon, equals the expected Bond Service Charges to be paid on the Bonds to and including the Initial Mandatory Tender Date and the tender price on the Mandatory Tender Date, the excess amounts shall be transferred upon receipt to the Project Fund and used to pay Project Costs in accordance with the Loan Agreement or to the Mortgage Loan Prepayment Fund, as directed by the Mortgage Lender.

The Borrower expects that the Project will proceed substantially in accordance with the Construction Draw Schedule. Each Requisition submitted to the Trustee shall evidence and request disbursements from the Project Fund and/or the Costs of Issuance Fund.

Notwithstanding any other provision of this Indenture to the contrary, after the Closing Date, the Trustee shall not disburse moneys from the Project Fund (other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund), other than to pay Bond Service Charges on the Bonds, unless and until the Trustee receives satisfactory evidence that Eligible Funds in an amount equal to or greater than the requested disbursement amount (the “Collateral Deposit”) has been deposited in the Collateral Fund. Notwithstanding the immediately preceding sentence, after the Closing Date, the Trustee shall not be required to receive satisfactory evidence that the Collateral Deposit has been deposited in the Collateral Fund prior to disbursing any moneys from the Subordinate Loan Account of the Project Fund. Prior to making any disbursement from the Project Fund, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund and (ii) the Project Fund (less amounts on deposit in the Subordinate Loan Account of the Project Fund), together with projected investment earnings thereon, will be sufficient to pay Bond Service Charges on the outstanding Bonds as and when they become due. In the event that, following receipt of the Collateral Deposit, the Trustee determines that it cannot correspondingly disburse Bond proceeds to or at the direction of the Borrower, the Mortgage Lender or other collateral providers, if any, the Trustee shall immediately notify the Borrower and the Mortgage Lender or other collateral providers, as applicable, of the reason for such determination and shall, immediately upon the request of the Borrower, the Mortgage Lender or other collateral provider, return the subject Collateral Deposit to the party that deposited such Collateral Deposit with the Trustee.

The proceeds of the Bonds shall be allocated exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code’s regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 142(d) of the Code; and (ii) shall be deemed allocated on a pro rata basis to each building in the Project and the Borrower’s leasehold interest in the land on which it is located, so that each building and the Borrower’s leasehold interest in 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; *provided, however*, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and *provided, further*, failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under this Indenture.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount for the Bonds has been declared to be due and immediately payable under this Indenture, any moneys remaining in the Project Fund (other than proceeds of the Subordinate Loans in the Subordinate Loan Account) shall be promptly transferred by the Trustee to the Bond Fund for payment of Bond Service Charges. Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount for the Bonds has been declared to be due and immediately payable under this Indenture, any moneys remaining in the Subordinate Loan Account of the Project Fund shall be promptly transferred by the Trustee to the Subordinate Lender.

Notwithstanding anything to the contrary in this Indenture, no corresponding deposit to the Collateral Fund shall be required with respect to any disbursement of proceeds of the Subordinate Loan from the Subordinate Loan Account of the Project Fund.

**Section 4.09 *Mortgage Loan Prepayment Fund.*** On the Conversion Date, the Trustee shall deposit into the Mortgage Loan Prepayment Fund the proceeds of the Citi Purchase Price and other funds of the Borrower such that the amount in the Mortgage Loan Prepayment Fund equals the Mortgage Loan Prepayment Amount, which amount shall be used on the Conversion Date to prepay the Mortgage Loan in full.

**Section 4.10 *Expense Fund.*** The Trustee shall deposit into the Expense Fund amounts received from the Borrower for the purpose of paying the Trustee's Fee, the Issuer Fee, and any other fees and expenses required to be paid by or on behalf of the Borrower under the Loan Agreement. The Trustee shall pay such amounts to the proper persons on the dates and in the amounts due when evidenced by a written invoice and written instruction of the Borrower or the Issuer to pay such amount. Amounts on deposit in the Expense Fund shall be withdrawn or maintained, as appropriate, by the Trustee to pay (i) to the Issuer, the Issuer Fee, (ii) to the Trustee, the Trustee's Fee, (iii) upon receipt, to the Trustee, any amounts due to the Trustee which have not been paid, other than amounts paid in accordance with clause (ii) hereof, and (iv) upon receipt, to, or at the written direction of, the Issuer, the Issuer Fee due and unpaid, other than amounts paid in accordance with clause (i) above.

In addition, any additional fees and expenses of Bond Counsel shall be timely funded by additional deposits by the Borrower into the Expense Fund of moneys not derived from the proceeds of the Bonds, and the Trustee shall use such amounts to pay such additional fees and expenses of Bond Counsel, as directed by the Borrower in writing.

In the event that the amounts on deposit in the Expense Fund are not equal to the amounts payable from the Expense Fund as provided in the preceding paragraphs on any date on which such amounts are due and payable, the Trustee shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Trustee of the amount of such deficiency.

Written notice of any insufficiency, which results in the Issuer not receiving the Issuer Fee on the applicable due date, shall be provided by the Trustee to the Issuer (with a copy to the Borrower) not later than 10 days after the respective due date.

Upon payment by the Borrower to the Trustee of such deficiency, the amounts for which such deficiency was requested shall be paid by the Trustee.

Notwithstanding anything herein to the contrary, the Trustee, on behalf of the Issuer, shall prepare and submit a written invoice to the Borrower for payment of the Issuer Fee not later than 10 days prior to the due date for payment of the Issuer Fee, and shall remit moneys received from the Borrower to the Issuer for payment of such fee. Failure of the Trustee to prepare or submit such notice shall not excuse the Borrower from making the required payments when due.

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

**Section 5.01 *Custody and Application of Project Fund and Bond Fund.*** On the Closing Date, the proceeds received upon the issuance and sale of the Bonds which remain after the deposit of the Initial Deposit into the Negative Arbitrage Account of the Bond Fund pursuant to Section 4.02 hereof shall be deposited into the Project Fund and Bond Fund (if accrued interest) and invested by the Trustee as set forth in Section 6.01 hereof.

**Section 5.02 *Procedure for Making Disbursements from Project Fund.*** Upon the deposit of Eligible Funds into the Collateral Fund, as provided in Section 4.08 hereof, the Trustee shall disburse the Bond proceeds and/or the proceeds of the Subordinate Loan, as applicable, on deposit in the Project Fund on such date solely to pay the Costs of the Project and only upon the receipt by the Trustee of (1) Requisitions in substantially the form attached as **Appendix B** hereto, and (2) certification by a Borrower Representative that such costs are qualified costs pursuant to Section 142 of the Code. The Trustee shall not disburse money from the Project Fund (other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund), other than to pay interest and principal on the Bonds, unless and until Collateral Deposits or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund; provided, however, that the Trustee shall transfer funds from the Project Fund to the Collateral Fund upon receipt of an opinion of Bond Counsel to the effect that such transfer shall not cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes. To the extent money on deposit in the Project Fund is invested in Eligible Investments and the Borrower has requested that the Trustee not sell or otherwise terminate such Eligible Investments prior to their stated maturity date, the Trustee is hereby authorized to make the following allocations and exchanges in accordance with Section 4.08 hereof, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund, and (ii) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund.

Each Requisition submitted to the Trustee shall evidence and request disbursements from (i) the Project Fund and/or (ii) the Costs of Issuance Fund.

The Trustee shall not disburse money from the Project Fund (other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund in accordance with the provisions of Section 3.03 of the Loan Agreement and this Section 5.02), other than to pay interest

and principal on the Bonds as otherwise permitted hereunder, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund in accordance with Section 4.08 hereof. Notwithstanding the immediately preceding sentence, no corresponding deposit to the Collateral Fund shall be required with respect to any disbursement of proceeds of the Subordinate Loan from the Subordinate Loan Account of the Project Fund. In accordance with Section 3.03 of the Loan Agreement, and prior to making any disbursement from the Project Fund (except to make necessary interest and principal payments on the Bonds as otherwise permitted hereunder), the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund, (b) the Project Fund (less the requested disbursement amount and less amounts on deposit in the Subordinate Loan Account of the Project Fund), and (c) the Bond Fund is at least equal to the then-Outstanding principal amount of the Bonds.

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.03 of the Loan Agreement and this Section 5.02. To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund (other than from moneys on deposit in the Subordinate Loan Account of the Project Fund) to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date.

Notwithstanding anything contained in this Indenture or any of the Borrower Documents to the contrary: (a) with respect to Eligible Funds funded by the Mortgage Lender for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund (other than from moneys on deposit in the Subordinate Loan Account of the Project Fund) to either the Mortgage Lender, the Borrower or the Title Company pursuant to a Requisition as directed by the Mortgage Lender; and (b) with respect to Eligible Funds funded by other collateral providers, if any, for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund (other than from moneys on deposit in the Subordinate Loan Account of the Project Fund) to either the Borrower or the Title Company as directed by the collateral provider pursuant to a Requisition. Such disbursements shall be made pursuant to a Requisition and shall not be made more frequently than once per month, unless approved by the Issuer, in its sole discretion.

Subject to the Trustee's obligation to return the Eligible Funds to the Mortgage Lender or other collateral providers, if any, as set forth in this Section 5.02, the Trustee and the Issuer shall not, in any event, be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee, and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with the Documents, when such failure is within the Trustee's sole control, and after receipt of written notice of such failure and a 3-day opportunity to cure such failure) for the disbursement of, or failure to disburse, moneys from the Project Fund or any part thereof, and no contractor, subcontractor or material or equipment supplier or their respective successors and assigns shall have any right or claim against the Trustee or the Issuer under this Indenture.

Notwithstanding anything contained in this Indenture or any of the Borrower Documents to the contrary, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund to or at the direction of the Mortgage Lender or other

collateral providers, as applicable, immediately following receipt of Eligible Funds from the Mortgage Lender or other collateral providers, as applicable, for deposit into the Collateral Fund, the Trustee shall promptly wire transfer such funds back to the Mortgage Lender or other collateral providers, as applicable, and not deposit same into the Collateral Fund.

Notwithstanding anything in this Indenture, the Loan Agreement or any of the other Documents to the contrary, (i) moneys held in the Subordinate Loan Account of the Project Fund are not held for the benefit of the Owners and are not part of the Trust Estate, and (ii) moneys disbursed by the Trustee from the Subordinate Loan Account of the Project Fund shall be used only for the purposes set forth in the Subordinate Loan Documents.

**Section 5.03 *Trustee May Rely on Requisitions and Certifications.*** In making any disbursement from the Project Fund, the Trustee may rely on any requests and confirmations delivered to it pursuant to Section 5.02 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such requests and confirmations. In making any disbursements from the Costs of Issuance Fund, the Trustee may rely on any requests and confirmations delivered to it pursuant to Section 4.07 hereof, and the Trustee shall be relieved of all liability with respect to making such disbursements in accordance with such requests and confirmations.

**Section 5.04 *Completion of Project.*** The completion of the Project and the payment of all costs and expenses incident thereto shall be evidenced for the Project by the filing with the Trustee of (a) the Completion Certificate required by the provisions of Section 3.05 of the Loan Agreement and (b) a certificate signed by the Borrower Representative stating that all obligations and costs in connection with the Project and payable out of the Project Fund have been paid and discharged except for amounts retained by the Trustee for the payment of Costs of the Project not then due and payable or then in dispute as provided in the Loan Agreement; *provided, however*, that no amounts necessary to pay principal and interest on the Bonds at maturity shall be held by the Trustee in the Project Fund beyond the Maturity Date. Additionally, the Borrower has agreed pursuant to Section 3.06 of the Loan Agreement that in the event that there are insufficient moneys available in the Project Fund to pay the Costs of the Project, the Borrower will complete the Project and pay the portion of the Costs of the Project in excess of the moneys available therefor in the Project Fund.

**Section 5.05 *Disposition of Moneys in Project Fund After Completion of Project.*** Subject to the proviso in Section 5.04 hereof, as soon as practicable after the date of the certificate referred to in clause (b) of Section 5.04 hereof, any balance remaining in the Project Fund (other than the amounts retained by the Trustee referred to in Section 5.04 hereof and amounts held in the Subordinate Loan Account of the Project Fund) shall be deposited into the Bond Fund and used to pay principal of the Bonds when due. To the extent any moneys from any payments made by the Borrower pursuant to the Loan Agreement remain in the Project Fund or Bond Fund after there are no Bonds Outstanding and payment in full, or provision for payment, of the final Rebate Amount and any remaining Trustee Fees, such moneys may be paid directly to the Borrower to the extent such funds are not proceeds of the Bonds or otherwise restricted funds. If such remaining funds are proceeds of the Bonds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

**ARTICLE VI**  
**INVESTMENT OF FUNDS AND ACCOUNTS**

**Section 6.01 *Investment of Bond Fund, Project Fund, and Collateral Fund.*** Money in all funds or accounts including the Bond Fund, the Project Fund (excluding monies held in the Subordinate Loan Account of the Project Fund), and the Collateral Fund shall be invested and reinvested by the Trustee, and at all times held in Eligible Investments at the written direction of the Borrower. In the absence of written direction of the Borrower, any moneys held under this Indenture shall be invested in: (i) the following money market funds in the following order, so long as such funds invest solely in direct obligations issued by the U.S. Treasury or repurchase agreements backed by those obligations: [BlackRock Treasury Trust Fund (CUSIP 09248U544)] and \_\_\_\_\_; and (ii) if none of such funds are available, then in the absence of investment directions from the Borrower, shall be held uninvested. If none of the money market funds identified in (i) of the preceding sentence are available, the Trustee will notify the Borrower accordingly.

At no time shall the Borrower direct that (a) any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code or (b) any funds be held other than in Eligible Investments.

Investments of money in the Bond Fund, Project Fund, and the Collateral Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Interest Payment Date or at stated maturity or on a Mandatory Tender Date. In addition, investments of money in the Project Fund shall be allocated and exchanged in accordance with Section 5.02 at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order on behalf of the Issuer or the Borrower and without restriction by reason of any order. An investment made from money credited to an applicable fund or account shall constitute part of that respective fund or account. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. Notwithstanding anything herein to the contrary, earnings received by the Trustee with respect to Governmental Obligations purchased for the purpose of paying Bond Service Charges shall be held uninvested.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee; *provided* that all such investments must be Eligible Investments.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Indenture.

If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par in connection with a mandatory tender prior to the Initial Mandatory



Tender Date, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any.

Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower hereby agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Borrower's and Issuer's written instructions as to both the suitability and legality of the directed investments.

**Section 6.02 *Investment of Rebate Fund.*** Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein.

**Section 6.03 *Accounting for Termination of Investments; No Arbitrage.*** In the event the moneys in the Project Fund or the Bond Fund are invested in any investment which fails to satisfy the requirements of Section 6.01, the Trustee shall, at the written direction of the Borrower, terminate any such investment, and the proceeds of such termination, shall be credited to the Project Fund or the Bond Fund, respectively.

If the Issuer is of the opinion, upon receipt of advice of Bond Counsel, that it is necessary to restrict or limit the yield on the investment of any moneys, securities or other obligations paid to or held by the Trustee hereunder in order to comply with the provisions of the Documents intended to prevent any Bonds from being considered "arbitrage bonds" within the meaning of Section 148 of the Code, an authorized officer of the Issuer may give written notice to the Trustee and the Borrower to such effect (together with appropriate written instructions), in which event the Trustee will take such action as is set forth in such written instructions to restrict or limit the yield on such investment so as to comply with Section 148 of the Code. The Trustee may conclusively rely on the direction of the Issuer in taking such action.

**Section 6.04 *Trustee's Own Bond or Investment Department.*** The Trustee may make any and all investments permitted under Section 6.01 and Section 6.02 through its own bond or investment department or that of any affiliate.

**Section 6.05 *Moneys to be Held in Trust.*** All moneys required to be deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture shall be held by the Trustee in trust, and shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien and claim created by this Indenture.

The Trustee, acting in its capacity as Trustee and not as sponsor, advisor or manager in connection with any investments hereunder, shall not be liable for any loss arising from

investments made in accordance with this Indenture, or for any loss resulting from the redemption or sale of any such investments as authorized by this Section.

## **ARTICLE VII GENERAL COVENANTS**

**Section 7.01 *Payment of Bonds.*** Each and every covenant made in this Indenture, including all covenants made in the several sections of this Article, is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall be payable solely (a) from Revenues, which are specifically assigned to secure the payment of the Bonds in the manner and to the extent specified in this Indenture, (b) from the moneys held in the funds and accounts created under this Indenture, except for amounts held in the Costs of Issuance Fund (but only to the extent such moneys are not proceeds of the Bonds), the Expense Fund and the Rebate Fund, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer.

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

The Revenues are to be remitted by the Borrower directly to the Trustee for the account of the Issuer and constitute a part of the Trust Estate and are subject to the lien and claim created by this Indenture. Such amounts, in addition to the amounts held in the Project Fund, are to be sufficient in amount at all times to pay the principal of and interest on the Bonds. The entire amount of Revenues (exclusive of the Reserved Rights of the Issuer) are assigned to secure the payment of the principal of and interest on the Bonds.

**Section 7.02 *Performance of Covenants.*** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all proceedings pertaining thereto, subject, however to the limitations set forth in Section 2.09. The Issuer covenants that it is duly authorized under the laws of the State to issue the Bonds, to enter into this Indenture and the Loan Agreement and to assign the Revenues, and that, upon issuance, authentication, and delivery, the Bonds are and will be valid and enforceable special limited obligations of the Issuer according to the import thereof.

**Section 7.03 *Maintenance of Existence; Compliance with Laws.*** The Issuer will use all reasonable efforts to (i) maintain its corporate existence or to assure the assumption of its obligations under this Indenture by any public body succeeding to its powers under the Act, and (ii) comply with all valid material acts, rules, regulations, orders and directions of any legislative, executive, administrative or judicial body applicable to this Indenture and the Loan Agreement.

**Section 7.04 *Enforcement of Borrower's Obligations.*** So long as any of the Bonds are Outstanding, the Issuer will cooperate with the Trustee in enforcing the obligations of the Borrower to pay, or cause to be paid, all the payments and other costs and charges payable pursuant to the Loan Agreement. Nothing contained in this Section or in any other section of this Indenture shall be deemed to modify the provisions of the Act and Section 2.09 hereof or require that the Issuer

expend any of its own funds or assets to enforce the obligations of the Borrower under the Documents.

**Section 7.05 *Further Assurances, Instruments and Actions.*** The Issuer will from time to time, execute and deliver such further instruments, conveyances, assignments and transfers and take such further actions as may be reasonable and as may be required to better assure, convey, grant, assign or confirm the Trust Estate and all other rights, revenues or funds pledged, assigned or intended to be so pledged or assigned hereunder for the benefit of the owners of the Bonds; *provided, however,* that no such instruments or actions shall pledge the credit or taxing power of the State, the Issuer or any other political subdivision of the State, or create or give rise to any monetary obligation or liability of the Issuer.

**Section 7.06 *Priority of Pledge.*** The Issuer covenants and agrees that it will not create any lien or claim upon the Revenues other than the liens and claims hereby created. Except for the assignment to the Trustee, the Issuer will not sell, lease or otherwise dispose of or encumber any of the Revenues, and will cooperate in causing to be discharged or satisfied any lien or charge on any part of the Trust Estate.

**Section 7.07 *Books and Documents Open to Inspection.*** The Issuer covenants and agrees that all books and documents in its possession relating to the Bonds, the Project, and the moneys, revenues and receipts derived from the Project, if any, that shall at any time be in its possession, shall, within a reasonable time of a request by the Trustee, the Rating Agency, the Investor Member or the Borrower, be open to inspection during the Issuer's regular business hours by such accountants or other agents as the Trustee or the Borrower or the Investor Member may from time to time designate.

**Section 7.08 *Borrower to Indemnify and Hold Issuer and Trustee Harmless from Liability.*** The Borrower has agreed to indemnify and hold the Issuer and the Trustee harmless from and against liability arising out of claims as defined and as provided in Sections 6.02 and 7.04 of the Loan Agreement.

**Section 7.09 *Tax-Exempt Status of Bonds.*** The Issuer and the Trustee each agrees that it will not (a) take any action, (b) fail to take any action, or (c) make any use of the Project or the proceeds of the Bonds, which it knows would cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes (except for minimum or preference tax purposes or other indirect taxation). In connection with the foregoing, the Issuer and the Trustee may rely upon the advice of Bond Counsel.

## **ARTICLE VIII DISCHARGE**

**Section 8.01 *Discharge of Lien.*** If and when the Bonds secured hereby shall become due and payable in accordance with their terms as provided in this Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable hereunder by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become

void and be discharged and satisfied. In such event, upon written request of the Issuer and subject to the provisions of Section 5.05 hereof, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Bond Fund and all balances remaining in any other fund created under this Indenture and shall assign and transfer to the Issuer all other property then held by the Trustee under this Indenture and shall execute such documents as may be reasonably required by the Issuer.

If and when the Trustee shall hold sufficient moneys hereunder, as verified to the Trustee in writing by an independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Rebate Fund or the Expense Fund) payable or which may thereafter become payable hereunder by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this Section 8.01, the Trustee, on demand of the Issuer but subject to the provisions of Section 5.05 hereof, shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, or to such person, body or authority as may be entitled to receive the same, any surplus in the Bond Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable hereunder by the Issuer.

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

Neither the securities nor moneys deposited with the Trustee pursuant to this Section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on such Bonds; *provided* that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested, as directed by the Borrower, in Governmental Obligations (including any short-term investment fund rated Aaa or MIG 1 by the Rating Agency and secured by and investing solely in Governmental Obligations) maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as

the case may be, and interest earned from such reinvestment shall be paid over to the Borrower, as received by the Trustee, free and clear of any trust, lien or pledge.

The release of the obligations of the Issuer under this Section 8.01 shall be without prejudice to the right of the Trustee provided in Section 10.04 hereof to be paid reasonable compensation for all services rendered by it hereunder and all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees, incurred on behalf of the Trustee in connection with the trust hereby created and the performance of its powers and duties hereunder, and shall not affect the obligations of the Borrower to make the payments required by the Loan Agreement or the Note.

## **ARTICLE IX DEFAULTS AND REMEDIES**

**Section 9.01 *Events of Default and Acceleration.*** If any of the following events occur, it is hereby defined as and declared to be and constitute an “Event of Default”:

- (a) any interest on any Bond is not paid on the date on which the same becomes due; or
- (b) any principal of any Bond is not paid on the date on which the same becomes due, whether at the stated maturity thereof, by acceleration or otherwise; or
- (c) an Event of Default occurs under the Loan Agreement; or
- (d) the Issuer fails to duly and promptly perform, comply with, or observe any covenant, condition, agreement or provision (other than as specified in (a) or (b) of this Section 9.01) contained in the Bonds or in this Indenture on the part of the Issuer to be performed, and such failure shall continue for a period of ninety (90) days after written notice specifying such failure and requiring the same to be remedied shall have been given to the Issuer, and the Borrower and the Investor Member by the Trustee, which notice may be given by the Trustee in its discretion and shall be given at the written request of the Holders of not less than 100% in principal amount of the Bonds then Outstanding; *provided, however*, that if such default be such that it is correctable but cannot be corrected within ninety (90) days, it shall not be an Event of Default if the Issuer, the Borrower or the Investor Member is taking appropriate corrective action to cure such failure and if such failure will not impair the security for the Loan or the Bonds.

If any Loan payment required under the Loan Agreement to avoid a default under (a) or (b) of this Section shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Investor Member, which telephonic notice shall be confirmed by written notice to the Borrower. If any other default shall occur under the provisions of this Section, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Investor Member and the Holders of the Bonds. A default or an Event of Default specified in (a) through (d) above shall occur even though the

Trustee fails to give the notice required by this paragraph, the giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this Section 9.01 shall occur and be continuing, the Trustee shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Member and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

If an Event of Default specified in (c) or (d) of this Section 9.01 shall occur and be continuing, the Trustee, upon written request of the Holders of a majority in principal amount of the Bonds then Outstanding shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Member and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in this Indenture or in the Bonds to the contrary notwithstanding.

The Investor Member shall be entitled to cure any Event of Default hereunder within the time frame provided to the Borrower. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Member shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 9.02 *Trustee to Enforce Rights of Issuer.*** Only in accordance with the provisions of this Indenture, the Trustee, as the assignee of all the right, title and interest of the Issuer in and to each of the documents constituting a part of the Trust Estate (except the Reserved Rights of the Issuer), may enforce the rights granted to the Issuer pursuant to such documents. In the enforcement of any rights or remedies under such documents, no provision of such documents shall require, and none shall be construed to require, that the Trustee post a bond or establish any surety of any kind as a condition precedent to exercising any such rights or remedies.

**Section 9.03 *Remedies in Addition to Acceleration.*** Upon the occurrence of, and during the continuance of, any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of not less than 51% in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in Section 9.01):

(a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;

(b) bring suit upon the Bonds; or

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

**Section 9.04 *Termination of Proceedings.*** In case any proceeding taken by the Trustee on account of any default or Event of Default shall have been discontinued or abandoned for any reason, the default or Event of Default has been cured, or shall have been determined adversely to the Trustee, then and in every such case, the Issuer, the Trustee, the Bondholders, and the Borrower shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**Section 9.05 *Right of Bondholders to Direct Proceedings.*** No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust hereunder, or any other remedy hereunder or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided and unless also the Holders of not less than 51% in principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of this Indenture or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds hereby secured shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of this Indenture, or to enforce any right hereunder or under the Bonds, except in the manner herein provided and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of notice and compliance with the foregoing terms and conditions, whereupon, the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in this Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued hereunder to the respective Holders of the Bonds at the time, place, from the source and in the manner herein and in such Bonds expressed.

**Section 9.06 *Remedies Vested in Trustee.*** All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Holders of the Bonds, subject to the provisions of this Indenture.

**Section 9.07 *Remedies Non-Exclusive and Cumulative.*** No remedy herein conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**Section 9.08 *Delays or Omissions by Trustee.*** No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or any acquiescence therein; and every power and remedy given by this Article IX to the Trustee and to the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

**Section 9.09 *Application of Moneys.*** All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article IX shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the accrued fees, expenses and advances incurred or made by the Trustee, and then to the accrued fees and expenses and advances made by the Issuer, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

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

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

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

*Third* - To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such Obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

*Fourth* - The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal



of and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated “*Third*” and “*Fourth*” of subsection (a) above.

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

**Section 9.10 *Severability of Remedies.*** It is the purpose and intention of this Article to provide rights and remedies to the Trustee and Bondholders which may be lawfully granted under the provisions of the Act, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Bondholders shall be entitled, as above set forth, to every other right and remedy provided in this Indenture and by law.

## ARTICLE X THE TRUSTEE AND REMARKETING AGENT

**Section 10.01 *Acceptance of Trusts.*** The Trustee hereby accepts the trusts hereby created, but only upon the additional terms set forth in this Article, to all of which the Issuer agrees and the respective Holders of the Bonds agree upon and by their acceptance of delivery of any of the Bonds. The Trustee, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations should be read into this Indenture against the Trustee.

**Section 10.02 *Trustee Not Responsible for Recitals, Statements and Representations.*** Except as otherwise expressly provided herein, any representations or warranties by the Issuer in this Indenture or in the Bonds contained shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

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

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

**Section 10.03 *Action by Trustee Through and In Reliance Upon Others.*** The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees. The Trustee shall be entitled to advice of counsel concerning all matters of trust and its duties hereunder, and the written advice or opinion of such counsel shall be full and complete authorization and protection for any action taken or omitted by it in good faith and in accordance with such advice or opinion. The Trustee may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may be reasonably employed in connection with the trusts hereof, such compensation to be paid as described under Section 10.04 hereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for anything whatever in connection with the trust, except only for negligence or willful misconduct with respect to its responsibilities hereunder.

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

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

**Section 10.04 *Fees and Expenses of Trustee.*** The Trustee shall be entitled to payment and/or reimbursement of such fees as the Trustee, the Issuer and the Borrower shall agree upon, or in the absence of such agreement, to payment and/or reimbursement of reasonable fees, for its services rendered hereunder, and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Any amounts payable to the Trustee pursuant to this Section 10.04 shall be payable upon demand.

**Section 10.05 *Trustee's Obligations to Take or Have Notice of Default.*** The Trustee shall not be required to take notice, or to be deemed to have notice, of any default under this Indenture other than a default under Section 9.01(a) or Section 9.01(b) hereof, unless a Responsible Officer of the Trustee is specifically notified in writing of such default by the Issuer or by the Holders of not less than 25% in principal amount of the Bonds then Outstanding. The Trustee may, however, at any time, in its discretion, require of the Issuer information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

**Section 10.06 *Duties of Trustee.***

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

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

(1) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and

(2) In the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee shall examine those certificates and opinions to determine whether they conform to the requirements of this Indenture.

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

(i) This paragraph does not limit the effect of paragraph (b) of this Section,

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

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

(iv) No provision of this Indenture 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.

(d) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense, but the Trustee shall not require indemnity as a condition to making any payments on the Bonds, or declaring the principal of and interest on the Bonds to be due immediately hereunder.

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

(f) Except as otherwise provided in this Article, the Trustee shall be under no obligation to take any action in respect of any default or otherwise, or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other

proceeding in connection therewith, unless requested in writing to do so by the Holders of not less than 51% in principal amount of the Bonds then Outstanding, and if in its opinion such action may tend to involve it in expense or liability, unless furnished, from time to time as often as it may require, with security and satisfactory indemnity. The foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given by any provision of this Indenture to the Trustee to take action in respect of any default without such notice or request from the Bondholders, or without such security or indemnity.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct as described in Section 10.06(c) above.

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

(i) The Trustee shall have no duty to verify, review or analyze any financial statements provided to it by the Borrower pursuant to the Loan Agreement and shall hold such financial statements solely as a repository for the benefit of the Bondholders; the Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner. The Trustee does not have a duty to verify the accuracy of such statements.

(j) All of the provisions of this Indenture related to the duties, obligations, standard of care, protections and immunities from liability afforded the Trustee under the Indenture shall apply to the Trustee in the performance of its duties and obligations, if any, under any of the Documents or other related documents or instruments.

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

(l) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a) through (k) of this Section.

**Section 10.07 Trustee May Make Advances to Effect Performance.** If the Issuer shall fail to perform any of the covenants or agreements contained in this Indenture other than the covenants or agreements in respect of the payment of the principal of and interest on the Bonds, the Trustee may, in its absolute discretion and without notice to the Bondholders, at any time and from time to time, make advances to effect performance of the same on behalf of the Issuer, but the Trustee shall be under no obligation to do so; and any and all moneys paid or advanced by the Trustee for any such purposes shall be a claim in favor of the Trustee upon the Trust Estate prior to the claim of the Bonds; but no such advance shall operate to relieve the Issuer from any default hereunder.

**Section 10.08 Trustee May Rely Upon Instruments.** The Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any

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

**Section 10.09 *Trustee May Own and Deal in Bonds and Deal With Issuer and Borrower.***

The Trustee may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder and secured by this Indenture, and may join in any action which any Bondholder may be entitled to take with like effect as if the Trustee were not a party to this Indenture. The Trustee, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Borrower or any related entity, and may act as depository, trustee, or agent for any committee or body of Holders of the Bonds secured hereby or other obligations of the Issuer as freely as if it were not Trustee hereunder.

**Section 10.10 *Financial Liability of the Trustee.*** No provision of this Indenture will require the Trustee to expend or risk its own funds or otherwise incur or risk any financial liability in the performance of any of its duties under this Indenture, or in the exercise of any of its rights or powers if it will have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

**Section 10.11 *Trustee May Construe Ambiguous or Inconsistent Provisions.*** The Trustee may construe any of the provisions of the Indenture insofar as the same may appear to be ambiguous or inconsistent with any other provisions hereof, and any construction of any such provisions hereof by the Trustee in good faith shall be binding upon the Bondholders.

**Section 10.12 *Resignation of Trustee.*** The Trustee may at any time resign and be discharged of the duties and obligations created by this Indenture by giving not less than 60 days written notice to the Issuer (with a copy to the Borrower and the Investor Member) specifying the date when such resignation shall take effect and such resignation shall take effect upon the day specified in such notice unless previously a successor shall have been appointed, in which event such resignation shall take effect immediately on the appointment of such successor, *provided* that such resignation shall not take effect unless and until a successor shall have been appointed.

**Section 10.13 *Removal of Trustee.*** The Trustee shall be removed by the Issuer, upon thirty (30) days written notice, if at any time so requested by an instrument or concurrent

instruments in writing, filed with the Trustee and the Issuer, and signed by the Holders of a majority in principal amount of the Bonds then Outstanding or their attorney-in-fact duly authorized, excluding any Bonds held by or for the account of the Issuer. The Issuer may also remove the Trustee at any time, except during the existence of any Event of Default as defined in Section 9.01 hereof, for cause or breach of trust or for acting or proceeding in violation of, or failing to act or proceed in accordance with any provision of this Indenture with respect to the duties and obligations of the Trustee by filing with the Trustee an instrument signed by an authorized officer of the Issuer. A copy of each such instrument providing for any such removal shall be delivered by the Issuer to any Bondholder who shall have filed its name and address with the Issuer and, if requested, to the Borrower and the Investor Member; *provided* that such removal shall not take effect unless and until a successor shall have been appointed.

**Section 10.14 *Appointment of Successor Trustee.*** In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, the Issuer covenants and agrees that it will thereupon appoint a successor Trustee.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provision of this Section within 45 days after the Trustee shall have given to the Issuer written notice, as provided in Section 10.12 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper, prescribe and appoint a successor Trustee.

Any successor Trustee appointed under the provision of this Section 10.14 in succession to the Trustee shall be a bank or trust company or national banking association with trust powers, having a combined capital, surplus and undivided profits of at least \$50,000,000 if there be such a bank or trust company or national bank association willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by this Indenture.

**Section 10.15 *Appointment of Successor Trustee by Court.*** In case at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article prior to the date specified in the notice of resignation as the date when such resignation shall take effect, the retiring Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article within six months after a vacancy shall have occurred in the office of Trustee, the Holder of any Bond may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Trustee. A successor Trustee under Sections 10.14 and 10.15 shall notify the Borrower and the Investor Member, in writing, after being so appointed.

**Section 10.16 *Acceptance of Trust by Successor Trustee.*** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer and the Rating Agency an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without further act, deed or conveyance, shall become duly vested with all the estates, property,

rights, powers, trust, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, the Trustee ceasing to act and the Issuer shall execute and deliver an instrument transferring to such successor Trustee all the estates, property, rights, powers and trusts hereunder of the Trustee so ceasing to act, and the Trustee so ceasing to act shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder.

**Section 10.17 *Merger or Consolidation of Trustee With Another Corporation.*** Any corporation into which any Trustee hereunder may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which any Trustee hereunder shall be a party, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of the parties hereto, anything herein to the contrary notwithstanding.

**Section 10.18 *Action of Trustee During Existence of an Event of Default.*** Notwithstanding any other provisions of this Article, the Trustee shall, during the existence of an Event of Default known to the Trustee, exercise such of the rights and powers vested in it by the Indenture and use the same degree of skill and care in their exercise as a prudent person would use and exercise under the circumstances.

**Section 10.19 *Notice of an Event of Default.*** Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default known to the Trustee, the Trustee shall within 30 days give written notice thereof to the Issuer, the Borrower, the Investor Member, the Rating Agency and to each Bondholder at its last address appearing upon the registration books of the Issuer kept by the Trustee unless such Event of Default shall have been cured before the giving of such notice.

**Section 10.20 *Trustee May Intervene.*** In any judicial proceeding to which the Issuer is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Holders of the Bonds, the Trustee may intervene on behalf of the Holders of the Bonds and shall, upon receipt of satisfactory indemnity do so if requested in writing by the Holders of not less than 51% in principal amount of Bonds then outstanding, if such intervention is permitted by the court having jurisdiction in the premises.

**Section 10.21 *Unclaimed Moneys.*** Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any Bonds which remain unclaimed for a period up to six (6) months, prior to the date when such moneys would escheat under applicable law and after the date when such Bonds have become due and payable either at their stated maturity dates, if such moneys were held by the Trustee at such date, or for a period up to six (6) months prior to the date when such moneys would escheat under applicable law if deposited with the Trustee after such date when all Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged. Thereafter, any person having a claim against any such moneys shall look solely to the Issuer for payment of the same.

**Section 10.22 *Appointment of Co-Trustee.*** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State)

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

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

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

### **Section 10.23 *The Remarketing Agent.***

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower (and, if requested, the Investor Member) and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (a) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee, the Investor Member and the Borrower at all reasonable times; and
- (b) perform all of its functions and duties under this Indenture.

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

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture. Approval in writing from the Issuer shall be required prior to the appointment of any such co-Remarketing



Agents by the Remarketing Agent. All such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer at the expense of the Borrower. Additionally, any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints pursuant to this Section 10.23.

#### **Section 10.24 *Qualification of Remarketing Agent.***

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, the Investor Member, the Authorized Member and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

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

The Trustee, within 30 days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Rating Agency (if the Bonds are then rated) and to the Holders of the Bonds.

**Section 10.25 *Notices to Rating Agency and Remarketing Notice Parties.*** The Trustee shall notify the Rating Agency and the Remarketing Notice Parties of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice, (c) any change in the identity of the Trustee, (d) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (e) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge, (f) any change or notification of proposed change of the Mandatory Tender Date or Remarketing Date, (g) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (h) any change in the investment of funds subject to the lien of this Indenture, (i) any defeasance or acceleration of the Bonds hereunder, or (j) any change in the Remarketing Agent or the Mortgage Lender of which the Trustee has actual knowledge.

**Section 10.26 *Financing Statements.*** Pursuant to Section 5.05 of the Loan Agreement, the Borrower shall perfect, or shall cause to be perfected any security interest created hereunder by the filing of financing statements which fully comply with Chapter 679, Florida Statutes, in the proper filing office (as described in Section 679.5011, Florida Statutes) in the State of Florida. Notwithstanding the foregoing, the Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds on which it is listed as a secured party, and which was filed at the time of the issuance thereof, in such manner

and in such places as the initial filings (copies of which shall be provided to the Trustee by the Issuer or Borrower) were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Trustee shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and unless the Trustee shall have been notified by the Issuer or Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 10.26 and in filing any continuation statements in the same filing offices as the initial filings were made.

**Section 10.27 *Trustee Delivery of Information to Borrower and Investor Member.*** The Trustee shall furnish to the Borrower and the Investor Member all information reasonably requested by the Borrower or the Investor Member with respect to the Bonds and the investment of Funds and Accounts maintained by the Trustee hereunder.

**Section 10.28 *Trustee Delivery of Information to Rating Agency.*** Upon written request by the Rating Agency, the Trustee shall furnish to the Rating Agency written evidence of the amount of funds on hand with the Trustee and other information as may be reasonably required to maintain the rating on the Bonds.

## ARTICLE XI MODIFICATION OF INDENTURE AND OTHER DOCUMENTS

**Section 11.01 *Limitation on Amendments to this Indenture.*** This Indenture shall not be modified or amended in any respect except as provided in accordance with and subject to the provisions of this Article.

**Section 11.02 *Amendments to Indenture and Loan Agreement Not Requiring Consent of Bondholders.***

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

- (i) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;
- (ii) to cure any formal defect, omission or ambiguity in this Indenture or the Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;
- (iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may

lawfully be granted or conferred and which are not contrary to or inconsistent with this Indenture as heretofore in effect;

- (iv) to add to the covenants and agreements of the Issuer in this Indenture or the Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (v) to add to the limitations and restrictions in this Indenture or the Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture or the Loan Agreement as theretofore in effect;
- (vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, this Indenture, of the Revenues or of any other moneys, securities or funds; or
- (vii) to modify, amend or supplement this Indenture or the Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

(b) Before the Issuer shall enter into any agreement supplemental to this Indenture pursuant to this Section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that (1) such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(c) The Trustee shall send written notice to the Borrower, the Investor Member and Rating Agency of any amendment to this Indenture or the Loan Agreement and, if requested, copies of any such amendments.

### **Section 11.03 *Amendments to Indenture Requiring Consent of Bondholders.***

(a) Subject to the terms and provisions contained in this Section and not otherwise, the Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the execution and delivery by the Issuer and the Trustee of any agreement supplemental to this Indenture as shall be deemed necessary or desirable by the Issuer and the Trustee for the purposes of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained in this Indenture; *provided, however*, that, unless approved in writing by the Holders of all of the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitting, (i) a change in the terms of maturity of the principal of or the interest on any Outstanding Bond, or a reduction in the principal amount of any Outstanding Bond or the rate of interest thereon, or (ii) the creation of a claim or lien upon, or a pledge or assignment of, the Trust Estate ranking prior to or on a parity with the claim, lien, assignment or pledge created by this Indenture, or the release of the Trust Estate or any part thereof (except to the extent permitted pursuant to the Documents), or (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (iv) a reduction in

the aggregate principal amount of the Bonds required for any action or consent by Bondholders set forth in this Indenture, including (without limitation) that required for consent to such supplemental indentures. This Section shall not limit or otherwise affect the ability of the Issuer to enter into agreements supplemental to this Indenture without the consent of the Bondholders pursuant to Section 11.02 hereof.

(b) If at any time the Issuer and the Trustee shall determine to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall cause written notice of the proposed supplemental indenture to be given to all Holders of the Bonds; *provided, however,* that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the Trust Office for inspection by all Bondholders.

(c) Within one hundred twenty (120) days after the date of giving such notice, the Issuer and the Trustee may enter into such supplemental indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding (or 100% if required hereunder) and (ii) an opinion of counsel stating that (1) such supplemental indenture is authorized or permitted by this Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income taxes.

(d) If the Holders of not less than the percentage of Bonds required by this Section shall have consented to and approved the supplemental indenture as herein provided, no Holder of any Bond shall have any right to object to such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

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

(f) The Trustee shall send written notice to the Rating Agency of any amendment to this Indenture.

**Section 11.04 *Supplemental Indentures Part of Indenture.*** Any supplemental indenture entered into in accordance with the provisions of this Article shall thereafter form a part of this Indenture and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of this Indenture for any and all such purposes.

**Section 11.05 *Required Consent.*** Notwithstanding anything herein to the contrary, the Trustee shall not be required to enter into or consent to any supplemental indenture or any amendment of any other Document that would materially adversely affect the rights, obligations, powers, privileges, indemnities, immunities or other security provided the Trustee herein or therein, except to the extent necessary, as set forth in an opinion of Bond Counsel, to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes. Further, notwithstanding anything herein to the contrary, as long as no default has occurred and is continuing under any of the Documents, any supplemental indenture under this Article shall not become effective unless and until the Borrower shall have consented in writing to such supplemental indenture, and to any related revisions of the Loan Agreement, the Tax Regulatory Agreement or any of the other Documents to be affected.

**Section 11.06 *Amendments to Documents Requiring Consent of Bondholders.*** Except as provided in Section 11.02 of this Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of written notice and the written approval or consent of the Holders of the Bonds at the time Outstanding, given and procured as provided in Section 11.03 hereof; *provided, however*, no such separate approval or consent shall be required in connection with the issuance of refunding bonds if any required consent of the required number of Holders to the issuance thereof shall have been previously obtained. If at any time the Issuer and the Borrower shall request in writing the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided by Section 11.03 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office for inspection by all Bondholders.

**Section 11.07 *Conversion Date.*** On the Conversion Date and upon the execution and delivery of the Funding Loan Agreement, the Governmental Lender Note and the Borrower Loan Agreement, this Indenture, the Loan Agreement and the Bonds shall be deemed amended, restated and superseded in full by the terms thereof. The requirements of Sections 11.03 through 11.06 hereof shall not apply to such amendment and restatement.

## ARTICLE XII MISCELLANEOUS

**Section 12.01 *Issuer's Successors.*** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the Issuer shall be transferred.

**Section 12.02 *Indenture for Benefit of Issuer, Trustee and Bondholders.*** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, other than the Issuer, the Trustee and the Holders of the Bonds, any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer and the Trustee and the Holders of the Bonds; *provided* that this Indenture shall also be for the benefit of the Borrower and the Investor Member, and the Borrower and the Investor Member shall be deemed to be third-party

beneficiaries of and in connection with those matters in which the terms of this Indenture fairly construed are indicative that they are for the benefit of the Borrower or the Investor Member.

**Section 12.03 Severability.** In case any one or more of the provisions of this Indenture or of the Bonds for any reason, is held to be illegal or invalid such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds, and this Indenture and the Bonds shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced as if such illegal or invalid provisions had not been contained therein.

**Section 12.04 Officials of Issuer Not Liable.** No personal recourse may be taken, directly or indirectly, against any past, present or future officer, director, employee or agent of the Issuer with respect to the obligations of the Issuer under this Indenture or any certificate or other writing delivered in connection therewith. The Issuer's immunities and protections from liability and its right to indemnification in connection with the performance of its duties and functions under this Indenture shall extend to the Issuer's past, present and future officers, directors, employees and agents.

**Section 12.05 Governing Law.** The laws of the State shall govern the construction and interpretation of this Indenture and of all Bonds issued hereunder.

**Section 12.06 Notices; Publication of Notice.**

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

(b) Whenever the Issuer or the Trustee is required or permitted to give or publish notice of any event or occurrence under this Indenture, such notice shall be given or published in such manner and by such means as the Issuer or the Trustee, as the case may be, shall determine to be appropriate. Such publication may be by (but is not limited to) any of the following means: (1) publication in one or more newspapers or trade journals selected by the Issuer or the Trustee, as the case may be; (2) publication by or through one or more financial information reporting services; (3) delivery to one or more "nationally recognized municipal securities information repositories" (as such term is defined in Securities and Exchange Commission Rule 15c2-12) or any successor repository or entity fulfilling a substantially similar or like role; or (4) by mailing a copy of such notice by first class mail, postage prepaid, to the person entitled to receive the notice at such person's address as shown on the records of the Issuer or the Trustee.

**Section 12.07 Trustee as Paying Agent and Bond Registrar.** The Trustee is hereby designated and agrees to act as paying agent and Bond registrar for and in respect to the Bonds.

**Section 12.08 *Execution of Instruments by Bondholders and Proof of Ownership of Bonds.*** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed by an instrument in writing. Proof of the execution of any such instrument and of the ownership of the Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

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

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

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

**Section 12.09 *Mortgage Loan Documents Independent.***

(a) Enforcement of the covenants in this Indenture will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Borrower, the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Mortgage Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project.

(b) Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Indenture or any of the Borrower Documents will not serve as a basis for default on the Mortgage Loan, the underlying mortgage, or any of the other Mortgage Loan Documents.

(c) Notwithstanding anything in this Indenture, the Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, (i) the Mortgaged Property (as defined in the Mortgage Loan Security Instrument) shall not include any portion of the Trust Estate and the Mortgage Lender shall not have any claim to or lien upon the Trust Estate under this Indenture and funds held by the Trustee under this Indenture and pledged to secure the repayment of the Bonds, except for Eligible Funds that may be returned to the party that deposited said funds with the Trustee as may be required under Section 5.02 hereof; and (ii) the Trust Estate shall not include any portion of the Mortgaged Property (as defined in the Mortgage Loan Security Instrument).

**Section 12.10 *Counterparts.*** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original, but all of which shall constitute but one and the same instrument.

**Section 12.11 U.S.A. Patriot Act Requirements of the Trustee.** To help the government of the United States of America fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust or other legal entity, the Trustee may request documentation to verify such Person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Trustee may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

**Section 12.12 Electronic Transactions.**

(a) The transactions described in this Indenture may be conducted and the related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The Trustee shall have the right to accept and act upon directions or instructions given pursuant to this Indenture and delivered using Electronic Means (defined below); provided, however, that Borrower, the Issuer or such other party giving such direction or instruction, as the case may be, shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such directions or instructions (each an "Authorized Officer") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. For purposes of this subsection (b), "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Trustee as available for use in connection with its services hereunder. If the Borrower, the Issuer or such other party giving such direction or instruction elects to give the Trustee directions or instructions using Electronic Means and the Trustee in its discretion elects to act upon such directions or instructions, the Trustee's understanding of such directions or instructions shall be deemed controlling. The Borrower, the Issuer and any other party giving such direction or instruction understand and agree that the Trustee cannot determine the identity of the actual sender of such directions or instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Borrower, the Issuer or such other party giving such instruction shall each be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Trustee and that only Authorized Officers transmit such directions or instructions to the Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various



methods of transmitting directions or instructions to the Trustee and that there may be more secure methods of transmitting directions or instructions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Issuer has caused this Indenture to be signed in its name and behalf by its authorized officer and its official seal to be hereunto affixed and attested by its authorized officer, the Secretary has approved this Indenture and the determination of the Issuer herein, and the Trustee has caused this Indenture to be signed in its name by one of its duly authorized officers, all as of the day and year first above written.

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

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

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

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

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

**CONSENT AND AGREEMENT OF BORROWER**

For and in consideration of the issuance of the Bonds by the Issuer, the Borrower consents to and approves the Indenture in all respects. In addition, the Borrower agrees that whenever the Indenture by its terms imposes any duty or obligation on the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Indenture, and the Borrower agrees to carry out and perform its duties and obligations thereunder.

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC**, a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

**APPENDIX A  
FORM OF SERIES 2023 BONDS**

No. R-1

\$[14,000,000]

\$[14,000,000]  
UNITED STATES OF AMERICA  
STATE OF FLORIDA  
HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2023  
(THE PALMS OF DEERFIELD TOWNHOMES)

THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES AND ASSETS OF THE ISSUER PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

<b>DATED DATE</b>	<b>INITIAL INTEREST RATE</b>	<b>INITIAL MANDATORY TENDER DATE</b>	<b>MATURITY DATE</b>	<b>CUSIP NUMBER</b>
November __, 2023	____%	December 1, 2026	December 1, 2056	

**REGISTERED OWNER:** CEDE & CO.

**PRINCIPAL AMOUNT:** [FOURTEEN] MILLION AND NO/100 DOLLARS

**FOR VALUE RECEIVED,** 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 (the “Issuer”), hereby promises to pay (but only out of the Trust Estate pledged therefor) to the registered owner identified above, or its successor or registered assignee or legal representative, unless previously called for redemption, the principal amount set forth above, on the Maturity Date identified above, in lawful money of the United States of America which on the date of payment is legal tender for the payment of public and private debts, upon the presentation and surrender of this Bond at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee, or its

successor in trust (the “Trustee”), and to pay interest thereon (but only out of the Revenues) to the registered owner hereof from the Dated Date identified above to but not including December 1, 2026 (the “Initial Mandatory Tender Date”), at the Initial Interest Rate per annum identified above and thereafter at the Remarketing Rate (as defined in the Trust Indenture) (subject to adjustment or change as provided in the Trust Indenture), payable at the times and in the manner hereinafter set forth. Principal hereof shall be payable, upon the request of any registered Holder of Bonds on the applicable Record Date having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number specified by such holder to the Trustee in writing. All interest hereon shall be paid by check or draft mailed by the Trustee to the registered Owner hereof at his or her address as it appears on the registration books of the Issuer, or, upon the request of any registered Holder of Bonds having an aggregate principal amount of \$1,000,000 or more, by wire transfer of immediately available funds from the Trustee to the bank and account number provided by such registered Owner to the Trustee in writing, such interest being payable semi-annually on each June 1 and December 1, commencing June 1, 2024, until the principal amount of the Bonds is paid or duly provided for in lawful money of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. Capitalized terms used herein have the same meanings as set forth in the Trust Indenture, dated as of November 1, 2023, by and between the Issuer and the Trustee (the “Trust Indenture”).

This Bond is one of an issue of the \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “Bonds”), of like date and tenor, except as to number and denomination, issued under and pursuant to the Constitution and laws of the State of Florida, Florida Housing Finance Authority Law, Part IV, Chapter 159, Florida Statutes, as amended and supplemented from time to time, Ordinance No. 79-41 enacted by the Board of County Commissioners (the “Board”) of Broward County, Florida (the “County”), on June 20, 1979 (the “Ordinance”), a Resolution of the Issuer adopted on October 18, 2023, and a Resolution of the Board adopted on November 14, 2023 (the “Act”), for the purpose of financing or providing financial assistance for a portion of the costs of acquisition, demolition, rehabilitation, equipping and financing by The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), of a multifamily rental housing project located in the State, which, upon completion, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related uses (the “Project”). The proceeds of the Bonds are being loaned to the Borrower by the Issuer under a Loan Agreement dated as of November 1, 2023, by and between the Borrower and the Issuer (the “Loan Agreement”) and evidenced by a Promissory Note dated November \_\_, 2023, from the Borrower in favor of the Issuer (the “Note”).

The Bonds are issued under the Trust Indenture, and to the extent provided therein, are, together with all other Bonds that may be issued thereunder, equally and ratably secured and entitled to the protection given by the Trust Indenture. Pursuant to the Trust Indenture, the Issuer has assigned to the Trustee (among other things) the Revenues. Pursuant to the Note and the Loan Agreement, payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Borrower to the Trustee for the account of the Issuer. The obligations of the Borrower under the Note and the Loan Agreement are secured by the proceeds of the Bonds deposited into the Project Fund (other than funds on deposit in the Subordinate Loan

Account of the Project Fund) and Eligible Funds deposited into the Collateral Fund created pursuant to Section 4.01 of the Trust Indenture.

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

The Bonds are issuable in the form of registered Bonds without coupons in denominations of \$5,000 each or any integral multiple of \$1,000 in excess thereof (the “Authorized Denominations”).

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

The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the Mandatory Tender Date.

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

All acts, conditions and things required by the statutes of the State of Florida, the Act and the Trust Indenture to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed.

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

This Bond shall not be entitled to any benefit under the Trust Indenture, or be valid or become obligatory for any purpose, until the Trustee shall have executed the Certificate of Authentication appearing hereon.

[Signature Page Follows]



**IN WITNESS WHEREOF**, the Issuer has caused this bond to be executed in its name by the manual or facsimile signature of an authorized officer and its corporate seal to be hereunto impressed or imprinted hereon and attested to by the manual or facsimile signature of an authorized officer of the Issuer, all as of the Dated Date identified above.

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

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

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

**FORM OF CERTIFICATE OF AUTHENTICATION**

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

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

By: \_\_\_\_\_  
Authorized Signature

Date of Authentication: \_\_\_\_\_, 2023

**FORM OF ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

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

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number: \_\_\_\_\_

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

\_\_\_\_\_  
Attorney to transfer the said bond on the books of the within-named Issuer maintained by the  
Trustee for the registration thereof, with full power of substitution in the premises.

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

Signature guaranteed by:

\_\_\_\_\_  
[Bank, Trust Company or Firm]

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

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

## APPENDIX B

### FORM OF REQUISITION

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
[SUBORDINATE LOAN ACCOUNT OF THE] PROJECT FUND PURSUANT  
TO SECTION 3.03 OF THE LOAN AGREEMENT

Pursuant to Section 3.03 of the Loan Agreement dated as of November 1, 2023 (the “*Loan Agreement*”) between the Housing Finance Authority of Broward County, Florida (the “*Issuer*”) and The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “*Borrower*”), the undersigned Authorized Borrower Representative hereby requests and authorizes The Bank of New York Mellon, N.A., as trustee (the “*Trustee*”), as depository of the [Subordinate Loan Account of the] Project Fund created by the Trust Indenture dated as of November 1, 2023 (the “*Indenture*”), between the Issuer and the Trustee, to pay [to the Borrower] [to [Citibank, N.A.], as Mortgage Lender] [or to the Person(s) listed on the Disbursement Schedule hereto] out of the money deposited in [the Subordinate Loan Account of] the Project Fund the aggregate sum of \$\_\_\_\_\_ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Exemption Agreement.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

- (a) Each item for which disbursement is requested hereunder is properly payable out of [the Subordinate Loan Account of] the Project Fund in accordance with the terms and conditions of the [Subordinate Loan Documents] [Loan Agreement] and none of those items has formed the basis for any disbursement heretofore made from said [Subordinate Loan Account of the] Project Fund.
- (b) Each such item is or was incurred in connection with the acquisition, rehabilitation, installation, equipment or improvement of the Project.
- (c) The Borrower has received, or will concurrently with payment receive and deliver to the Trustee, appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.
- (d) After taking into account the proposed disbursement,
  - (i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs;
  - (ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring the leasehold interest in the land; and

(iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.

(e) There is no current or existing default or event of default pursuant to the terms of the Loan Agreement, the Tax Regulatory Agreement or the Tax Exemption Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents. [With respect to amounts disbursed from the Subordinate Loan Account of the Project Fund, there is no current or existing default or event of default pursuant to the terms of the Subordinate Loan Documents and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.]

(f) There are no liens on the Project except [Permitted Encumbrances (as defined in the Mortgage Loan Security Agreement)] and those permitted or provided for by the [Subordinate Loan Documents] [Loan Agreement]

(g) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC, a Florida limited liability company**

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

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

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

**DISBURSEMENT SCHEDULE**

TO STATEMENT NO. \_\_\_\_\_ REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS FROM  
[SUBORDINATE LOAN ACCOUNT OF] PROJECT FUND PURSUANT TO SECTION 3.03 OF THE LOAN  
AGREEMENT

## APPENDIX B-1

### FORM OF REQUISITION

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
COSTS OF ISSUANCE FUND PURSUANT TO SECTION 4.07 OF THE TRUST  
INDENTURE

Pursuant to Section 4.07 of the Trust Indenture dated as of November 1, 2023 (the “*Indenture*”), between the Housing Finance Authority of Broward County, Florida and The Bank of New York Mellon, N.A., as trustee (the “*Trustee*”), the undersigned Authorized Borrower Representative hereby requests and authorizes the Trustee, as depositary of the Costs of Issuance Fund created by the Indenture to pay [to the Borrower] [or to the Person(s) listed on the Disbursement Schedule hereto] out of the money deposited in the Costs of Issuance Fund the aggregate sum of \$\_\_\_\_\_ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Costs of Issuance Fund in accordance with the terms and conditions of the Indenture and none of those items has formed the basis for any disbursement heretofore made from said Costs of Issuance Fund.

(b) After taking into account the proposed disbursement, not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.

(c) There is no current or existing default or event of default pursuant to the terms of the Indenture, Loan Agreement, the Tax Regulatory Agreement [or the Tax Exemption Agreement] and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(d) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC, a Florida limited liability company**

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company, its  
Authorized Member

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

Darren Smith, Manager

Approved:

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

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

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

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

**DISBURSEMENT SCHEDULE**

TO STATEMENT NO. \_\_\_\_\_ REQUESTING AND AUTHORIZING DISBURSEMENT OF FUNDS FROM COSTS OF ISSUANCE FUND PURSUANT TO SECTION 4.07 OF THE TRUST INDENTURE

**APPENDIX C  
FUNDING LOAN AGREEMENT**

[ATTACHED]

**FUNDING LOAN AGREEMENT**

**among**

**CITIBANK, N.A.,  
as Funding Lender**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA,  
as Governmental Lender**

**and**

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

**Dated as of \_\_\_\_\_, 202\_ [Conversion Date]**

**Relating to**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Note, Series [2023]  
(The Palms of Deerfield Townhomes)**

**Loan Principal Amount: \$\_\_\_\_\_**

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## FUNDING LOAN AGREEMENT

This **FUNDING LOAN AGREEMENT** (this “**Funding Loan Agreement**”), is made and entered into as of \_\_\_\_\_, 20\_\_ [Conversion Date], by and among **CITIBANK, N.A.**, in its capacity as Funding Lender (the “**Funding Lender**”), the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA** (the “**Governmental Lender**”), a public body corporate and politic organized and existing under the laws of the State of Florida (the “**State**”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, as Fiscal Agent (the “**Fiscal Agent**”).

### RECITALS

WHEREAS, pursuant to Ordinance 79-41, enacted by the Board of County Commissioners of Broward County, Florida (the “**County**”) on June 20, 1979, as amended and a resolution adopted by the County on November 14, 2023, and Resolution No. 2023-\_\_\_ adopted by the Governmental Lender on October 18, 2023, and in accordance with Florida Housing Finance law, Sections 159.601 through 159.623, Florida Statutes, as amended (the “**Act**”), the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, rehabilitation and equipping of multifamily rental housing facilities for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender; (b) to issue its revenue bonds, notes or other evidence of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, on November \_\_, 2023 (the “**Delivery Date**”) pursuant to and in accordance with the Act and a Trust Indenture dated as of November 1, 2023 (the “**Indenture**”) between the Governmental Lender and the Fiscal Agent, the Governmental Lender issued and sold its \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “**Bonds**”), and used the proceeds thereof to make a loan to **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company (the “**Borrower**”), upon the terms and conditions of a promissory note dated November \_\_, 2023 from the Borrower to the Governmental Lender in the original principal amount of \$[14,000,000] and the Loan Agreement dated as of the same date as the Indenture between the Governmental Lender and the Borrower (the “**Loan Agreement**”), for purposes of funding a portion of the costs of acquiring, rehabilitating and equipping a multifamily rental housing project located in the City of Deerfield Beach, Broward County, Florida, known as The Palms of Deerfield Townhomes, which contains 56 affordable rental housing units (the “**Project**”); and

WHEREAS, in connection with the issuance of the Bonds, the Funding Lender entered into a [Forward Commitment Agreement with the Borrower and Citibank, N.A., in its capacity as construction lender] (the “Construction Lender”), dated as of [November 1, 2023] (the “Citi Forward Commitment”), whereby the Funding Lender committed, subject to the satisfaction on or before the Termination Date (as defined in the Citi Forward Commitment) of the Conditions to Conversion set forth in the Citi Forward Commitment, to facilitate the permanent financing of the Project by making the Funding Loan (defined below) pursuant to the provisions of this Funding Loan Agreement; and

WHEREAS, as of the date hereof, the Funding Lender has determined that the Conditions to Conversion have been satisfied and, as a result, (i) the Bonds are subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of the Bonds is being paid with amounts on deposit under the Indenture, (iii) a portion of the principal amount of the Bonds is being cancelled such that the principal amount outstanding equals the Permanent Period Amount (as defined in the Citi Forward Commitment), (iv) the Bonds are being removed from the Book-Entry System and being converted to a physical Governmental Lender Note (as described below) which is being purchased by the Funding Lender, (v) this Funding Loan Agreement and the Borrower Loan Agreement dated as of the Conversion Date (the “Borrower Loan Agreement”) by and between the Governmental Lender and the Borrower are being delivered by the respective parties and becoming effective and superseding the Indenture and the Loan Agreement, and (vi) the taxable mortgage loan provided by the Construction Lender is being paid in full in accordance with the Indenture; and

WHEREAS, pursuant to this Funding Loan Agreement, the Funding Lender will (i) advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower; and

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

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Note (as defined in the Borrower Loan Agreement) and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Borrower’s leasehold interest in the land upon which the Project is located pursuant to a [Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing], dated as of the date hereof (as amended, restated and/or supplemented from time to time, the “**Security Instrument**”), encumbering the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Fiscal Agent to secure the performance by the Governmental Lender of its obligations under this Funding Loan Agreement; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Housing Revenue Note, Series [2023] (The Palms of Deerfield Townhomes) (the “Governmental Lender Note”), dated the Conversion Date, with respect to funds advanced and to

be advanced under the Funding Loan Agreement, evidencing its limited obligation to make the payments due to the Funding Lender as provided in this Funding Loan Agreement; and

WHEREAS, all things necessary to make this Funding Loan Agreement, the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, in consideration of the premises and of the purchase of the Governmental Lender Note by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION

**Section 1.1. Definitions.** For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

(a) Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

(b) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

(c) All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

(d) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

(e) All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

(f) All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(g) References to the Governmental Lender Note as "tax exempt" or to the "tax exempt status" of the Governmental Lender Note are to the exclusion of interest on the

Governmental Lender Note (other than any portion of the Governmental Lender Note held by a “substantial user” of the Project or a “related person” within the meaning of Section 147 of the Code) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

(h) The following terms have the meanings set forth below:

“Act” shall have the meaning assigned to such term in the recitals above.

“Additional Borrower Payments” shall have the meaning given such term in the Borrower Loan Agreement.

“Administration Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Affiliate” shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

“Approved Transferee” means (1) a “qualified institutional buyer” (“QIB”) as defined in Rule 144A promulgated under the Securities Act that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an Affiliate of the Funding Lender, (3) a trust or custodial arrangement established by the Funding Lender or one of its Affiliates or any state or local government or any agency or entity which is a political subdivision of a federal, state or local government (a “Governmental Entity”), in each case (i) the beneficial interests in which will be owned only by QIBs or (ii) the beneficial interests in which will be rated in the “BBB” category or higher without regard to modifier (or the equivalent investment grade category) by at least one nationally recognized rating agency, or (4) a Governmental Entity.

“Authorized Attesting Officer” means the Chair, Vice Chair, Secretary or Assistant Secretary of the Governmental Lender, or such other officer or official or member of the Governmental Lender, including but not limited to the Finance Director of the Governmental Lender who, in accordance with the law of the State, the bylaws or other governing documents of the Governmental Lender, or practice or custom, regularly attests or certifies official acts and records of the Governmental Lender, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Governmental Lender Representative” shall mean the Chair, Vice-Chair, and any other, officer or employee of the Governmental Lender designated to perform a specified act, to sign a specified document or to act generally on behalf of the Governmental Lender as evidenced by a written certificate furnished to the Funding Lender, the Fiscal Agent, the Servicer (if any) and the Borrower containing the specimen signature of such person and signed on behalf of the Governmental Lender by the Chair or Vice Chair of the Governmental Lender. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Governmental Lender Representative.

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

“Borrower” shall mean The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, and its successors and assigns.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the principal amount of \$[PERMANENT PERIOD AMOUNT] as of the Conversion Date, as evidenced by the Borrower Note.

“Borrower Loan Agreement” shall mean the Borrower Loan Agreement, dated as of the Conversion Date, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

“Borrower Loan Agreement Default” shall mean any event of default set forth in 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall “exist” if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable cure period.

“Borrower Loan Documents” shall have the meaning given to such term in the Borrower Loan Agreement.

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

“Business Day” shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

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

“Code” shall mean the Internal Revenue Code of 1986, as in effect on the Delivery Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Delivery Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Conditions to Conversion” shall have the meaning given such term in the Citi Forward Commitment. Agreement.

“Control” shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

“Conversion Date” shall mean \_\_\_\_\_.

“County” shall mean Broward County, Florida.

“County Authorization” shall mean the resolution of the County authorizing the Governmental Lender to, among other things, (i) secure the Funding Loan, and (ii) execute and deliver the Governmental Lender Note and the Funding Loan Documents to which the Governmental Lender is a party.

“Default” shall mean the occurrence of an event, which, under any Funding Loan Document, would, but for the giving of notice or passage of time, or both, be an event of default under the Funding Loan Document or a Borrower Loan Agreement Default.

“Delivery Date” shall mean the date on which the Bonds were issued and delivered.

“Equity Investor” shall have the meaning ascribed thereto in the Borrower Loan Agreement.

“Event of Default” shall have the meaning ascribed thereto in Section 9.1 hereof.

“Fiscal Agent” shall mean The Bank of New York Mellon Trust Company, N.A., a national banking association, as fiscal agent hereunder, and any successor fiscal agent or co-fiscal agent appointed under this Funding Loan Agreement.

“Fiscal Agent’s Fees” shall mean the Fiscal Agent’s initial acceptance fee and expenses of \$2,500 plus fees, costs and expenses of its counsel in conjunction with the purchase of the Governmental Lender Note and the ongoing compensation and expenses payable to the Fiscal Agent as follows:

(i) the annual administration fees of the Fiscal Agent, for the ordinary services of the Fiscal Agent rendered under this Funding Loan Agreement during each twelve-month period shall be \$3,750 per annum, payable in advance in semiannual installments of \$1,875 on each [June] 1 and [December] 1 thereafter commencing on the \_\_\_\_\_ 1 or \_\_\_\_\_ 1 after the Conversion Date and continuing so long as any principal of the Governmental Lender Note remains unpaid;

(ii) the reasonable fees and charges of the Fiscal Agent for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under this Funding Loan Agreement as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Fiscal Agent shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Fiscal Agent shall have been made; and

(iii) for purposes of the Borrower Loan Agreement, indemnification of the Fiscal Agent by the Borrower.

“Funding Lender” shall mean Citibank, N.A., a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

“Funding Loan Agreement” shall mean this Funding Loan Agreement, dated \_\_\_\_\_, 20\_\_ by and among the Funding Lender, the Governmental Lender and the Fiscal Agent, as it may from time to time be supplemented, modified or amended by one or more instruments supplemental hereto entered into pursuant to the applicable provisions hereof.

“Funding Loan Documents” shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Certificate, (v) the Borrower Loan Documents, (vi) the Loan Covenant Agreement, (vii) the Governmental Lender Guaranties, (viii) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (ix) all amendments, modifications, renewals and substitutions of any of the foregoing.

“Governmental Lender” shall mean the Housing Finance Authority of Broward County, Florida.

“Governmental Lender Fee” means, collectively, (i) the Ongoing Governmental Lender Fee, and (ii) Late Reporting Fees and/or Issuer’s Compliance Fees, as applicable, pursuant to the Regulatory Agreement.

“Governmental Lender Guaranties” means, collectively, (i) the Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, (ii) the Absolute and Unconditional Guaranty of Operating Deficits, and (iii) the Environmental Indemnity Agreement, each dated as of the Delivery Date, by the Governmental Lender Guarantors for the benefit of the Governmental Lender and the Fiscal Agent.

“Governmental Lender Guarantors” means, collectively, the Borrower, \_\_\_\_\_, and \_\_\_\_\_, individually.

“Governmental Lender Note” shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

“Highest Rating Category” shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody’s in the highest rating given by that Rating Agency for that general category of security. By way of example, the Highest Rating Category for tax exempt municipal debt established by S&P is “A 1+” for debt with a term of one year or less and “AAA” for a term greater than one year, with corresponding ratings by Moody’s of “MIG 1” (for fixed rate) or “VMIG 1” (for variable rate) for three (3) months or less and “Aaa” for greater than three months. If at any time (i) both S&P and Moody’s rate a Permitted Investment and (ii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will,

nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that Rating Agency. For example, a Permitted Investment rated “AAA” by S&P and “Aa3” by Moody’s is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that Rating Agency, then the Permitted Investment will not be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated “AAA” by S&P and “A1” by Moody’s is not rated in the Highest Rating Category.

“Loan Covenant Agreement” shall mean the Loan Covenant Agreement between the Borrower and the Funding Lender, dated the date hereof.

“Loan Payment Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Maturity Date” shall mean with respect to the Governmental Lender Note, [December] 1, 20\_\_\_\_.

“Minimum Beneficial Ownership Amount” shall mean an amount not less than fifteen percent (15%) of the aggregate outstanding principal amount of the Funding Loan.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Ongoing Governmental Lender Fee” shall mean the annual program administration fee of the Governmental Lender, payable in advance by the Borrower to the Fiscal Agent for payment to the Governmental Lender in the amount of eighteen (18) basis points per annum of the outstanding principal amount of the Funding Loan (calculated on the Business Day prior to any principal reduction of the Funding Loan). The Ongoing Governmental Lender Fee shall be payable in semi-annual installments on each [June] 1 and [December] 1, with the first semi-annual payment due and payable on \_\_\_\_\_ 1, 202\_\_; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, the Fiscal Agent, Tax Counsel, the Governmental Lender’s counsel, or the Fiscal Agent’s counsel to be paid by the Borrower pursuant to the Borrower Loan Agreement.

“Opinion of Counsel” shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion; provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by Tax Counsel.

“Permitted Investments” shall mean, to the extent authorized by law for investment of any moneys held under this Funding Loan Agreement:

(a) Direct obligations of the United States of America including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America (“Government Obligations”).



(b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America, or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.

(c) Demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its Affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000 and maturing in less than 365 days; provided that the Fiscal Agent or such other institution has been rated at least "VMIG-1"/"A-1+" by Moody's/S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency.

(d) Bonds (including tax-exempt bonds), bills, notes or other obligations of or secured by Fannie Mae, Freddie Mac, the Federal Home Loan Bank or the Federal Farm Credit Bank.

(e) Money market funds rated AAA by S&P which are registered with the Securities and Exchange Commission and which meet the requirements of Rule 2(a)(7) of the Investment Company Act of 1940, as amended, which may be administered by the Fiscal Agent or its Affiliates.

(f) Collateralized Investment Agreements or Repurchase Agreements with financial institutions rated in the "A" category or higher without regard to qualifiers, by at least one Rating Agency. The agreement must be continually collateralized with obligations specified in paragraphs (a), (b) and/or (d) above, eligible for wire through the Federal Reserve Bank System or the DTC/PTC as applicable, and at a level of at least 103% of the amount on deposit and valued no less than daily. The collateral must be held by a third party custodian and be free and clear of all liens and claims of third parties. Securities must be valued daily, marked-to-market at current market price plus accrued interest. If the market value of the securities is found to be below the required level, the provider must restore the market value of the securities to the required level within one (1) business day. Permitted collateral must be delivered to and held in a segregated account by the Fiscal Agent or a custodian (the "Collateral Agent"), and the Collateral Agent cannot be the provider. The collateral must be delivered to the Collateral Agent before/simultaneous with payment (perfection by possession of certificated securities). Acceptable collateral must be free and clear of all liens and claims of third parties and shall be registered in the name of the Collateral Agent for the benefit of the Governmental Lender and Fiscal Agent. The agreement shall state that the Collateral Agent has a valid and perfected first priority security interest in the securities, any substituted securities and all proceeds thereof.

(g) Any other investment authorized by the laws of the State, if such investment is approved in advance in writing by the Funding Lender in its sole discretion.

Permitted Investments shall not include any of the following:

(1) Except for any investment described in the next sentence, any investment or any agreement with a maturity profile greater than the date(s) on which funds representing the corpus of the investment may be needed under the Funding Loan Documents. This exception (1) shall not apply to Permitted Investments listed in paragraph (g).

(2) Any obligation bearing interest at an inverse floating rate.

(3) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

(4) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories, and the Fiscal Agent shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments.

“Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

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

“Prepayment Premium” shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any Prepayment Premium as set forth in the Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

“Project” shall have the meaning given to that term in the Borrower Loan Agreement.

“Rating Agency” shall mean any one and each of S&P and Moody’s then rating the Permitted Investments or any other nationally recognized statistical rating agency then rating the Permitted Investments, which has been approved by the Funding Lender.

“Rebate Analyst” means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Governmental Lender at the expense of the Borrower to calculate the amounts to be paid to the United States Treasury in accordance with the applicable provisions of the Tax Certificate (the “Rebate Amount”) or, in the event that the Governmental Lender fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Fiscal Agent to calculate the Rebate Amount. The initial Rebate Analyst will be [Dufresne CPA Services, P.A.]

“Rebate Fund” shall mean the fund by that name created and established under this Funding Loan Agreement.

“Record Date” shall mean the last day of each calendar month.

“Regulations” shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

“Regulatory Agreement” shall mean that certain Land Use Restriction Agreement, dated as of the Delivery Date, by and among the Governmental Lender, the Borrower and the Fiscal Agent, as hereafter amended or modified.

“Required Transferee Representations” shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

“Resolution” shall mean the resolution of the Governmental Lender adopted on October 18, 2023 authorizing the Funding Loan, as evidenced by the Governmental Lender Note and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Responsible Officer” shall mean any officer within the Corporate Trust Department (or any successor group) of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Fiscal Agent customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, who is responsible for the administration of this Funding Loan Agreement.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security” shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

“Security Instrument” shall mean the [Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing], dated as of the date hereof (as amended, restated and/or supplemented from time to time), made by the Borrower in favor of the Governmental Lender and assigned to the Fiscal Agent to secure the performance by the Governmental Lender of its obligations with respect to the Funding Loan, as evidenced by the Governmental Lender Note.

“Servicer” shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

“Servicing Agreement” shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

“S&P” shall mean Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services, LLC business division of The McGraw-Hill Companies, Inc., or its successor.

“State” shall mean the State of Florida.

“Tax Certificate” shall mean, collectively, (i) the Certificate as to Arbitrage and Certain Other Tax Matters dated the Delivery Date and executed by the Governmental Lender, and (ii) the Borrower Tax Certificate dated the Delivery Date and executed and delivered by the Borrower, and (iii) the Arbitrage Rebate Agreement by and among the Governmental Lender, the Borrower and the Fiscal Agent, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

“Tax Counsel” shall mean, Nabors, Giblin & Nickerson, P.A., or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through 150 (or any successor provisions) of the Code.

“Tax Counsel Approving Opinion” shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Note constitutes a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Tax Counsel No Adverse Effect Opinion” shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not, in and of itself, impair the exclusion

of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

“Unassigned Rights” shall mean the Governmental Lender’s rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its rights of access under Section 5.18 thereof, its rights to indemnification under Section 5.16 thereof and under any of the other Funding Loan Documents, if such right exists, its rights to attorneys’ fees and expenses under Sections 5.12 and 5.15 thereof, its rights to receive notices, reports and other statements and its rights to consent to certain matters, as provided in this Funding Loan Agreement, the Borrower Loan Agreement and under any of the other Funding Loan Documents, if such right exists.

“Written Certificate,” “Written Certification,” “Written Consent,” “Written Direction,” “Written Notice,” “Written Order,” “Written Registration,” “Written Request,” and “Written Requisition” shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized Governmental Lender Representative, a Responsible Officer of the Fiscal Agent or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer, the Fiscal Agent or such other Person as required under the Funding Loan Documents.

“Yield” shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

**Section 1.2. *Effect of Headings and Table of Contents.*** The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

**Section 1.3. *Date of Funding Loan Agreement.*** The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

**Section 1.4. *Designation of Time for Performance.*** Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

**Section 1.5. *Interpretation.*** The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

**ARTICLE II**  
**TERMS; GOVERNMENTAL LENDER NOTE**

**Section 2.1. Terms.**

(a) Principal Amount. The aggregate principal amount of the Funding Loan and the Governmental Lender Note evidencing such Funding Loan is \$\_\_\_\_\_.

(b) Maturity. The Funding Loan shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

(c) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the principal amount outstanding on the Conversion Date, less any payments of principal of the Governmental Lender Note received from payments of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in paragraphs (d), (e) and (f) of this Section 2.1. The Fiscal Agent shall keep a record of all principal repayments made under the Governmental Lender Note and shall upon written request provide the Governmental Lender and the Funding Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

(d) Interest. Interest shall be paid on the outstanding principal amount of the Governmental Lender Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(e) Corresponding Payments. The payment or prepayment of principal, interest and premium, if any, due on the Governmental Lender Note shall be identical with and shall be made on the same dates, terms and conditions, as the principal, interest, premiums, late payment fees and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, interest, premium, if any, due on the Borrower Note shall be deemed to be like payments or prepayments of principal, interest and premium, if any, due on the Funding Loan and the Governmental Lender Note.

(f) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then

the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

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

**Section 2.2. *Form of Governmental Lender Note.*** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement or State law.

**Section 2.3. *Execution and Delivery of Governmental Lender Note.*** The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of an Authorized Governmental Lender Representative, and attested by the manual or facsimile signature of an Authorized Attesting Officer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Lender Note. In case any officer of the Governmental Lender whose manual or facsimile signature shall appear on a Governmental Lender Note shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also a Governmental Lender Note may bear the facsimile signatures of, or may be signed by, such persons as at the actual time of the execution thereof shall be the proper officers to sign such Governmental Lender Note although at the date of the Governmental Lender Note such persons may not have been such officers.

**Section 2.4. *Authentication.*** The Fiscal Agent has authenticated the Governmental Lender Note by execution of the certificate of authentication on or attached to the Governmental Lender Note, and the certificate of authentication so executed on or attached to the Governmental Lender Note shall be conclusive evidence that the Governmental Lender Note has been authenticated and delivered under this Funding Loan Agreement.

**Section 2.5. *Registration and Transfer of Governmental Lender Note.***

(a) The Fiscal Agent acknowledges that the Funding Lender is the initial holder of the Governmental Lender Note and shall remain the sole holder of the Governmental Lender Note except as otherwise provided herein.

(b) The Fiscal Agent, on behalf of the Governmental Lender, shall provide for the registration of the Governmental Lender Note or interests therein and the registration of transfers thereof. In that regard, the Fiscal Agent shall maintain a register which shall contain a record of the Governmental Lender Note at any time authenticated hereunder, together with the name and address of the holder thereof, the date of authentication, the date of transfer or payment, and such other matters as may be deemed appropriate by the Fiscal Agent or the Governmental Lender. The Governmental Lender, the Fiscal Agent and any agent of the Governmental Lender or the Fiscal Agent shall treat the person in whose name the Governmental Lender Note is registered as of the Record Date as the owner of the Governmental Lender Note for the purpose of receiving payment of the Governmental Lender Note and for all other purposes whatsoever whether or not the Governmental Lender Note payments are overdue, and, to the extent permitted by law, neither the Governmental Lender, the Fiscal Agent nor any such agent shall be affected by notice to the contrary.

(c) The transfer of the Governmental Lender Note is subject to registration by the holder thereof only upon compliance with the conditions for registration of transfer imposed on the holder under this Section 2.5 and under Section 2.6 hereof. Upon surrender of any Governmental Lender Note at the designated corporate trust office of the Fiscal Agent, the Governmental Lender shall execute (if necessary), and the Fiscal Agent shall authenticate and deliver, in the name of the designated transferee (but not registered in blank or to "bearer" or a similar designation), a new Governmental Lender Note of a like principal amount, and having the same stated maturity, tenor and interest rate, substantially in the form set forth in Exhibit A hereto.

(d) Any Governmental Lender Note delivered in exchange for or upon transfer of a Governmental Lender Note shall be a valid limited obligation of the Governmental Lender evidencing the same debt, and entitled to the same benefits under this Funding Loan Agreement, as the Governmental Lender Note surrendered for such exchange or transfer.

(e) Registration of the transfer of the Governmental Lender Note may be made on the Fiscal Agent's register by the holder thereof by such holder's attorney duly authorized in writing; provided, that the Governmental Lender Note presented or surrendered for registration of transfer or exchange (i) is accompanied by evidence of compliance with the provisions of Section 2.6 hereof, (ii) is duly endorsed or be accompanied by a written instrument or instruments of transfer, in a form satisfactory to the Governmental Lender and the Fiscal Agent, duly executed by the holder thereof or his, her or its attorney duly authorized in writing and (iii) includes written instructions as to the details of the transfer of the Governmental Lender Note.

(f) No service charge shall be made to the registered holder of the Governmental Lender Note for any registration, transfer or exchange, but the Fiscal Agent and the



Governmental Lender may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of the Governmental Lender Note, and any legal or unusual costs of transfers. Such sums shall be paid in every instance by the purchaser or assignee of the Funding Loan or portion thereof.

(g) The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(h) The transferor shall also provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Fiscal Agent may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

**Section 2.6. *Restrictions on Transfer.***

(a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit B on the Conversion Date.

(b) The Funding Lender shall have the right to sell (i) the Governmental Lender Note and the Funding Loan in whole or (ii) a participation interest or other beneficial ownership interest in the Governmental Lender Note and the Funding Loan to the extent permitted by Section 2.6(c) below, provided that such sale shall be only to Approved Transferees that execute and deliver the Required Transferee Representations to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent; provided, however, that no Required Transferee Representations shall be required to be delivered by transferees or beneficial interest holders described in clauses (3) or (4) of the definition of "Approved Transferee."

(c) Notwithstanding the other provisions of this Section 2.6, no beneficial ownership interest in the Governmental Lender Note and Funding Loan shall be sold in an amount that is less than the Minimum Beneficial Ownership Amount; provided, however, that beneficial ownership interests in the Governmental Lender Note and Funding Loan described in clause (3) of the definition of "Approved Transferee" may be sold in any amount without regard to the Minimum Beneficial Ownership Amount.

(d) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Lender Note.

The Fiscal Agent shall be entitled to rely, without any further inquiry, on any Required Transferee Representations delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Lender Note in reliance on any such Required Transferee Representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability,

cost or expense (including attorneys' fees, costs and expenses) that may result if the transfer is not exempt from registration under the Securities Act or is not made in accordance with such federal and state laws. Notwithstanding anything to the contrary herein, the holder shall not transfer or sell the Governmental Lender Note or any interest therein to a party related to or affiliated with the Borrower, any general partner, limited partner or member of the Borrower without the prior written consent of the Governmental Lender.

### ARTICLE III PREPAYMENT

**Section 3.1. *Prepayment of the Governmental Lender Note from Prepayments Under the Borrower Note.*** The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Lender Note shall be subject to voluntary prepayment to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note at the direction of the Funding Lender in accordance with the terms of the Borrower Note at a prepayment price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

**Section 3.2. *Notice of Prepayment.*** Notice of prepayment of the Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to Funding Lender and Fiscal Agent in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

### ARTICLE IV SECURITY

**Section 4.1. *Security for the Funding Loan.*** To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note is secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these

presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Fiscal Agent for the benefit of the holder from time to time of the Governmental Lender Note or any interests therein, a lien on and security interest in the following described property (excepting, however, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

(a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments (except those related to the Unassigned Rights) derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) All right, title and interest of the Governmental Lender in, to and under, together with all rights, remedies, privileges and options pertaining to, the Funding Loan Documents, and all other payments, revenues and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement (other than the Administration Fund and the Rebate Fund), subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) Any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or the Funding Lender or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent or the Funding Lender is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Lender Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent or the Funding Lender shall immediately be subject to the lien of such pledge and security interest without any physical

delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 4.2. *Delivery of Security.*** In order to secure payment of the Funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned its right, title and interest in the Security to the Fiscal Agent for the benefit of the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Fiscal Agent, for the benefit of the Funding Lender, the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

(a) The Borrower Note endorsed without recourse to the Fiscal Agent for the benefit of the Funding Lender, as their interests may appear by the Governmental Lender (subject to reservation of the Unassigned Rights);

(b) The originally executed Borrower Loan Agreement and Regulatory Agreement;

(c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Fiscal Agent, in recordable form;

(d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Fiscal Agent's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project, in form suitable for filing; and

(e) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

The Governmental Lender shall, at the expense of the Borrower, deliver and deposit with the Fiscal Agent or the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require and direct from time to time for the better perfecting of and assuring to the Funding Lender of its lien and security interest in and to the Security.

## **ARTICLE V LIMITED LIABILITY**

**Section 5.1. *Source of Payment of Funding Loan, the Governmental Lender Note and Other Obligations.*** The Governmental Lender Note evidencing the Funding Loan is a limited obligation of the Governmental Lender, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned hereunder. None of the Governmental Lender, the County, the State, or any political subdivision thereof nor any public agency shall in

any event be liable for the payment of the principal of, premium (if any) or interest on the Governmental Lender Note and the Funding Loan or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth herein, and none of the Funding Loan or the Governmental Lender Note or any of the Governmental Lender's agreements or obligations shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the foregoing within the meaning of any constitutional or statutory provision whatsoever. Neither the faith, revenues, credit nor taxing power of the Governmental Lender, the State or any other political corporation or subdivision or agency thereof shall be pledged to the payment of the principal of, premium (if any), or interest on the Governmental Lender Note or this Funding Loan Agreement.

**Section 5.2. *Exempt from Individual Liability.*** No recourse under or upon any obligation, covenant, warranty or agreement contained in this Funding Loan Agreement or in the Governmental Lender Note, or under any judgment obtained against the Governmental Lender, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this Funding Loan Agreement, shall be had against any of the members, officers, agents or employees of the Governmental Lender (past, present or future), either directly or through the Governmental Lender or otherwise, for the payment for or to the Governmental Lender or any receiver of the Governmental Lender, or for or to the owner of the Governmental Lender Note, or otherwise, of any sum that may be due and unpaid by the Governmental Lender upon the Governmental Lender Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owner of a Governmental Lender Note or otherwise of any sum that may remain due and unpaid upon a Governmental Lender Note secured by this Funding Loan Agreement or any of them is, by the acceptance of the Governmental Lender Note, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. Anything in this Funding Loan Agreement to the contrary notwithstanding, it is expressly understood by the parties to this Funding Loan Agreement that (a) the Governmental Lender may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Servicer, the Borrower or the owner of the Governmental Lender Note as to the existence of any fact or state of affairs, (b) the Governmental Lender shall not be under any obligation under this Funding Loan Agreement to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent or by the Servicer and its respective counsel, as applicable, and (c) none of the provisions of this Funding Loan Agreement shall require the Governmental Lender to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Funding Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Governmental Lender

Note or for the satisfaction of any liability arising from, founded upon or existing by reason of the initial delivery, purchase or ownership of a Governmental Lender Note shall be had against any officer, member, agent or employee of the Governmental Lender, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Lender Note. No covenant, stipulation, obligation or agreement of the Governmental Lender contained in this Funding Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Governmental Lender in other than that person's official capacity. No member, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Governmental Lender Note or be subject to any personal liability or accountability by reason of the delivery of the Governmental Lender Note.

It is recognized that notwithstanding any other provision of this Funding Loan Agreement, neither the Borrower, the Fiscal Agent nor any owner of the Governmental Lender Note shall look to the Governmental Lender for damages suffered by the Borrower, the Fiscal Agent or such owner as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Funding Loan Agreement, the Borrower Loan Agreement, the Governmental Lender Note or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, or for any other reason. Although this Funding Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Funding Loan Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 5.3. *Limited Obligation.*** Notwithstanding any other provision of this Funding Loan Agreement to the contrary:

THE GOVERNMENTAL LENDER NOTE IS ISSUED PURSUANT TO THE COUNTY AUTHORIZATION, THE RESOLUTION AND IN ACCORDANCE WITH THE ACT, AND ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER NOR ANY PERSON EXECUTING A GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON SUCH GOVERNMENTAL LENDER NOTE OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THIS FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE STATE NOR ANY OTHER POLITICAL CORPORATION OR

SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF THE GOVERNMENTAL LENDER NOTE OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF NOR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE GOVERNMENTAL LENDER NOTE OR OTHER COSTS INCIDENT THERETO. THE GOVERNMENTAL LENDER NOTE IS NOT A DEBT OF THE UNITED STATES OF AMERICA.

## ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS

**Section 6.1. *Conditions Precedent to Closing.*** Closing of the Funding Loan on the Conversion Date shall be conditioned upon satisfaction or waiver by the Funding Lender and the Governmental Lender in their sole discretion of each of the conditions precedent to closing set forth in this Funding Loan Agreement (other than the requirements in clauses (g) and (h) of this section as applicable to deliverables to the Governmental Lender, or the requirements in clauses (e) and (i) below, each of which may only be waived by the Governmental Lender), including but not limited to the following:

- (a) Receipt by the Funding Lender of the original, executed Governmental Lender Note dated the Conversion Date, authenticated by the Fiscal Agent;
- (b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed by the Governmental Lender to the Funding Lender, and receipt by the Fiscal Agent of an executed copy of the Borrower Note;
- (c) Receipt by the Funding Lender and the Fiscal Agent of executed counterpart copies of this Funding Loan Agreement, the Borrower Loan Agreement, the Loan Covenant Agreement, the Regulatory Agreement, the Tax Certificate and the Security Instrument, as well as copies of the UCC financing statement required under Section 4.2 hereof;
- (d) Receipt by the Funding Lender and the Fiscal Agent of a certified copy of the Resolution;
- (e) Receipt by the Fiscal Agent of an executed Required Transferee Representations from the Funding Lender;
- (f) Delivery into escrow or to the Fiscal Agent, as appropriate, of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan;

(g) [Receipt by the Governmental Lender, the Funding Lender and Fiscal Agent of a Tax Counsel Approving Opinion with respect to the Governmental Lender Note dated the Conversion Date];

(h) [Receipt by the Governmental Lender, the Funding Lender and the Fiscal Agent of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended];

(i) delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender, the Funding Lender and the Fiscal Agent to the effect that the Borrower Loan Documents and the Regulatory Agreement are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender;

(j) [Delivery of an opinion of Tax Counsel or counsel to the Governmental Lender addressed to the Governmental Lender, the Funding Lender and the Fiscal Agent to the effect that the Funding Loan Documents to which the Governmental Lender is a party are valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Funding Lender; and]

(k) Receipt by the Funding Lender and the Governmental Lender of any other documents or opinions that the Funding Lender, the Governmental Lender or Tax Counsel may require.

## ARTICLE VII FUNDS AND ACCOUNTS

**Section 7.1. *Authorization to Create Funds and Accounts.*** Except as provided in Section 7.3 hereof, no funds or accounts shall be established in connection with the Funding Loan. The Fiscal Agent is authorized to establish and create from time to time such other funds and accounts or subaccounts as directed in writing by the Funding Lender or, if there is a Servicer, by the Servicer, as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 7.2. *Investment of Funds.*** Amounts held in any funds or accounts created by the Fiscal Agent under this Funding Loan Agreement shall be invested in Permitted Investments at the written direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof



and of the Tax Certificate. The Fiscal Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including account maintenance fees.

The Fiscal Agent may conclusively rely upon the Borrower's written direction as to both the suitability and legality of any directed investments. In the absence of written direction from the Borrower, the Fiscal Agent shall hold such amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested. The Fiscal Agent shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Borrower to provide timely written investment direction.

Although the Governmental Lender and the Borrower each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Governmental Lender and the Borrower hereby agree that confirmations of Permitted Investments are not required to be issued by the Fiscal Agent for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

**Section 7.3. *Establishment of Funds and Accounts.*** In connection with the Funding Loan, there are established with the Fiscal Agent the following funds and accounts:

- (a) Project Fund;
- (b) Loan Payment Fund;
- (c) Administration Fund (and therein a Conversion Fee Account); and
- (d) Rebate Fund.

On the Conversion Date, each of the Project Fund, the accounts therein, and the Conversion Fee Account within the Administration Fund shall be closed to the extent there are no funds on deposit in each such fund and/or account.

All money required to be deposited with or paid to the Fiscal Agent for the account of any of the funds or accounts created by this Funding Loan Agreement shall be held by the Fiscal Agent for the benefit of the Funding Lender, and except for money held in the Administration Fund and Rebate Fund, shall, while held by the Fiscal Agent, constitute part of the Pledged Revenues and be subject to the lien hereof.

The Fiscal Agent shall provide Written Notice of any change to its wiring instructions to the Funding Lender and the Borrower no less than five (5) Business Days prior to the next payment date for which such revised instructions will be applicable.

**Section 7.4. *Loan Payment Fund.*** The Governmental Lender and the Borrower shall have no interest in the Loan Payment Fund or the moneys therein, which shall always be

maintained by the Fiscal Agent completely separate and segregated from all other moneys held hereunder and from any other moneys of the Governmental Lender and the Borrower.

The Fiscal Agent shall deposit into the Loan Payment Fund any amounts received from the Borrower as payments of principal of, premium, if any, or interest on the Borrower Loan and any other amounts received by the Fiscal Agent that are subject to the lien and pledge of this Funding Loan Agreement, including any Pledged Revenues not required to be deposited to the Administration Fund or Rebate Fund or not otherwise specifically directed in writing to be deposited into other funds created by this Funding Loan Agreement.

The Fiscal Agent shall apply all amounts on deposit in the Loan Payment Fund in the following order of priority:

First, to pay or provide for the payment of the interest then due on the Governmental Lender Note;

Second, to pay or provide for the payment and premium, if any, or the prepayment of principal on the Governmental Lender Note, provided moneys have been transferred or deposited into the Loan Payment Fund for such purpose; and

Third, to pay or provide for the payment of the Governmental Lender Note on the Maturity Date.

If the Fiscal Agent has not received, by 2:00 p.m. Eastern time on the date interest is due on the Governmental Lender Note, an amount sufficient to pay such interest, the Fiscal Agent shall provide immediate telephonic or electronic notice to the Funding Lender of such deficiency. The Fiscal Agent may rely on the payment terms of the Governmental Lender Note for purposes of payments described above. The Fiscal Agent may rely on the payment terms of the Governmental Lender Note for purposes of payments described above. In making any payment under this Section, the Fiscal Agent may rely conclusively upon a written statement provided by the Funding Lender as to the amount payable to the Funding Lender pursuant to this Funding Loan Agreement or the Borrower Loan Agreement, as applicable.

**Section 7.5. Administration Fund.** The Fiscal Agent shall deposit in the Administration Fund the amounts required by the Borrower Loan Agreement to be paid by the Borrower to the Governmental Lender or the Fiscal Agent, as provided in this Section 7.5. Amounts on deposit in the Administration Fund shall be used to pay the fees and expenses of the Governmental Lender and the Fiscal Agent, as and when the same become due. In that regard, moneys in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent to pay (a) to the Governmental Lender, the Governmental Lender Fee when due and payable, (b) on each [June] 1 and [December] 1 to the Fiscal Agent amounts due pursuant to subparts (i) and (ii) of the definition of "Fiscal Agent's Fees" herein, (c) upon receipt, to the Fiscal Agent, any amounts due to the Fiscal Agent which have not been paid, other than amounts paid in accordance with clause (b) above, and (d) upon receipt, to, or at the written direction of, the Governmental Lender,

any amounts owing the Governmental Lender by the Borrower and then due and unpaid, other than amounts paid in accordance with clause (a) above.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within two Business Days to the Fiscal Agent of the amount of such deficiency.

Written notice of any insufficiency, which results in the Governmental Lender not receiving the Governmental Lender Fee on the applicable due date, shall be provided by the Fiscal Agent to the Governmental Lender (with a copy to the Borrower and the Funding Lender) within 10 days of the respective due date.

Upon payment by the Borrower to the Fiscal Agent of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

Notwithstanding anything herein to the contrary, the Fiscal Agent, on behalf of the Governmental Lender, shall prepare and submit a written invoice to the Borrower for payment of the Governmental Lender Fee not later than 10 days prior to the due date for payment of such Governmental Lender Fee, and shall remit moneys received from the Borrower to the Governmental Lender for payment of such fee. Failure of the Fiscal Agent to prepare or submit such notice shall not excuse the Borrower from making the required payments.

**Section 7.6. *Project Fund.***

Proceeds of the Funding Loan provided by the Initial Funding Lender were deposited to the Note Proceeds Account of the Project Fund, and disbursed in accordance with the Indenture to pay Qualified Project Costs and to pay other costs related to the Project as provided therein. Based on representations, warranties and covenants of the Borrower pursuant to the Tax Certificate and the Borrower Loan Agreement, not less than 95% of the moneys deposited in and credited to the Note Proceeds Account of the Project Fund representing the proceeds of the Funding Loan, including Investment Income thereon, have been expended for Qualified Project Costs (the "95% Requirement"). To the extent there are no funds remaining in the Project Fund, the Project Fund shall be closed.

**Section 7.7. *Rebate Fund.*** All amounts in the Rebate Fund shall be held, invested and disbursed by the Fiscal Agent in accordance with the written instructions of the Borrower or the Rebate Analyst and the provisions of the Tax Certificate, the terms of which are incorporated herein by reference and made a part hereof as if fully set forth herein. The Borrower shall have the absolute obligation to deposit funds into the Rebate Fund in accordance with the provisions of the Tax Certificate. The Fiscal Agent shall make rebate payments to the United States Treasury in accordance with the applicable provisions of the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Borrower or the Rebate Analyst and shall not be required to take any actions

under the Tax Certificate on behalf of the Borrower in the absence of written instructions from the Borrower or the Rebate Analyst. Any amounts remaining in the Rebate Fund after (i) payment in full of the Governmental Lender Note, and (ii) payment of any and all amounts (a) due to the Rebate Analyst, and (b) required by the final rebate report to be paid to the United States Treasury, shall be disbursed to the Borrower.

**Section 7.8. Amounts Remaining in Funds.** After full payment of the Funding Loan and full payment of the fees, charges and expenses of the Fiscal Agent, the Governmental Lender, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Borrower Loan Document (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder, other than the Rebate Fund, shall be paid to the Borrower.

## ARTICLE VIII REPRESENTATIONS AND COVENANTS

**Section 8.1. General Representations.** The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Governmental Lender is a public body corporate and politic under the Act, has the power and authority to (i) enter into the Funding Loan Documents to which it is a party and the transactions contemplated thereby, (ii) incur the indebtedness represented by the Governmental Lender Note and the Funding Loan and apply the proceeds of such indebtedness to finance a portion of the costs of the Project and (iii) carry out its other obligations under this Funding Loan Agreement and the Governmental Lender Note, and by proper action has duly authorized the Governmental Lender's execution and delivery of, and its performance under, such Funding Loan Documents and all other agreements and instruments relating thereto.

(b) The Governmental Lender is not in default under or in violation of, and the execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict with or constitute a default under or a violation of, (i) the Act or the County Authorization, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into this Funding Loan Agreement, executing and delivering the Governmental Lender Note, financing the Project, executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and, to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice, or both, would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no

representations as to the necessity of registering the Borrower Note pursuant to any securities laws or complying with any other requirements of securities laws).

(c) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the Funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such Funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such Funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such Funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are in full force and effect.

(d) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Note and this Funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its notes or bonds other than the Funding Loan as evidenced by the Governmental Lender Note.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

**Section 8.2. *No Encumbrance on Security.*** The Governmental Lender will not knowingly create or knowingly permit the creation of any mortgage, pledge, lien, charge or encumbrance of any kind on the Security or any part thereof prior to or on a parity with the lien of this Funding Loan Agreement, except as expressly permitted or contemplated by the Funding Loan Documents.

**Section 8.3. *Repayment of Funding Loan.*** Solely from amounts pledged therefor, and subject to the provisions of Article V hereof, the Governmental Lender will duly and punctually repay, or cause to be repaid, the Funding Loan, as evidenced by the Governmental Lender Note, as and when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement.

**Section 8.4. *Servicer.*** The Funding Lender may appoint a Servicer to service and administer the Funding Loan and/or the Borrower Loan on behalf of the Funding Lender and the Fiscal Agent, including without limitation the fulfillment of rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement. The Funding Lender shall deliver to the Fiscal Agent written notice of the appointment or removal of any Servicer with a copy of any related servicing agreement.

**Section 8.5. *Borrower Loan Agreement Performance.***

(a) The Funding Lender, the Fiscal Agent and the Servicer, if any, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

(b) The Governmental Lender will promptly notify, or cause to be notified, the Borrower, the Fiscal Agent, the Equity Investor, the Servicer, if any, and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has knowledge of such event.

**Section 8.6. *Maintenance of Records; Inspection of Records.***

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Governmental Lender Note and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and premium paid on the Governmental Lender Note, subject to the inspection of the Funding Lender and the Governmental Lender and their representatives at all reasonable times and upon reasonable prior notice.

(b) The Governmental Lender and the Funding Lender will at any and all times, upon the reasonable request of the Servicer, if any, the Borrower, the Fiscal Agent, the Governmental Lender or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender or the Funding Lender, as appropriate, relating to the Project and the Funding Loan, if any, and to make copies thereof.

**Section 8.7. *Tax Covenants.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other instrument, it will (subject to the limited liability provisions hereof):

(a) Require the Borrower to affirm the Regulatory Agreement as a condition of funding the Borrower Loan;

(b) Not knowingly take or cause to be taken any other action or actions, or fail to take any action or actions, which would cause the interest payable on the Governmental Lender Note to be includable in gross income for federal income tax purposes;

(c) Whenever and so often as requested by the Funding Lender, the Governmental Lender (at the sole cost and expense of the Borrower) shall do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the

Governmental Lender on the Governmental Lender Note will be excluded from the gross income of the holders of the Governmental Lender Note, for federal income tax purposes, pursuant to Section 103 of the Code, except in the event where any holder of the Governmental Lender Note or a portion thereof is a “substantial user” of the facilities financed with the Funding Loan or a “related person” within the meaning of Section 147(a) of the Code;

(d) Not knowingly take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Regulations; and

(e) Require the Borrower to agree, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, not to commit any act and not to make any use of the proceeds of a Governmental Lender Note, or any other moneys which may be deemed to be proceeds of such Governmental Lender Note pursuant to the Code, which would cause such Governmental Lender Note to be an “arbitrage bond” within the meaning of Sections 103(b) and 148 the Code, and to comply with the requirements of the Code throughout the term of the Funding Loan; and

(f) Require the Borrower, solely by causing the Borrower to execute and deliver the Borrower Loan Agreement, to take all steps necessary to compute and pay or cause to be paid pursuant to the provisions of Section 7.7 hereof any rebatable arbitrage in accordance with Section 148(f) of the Code in accordance with the applicable provisions of the Tax Certificate.

(g) In furtherance of the covenants in this Section 8.7, the Governmental Lender and the Borrower have executed, delivered and complied with the provisions of the Tax Certificate, which are by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full.

For purposes of this Section 8.7 the Governmental Lender’s compliance shall be based solely on matters within the Governmental Lender’s knowledge and control and no acts, omissions or directions of the Borrower, the Fiscal Agent, the Funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

**Section 8.8. *Performance by the Borrower.*** Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

**Section 8.9. *Maintenance of Records.*** The Funding Lender shall keep and maintain adequate records pertaining to funds and accounts relative to the Borrower Loan not established with the Fiscal Agent, if any, including all deposits to and disbursements from said funds and

accounts and will provide information and records relating thereto to the Fiscal Agent or the Governmental Lender upon request.

## ARTICLE IX DEFAULT; REMEDIES

**Section 9.1. *Events of Default.*** Subject in all respects to Article V hereof, any one or more of the following shall constitute an event of default (an “Event of Default”) under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable; or

(b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

(c) Subject to Section 8.8 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 12.1 hereof, to the Governmental Lender, the Fiscal Agent, the Equity Investor and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under this Funding Loan Agreement; provided that, so long as the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender, or the Borrower or Equity Investor on behalf of the Governmental Lender, is diligently pursuing such cure to the Funding Lender’s satisfaction, with the Funding Lender’s Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

(d) A default in the payment of any Additional Borrower Payments; or

(e) Any other “Default” or “Event of Default” under any of the other Funding Loan Documents to which the Governmental Lender is a party and is an obligor thereunder or, upon the Written Direction of the Funding Lender, under any other Funding Loan Document (taking into account any applicable grace periods therein).

Any notice of default delivered by the Funding Lender to the Borrower shall be contemporaneously delivered to the Equity Investor.



**Section 9.2. *Acceleration of Maturity; Rescission and Annulment.***

(a) Subject to the provisions of Article V and Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender Note and the interest accrued to be immediately due and payable, by notice to the Fiscal Agent, the Governmental Lender, the Equity Investor and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Governmental Lender Note shall become immediately due and payable.

(b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Fiscal Agent, the Borrower, the Equity Investor and the Governmental Lender, rescind and annul such declaration and its consequences if:

(i) The Borrower has deposited with the Fiscal Agent or the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Governmental Lender Note, (2) the principal of and Prepayment Premium on the Governmental Lender Note that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Governmental Lender Note, (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Governmental Lender Note, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above); and

(ii) All Events of Default, other than the non-payment of the principal of the Governmental Lender Note which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof.

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

(c) Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default.

**Section 9.3. *Additional Remedies; Funding Lender Enforcement.***

(a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of Article V, this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall

be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute. The Funding Lender acknowledges and agrees that the Governmental Lender shall not be responsible or liable for any fees and expenses incurred by the Funding Lender in connection with pursuing remedies under this Article IX.

(b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

(i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

(ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Fiscal Agent for the benefit of the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

(iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

(iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect.

(c) Whether or not an Event of Default has occurred, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may

enforce specific performance with respect to the Unassigned Rights; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(d) If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower, the Governmental Lender, the Fiscal Agent and the Funding Lender receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder; provided, however, that any such forbearance by the Funding Lender in the exercise of its remedies under the Funding Loan Documents shall not be construed as a waiver by the Funding Lender of any Conditions to Conversion.

(e) If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.5, 5.15 or 5.16 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder (subject to the last paragraph of Section 9.14 hereof).

**Section 9.4. *Application of Money Collected.*** Any money collected by the Funding Lender or the Fiscal Agent pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

First: To the payment of any and all other amounts due under the Funding Loan Documents to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement;

Second: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan, including, without limitation, any amounts due to the Governmental Lender, the Funding Lender, the Servicer, and the Rebate Analyst;

Third: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Governmental Lender Note) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Governmental

Lender Note; provided, however, that partial interests in any portion of the Funding Loan, as evidenced by the Governmental Lender Note shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and

Fourth: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

If and to the extent this Section 9.4 conflicts with the provisions of the Servicing Agreement, the provisions of the Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

**Section 9.5. Remedies Vested in Funding Lender.** All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto.

**Section 9.6. Restoration of Positions.** If Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

**Section 9.7. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**Section 9.8. Delay or Omission Not Waiver.** No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

**Section 9.9. Waiver of Past Defaults.** Before any judgment or decree for payment of money due has been obtained by the Funding Lender against the Borrower, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Fiscal Agent, the Governmental

Lender, the Equity Investor and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

**Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Note.** As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether or not the Governmental Lender Note have been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11. Waiver of Appraisal and Other Laws.**

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws. The Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof.

(b) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

**Section 9.12. Suits to Protect the Security.** The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

**Section 9.13. Remedies Subject to Applicable Law.** All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in

the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**Section 9.14. *Assumption of Obligations.*** In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth in such Borrower Loan Documents and Funding Loan Documents and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents.

**ARTICLE X  
AMENDMENT; AMENDMENT OF FUNDING LOAN AGREEMENT  
AND OTHER DOCUMENTS**

**Section 10.1. *Amendment of Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender, the Fiscal Agent and the Governmental Lender; provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender, the Fiscal Agent or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender and the Fiscal Agent.

**Section 10.2. *Amendments Require Funding Lender Consent.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender.

**Section 10.3. *Consents and Opinions.*** No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion

and (ii) the Funding Lender, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, a Tax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE XI THE FISCAL AGENT

**Section 11.1. *Appointment of Fiscal Agent; Acceptance.*** The Governmental Lender hereby appoints The Bank of New York Mellon Trust Company, N.A. as Fiscal Agent hereunder. The Fiscal Agent shall signify its acceptance of the duties and obligations imposed upon it by this Funding Loan Agreement by executing this Funding Loan Agreement.

**Section 11.2. *Certain Duties and Responsibilities of Fiscal Agent.***

(a) The Fiscal Agent undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations shall be read into this Funding Loan Agreement against the Fiscal Agent.

(b) If an event of default exists hereunder or under any Borrower Loan Document of which Fiscal Agent has been provided Written Notice, the Fiscal Agent shall exercise such of the rights and powers vested in it by this Funding Loan Agreement, and subject to Section 11.2(c)(iii) hereof, use the same degree of care and skill in its exercise, as a prudent corporate trust officer would exercise or use under the circumstances in the conduct of corporate trust business. The Fiscal Agent, prior to the occurrence of an event of default and after the curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent.

(i) The Fiscal Agent may consult with counsel, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Fiscal Agent hereunder in good faith and in reliance thereon.

(ii) The Fiscal Agent shall not be accountable for the use or application by the obligor of the Governmental Lender Note or the proceeds thereof or for the use or application of any money paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement or for the use and application of money received by any paying agent.

(iii) The Fiscal Agent shall have no liability for any loss, expense or liability incurred as a result of such investment made in accordance with directions of the Borrower or the Governmental Lender, as applicable.

(c) No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, in each case, as finally adjudicated by a court of law, except that:

(i) This subsection shall not be construed to limit the effect of subsection (a) of this Section;

(i) The Fiscal Agent shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts;

(ii) The Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Funding Lender relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement; and

(iii) No provision of this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it in its sole discretion.

Subject to its rights to indemnification pursuant to Section 11.4 hereof, the Fiscal Agent is directed to enter into the Borrower Loan Documents to which it is a party and other related documents, solely in its capacity as Fiscal Agent.

(d) Whether or not therein expressly so provided, every provision of this Funding Loan Agreement and the other Funding Loan Documents relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section. All of the provisions of this Funding Loan Agreement related to the duties, obligations, standard of care, protections and immunities from liability afforded the Fiscal Agent under this Funding Loan Agreement shall apply to the Fiscal Agent in the performance of its duties and obligations under any of the Funding Loan Documents or other related documents or instruments.

(e) The Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Funding Loan Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Funding Loan Agreement.

(f) The permissive rights of the Fiscal Agent to do things enumerated in this Funding Loan Agreement shall not be construed as a duty.



(g) The rights of the Fiscal Agent and limitations of liability enumerated herein and in Section 11.4 shall extend to actions taken or omitted in its role as assignee of the Governmental Lender under the Borrower Loan Agreement and the other Funding Loan Documents.

(h) In connection with the issuance of the Governmental Lender Note, certain moneys may be deposited with the Fiscal Agent before the Conversion Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held uninvested by the Fiscal Agent subject to the terms and conditions of this Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities and indemnification and other sections relating to the Fiscal Agent contained in this Funding Loan Agreement and the Borrower Loan Agreement (the "Effective Provisions") shall be effective as of the first day of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 11.3. *Notice of Defaults.*** Upon the occurrence of any default hereunder or under any Borrower Loan Document and provided that a Responsible Officer of the Fiscal Agent is aware of or has received Written Notice of the existence of such default, promptly, and in any event within 15 days, the Fiscal Agent shall transmit to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the Funding Lender, in the manner and at the addresses for notices set forth in Section 12.1 hereof, notice of such default hereunder known to the Fiscal Agent pursuant to Section 11.4(g) hereof, unless such default shall have been cured or waived.

**Section 11.4. *Certain Rights of Fiscal Agent.*** Except as otherwise provided in Section 11.1 hereof:

(a) The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the purported proper party or parties;

(b) Any request or direction of the Governmental Lender mentioned herein shall be sufficiently evidenced by a certificate or order executed by an Authorized Governmental Lender Representative;

(c) Whenever in the administration of this Funding Loan Agreement or any Borrower Loan Document the Fiscal Agent shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Fiscal Agent (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Written Certificate of the Governmental Lender, the Funding Lender, the Servicer or the Borrower, as appropriate;

(d) The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Funding Loan Agreement or any Borrower Loan Document at the

request or direction of the Funding Lender, pursuant to this Funding Loan Agreement, unless the Funding Lender shall have offered to the Fiscal Agent in writing security or indemnity reasonably satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, except costs, expenses and liabilities which are adjudicated to have resulted from its own negligence or willful misconduct, provided, that nothing contained in this subparagraph (d) shall be construed to require such security or indemnity for the performance by the Fiscal Agent of its obligations under Section 8.6 hereof;

(e) The Fiscal Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, debenture, coupon or other paper or document but the Fiscal Agent, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Fiscal Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books and records of the Governmental Lender, if any, and of the Borrower, in either case personally or by agent or attorney after reasonable notice and during normal business hours;

(f) The Fiscal Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and pay reasonable compensation thereto and the Fiscal Agent shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. The Fiscal Agent may act upon the advice of counsel of its choice concerning all matters hereof and the Fiscal Agent shall not be responsible for any loss or damage resulting from any action or inaction taken in good faith reliance upon said advice;

(g) Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained; and

(h) The Fiscal Agent shall not be required to take notice or be deemed to have notice of any default hereunder or under any Borrower Loan Document except for failure by the Borrower to make payments of principal, interest, premium, if any, or the Governmental Lender Fee when due, unless a Responsible Officer of the Fiscal Agent shall be specifically notified by a Written Direction of such default by the Governmental Lender, the Servicer or the Funding Lender, and all notices or other instruments required by this Funding Loan Agreement or under

any Borrower Loan Document to be delivered to the Fiscal Agent, must, in order to be effective, be delivered in writing to a Responsible Officer of the Fiscal Agent at the designated corporate trust office of the Fiscal Agent, and in the absence of such Written Notice so delivered the Fiscal Agent may conclusively assume there is no default as aforesaid.

**Section 11.5. *Not Responsible for Recitals, Offering Documents or Financial Condition.*** The recitals contained herein and in the Governmental Lender Note shall be taken as the statements of the Governmental Lender, and the Fiscal Agent assumes no responsibility for their correctness. The Fiscal Agent makes no representations as to the value or condition of the Pledged Revenues, the Security or any part thereof, or as to the title of the Governmental Lender thereto or as to the security afforded thereby or hereby, or as to the validity or sufficiency of this Funding Loan Agreement or of the Governmental Lender Note.

The Fiscal Agent shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the funding of the Funding Loan.

The Fiscal Agent shall not be required to monitor the financial condition of the Borrower or the physical condition of the Project. Unless otherwise expressly provided, the Fiscal Agent shall be under no obligation to analyze, review or verify the accuracy of or make any credit decisions with respect to any financial statements, reports, notices, certificates or documents received hereunder but shall hold such financial statements reports, notices, certificates and documents solely for the benefit of, and review by, the Funding Lender and such other parties to whom the Fiscal Agent may provide such information pursuant to this Funding Loan Agreement. The Fiscal Agent shall not be deemed to have notice of any information contained therein or event of default which may be disclosed therein in any manner.

The Fiscal Agent makes no representations as to and shall have no responsibility for the sufficiency of the insurance required under any of the Borrower Loan Documents.

**Section 11.6. *May Hold Governmental Lender Note.*** The Fiscal Agent in its individual or any other capacity may become the owner or pledgee of the Governmental Lender Note and may otherwise deal with the Governmental Lender, the Funding Lender and the Borrower with the same rights it would have if it were not Fiscal Agent.

**Section 11.7. *Moneys Held in Trust.*** Moneys held by the Fiscal Agent in trust hereunder need not be segregated from other funds except to the extent required by law. The Fiscal Agent shall be under no liability for interest on any moneys received by it hereunder except as otherwise provided herein.

**Section 11.8. *Compensation and Reimbursement.*** Under the Borrower Loan Agreement, the Borrower has agreed to, except as otherwise expressly provided herein, reimburse the Fiscal Agent as provided in this Funding Loan Agreement or the Borrower Loan Agreement, upon its request for all reasonable expenses, disbursements and advances incurred or made by the Fiscal Agent in accordance with any provision of this Funding Loan Agreement (including the

reasonable fees, expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to the Fiscal Agent's negligence or willful misconduct, both as finally adjudicated by a court of law.

When the Fiscal Agent incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally.

(a) The Governmental Lender has no obligation to pay the Fiscal Agent for services rendered.

(b) As security for the performance of the obligations of the Borrower under this Section and for the payment of such compensation, expenses, reimbursements and indemnity, the Fiscal Agent shall have the right to use and apply any moneys held by it as Pledged Revenues.

(c) The Fiscal Agent's rights to compensation and reimbursement shall survive its resignation or removal, the payment of the Funding Loan or the Borrower Loan or the release of this Funding Loan Agreement.

**Section 11.9. *Fiscal Agent Required; Eligibility.*** Any successor Fiscal Agent shall at all times be a trust company, a state banking corporation or a national banking association with the authority to accept trusts in the State approved in writing by the Governmental Lender and either (a) have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, (b) be a wholly owned subsidiary of a bank holding company, or a wholly owned subsidiary of a company that is a wholly owned subsidiary of a bank holding company, having a combined capital surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition, have at least \$500,000,000 of trust assets under management and have a combined capital surplus of at least \$2,000,000 as set forth in its most recent published annual report of condition, or (c) be otherwise acceptable to the Funding Lender in its sole and absolute discretion.

**Section 11.10. *Resignation and Removal; Appointment of Successor.***

(a) No resignation or removal of the Fiscal Agent hereunder and no appointment of a successor Fiscal Agent pursuant to this Article shall become effective until the written acceptance by the successor Fiscal Agent of such appointment.

(b) The Fiscal Agent may resign at any time by giving 60 days' Written Notice thereof to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the Funding Lender. If an instrument of acceptance by a successor Fiscal Agent shall not have been delivered to the Fiscal Agent within 30 days after the giving of such notice of resignation, the resigning Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(c) The Fiscal Agent may be removed at any time with 30 days' notice by (i) the Governmental Lender, with the Written Consent of the Funding Lender, (ii) the Borrower (unless the Borrower is in default under any of the Borrower Loan Documents), with the Written Consent of the Funding Lender and the Governmental Lender, or (iii) the Funding Lender by Written Notice delivered to the Fiscal Agent, the Governmental Lender, the Equity Investor and the Borrower.

(d) If the Fiscal Agent shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the designated corporate trust office of the Fiscal Agent for any cause, the Governmental Lender shall promptly appoint a successor Fiscal Agent, with the consent of the Funding Lender. In case all or substantially all of the Pledged Revenues and Security shall be in the possession of a receiver or trustee lawfully appointed, such receiver or trustee may similarly appoint a successor to fill such vacancy until a new Fiscal Agent shall be so appointed by the Governmental Lender. If, within 60 days after such resignation, removal or incapability or the occurrence of such vacancy, the Governmental Lender has failed to so appoint a successor Fiscal Agent, then a successor Fiscal Agent shall be appointed by the Funding Lender (from any institution acceptable to the Governmental Lender to serve as a fiscal agent or trustee) with Written Notice thereof delivered to the Governmental Lender, the Borrower, the Equity Investor, the Servicer, if any, and the retiring Fiscal Agent, and the successor Fiscal Agent so appointed shall, forthwith upon its acceptance of such appointment, become the successor Fiscal Agent and supersede the successor Fiscal Agent appointed by such receiver or Fiscal Agent. If no successor Fiscal Agent shall have been appointed by the Governmental Lender or the Funding Lender and accepted appointment in the manner hereinafter provided, the Fiscal Agent may petition any court of competent jurisdiction for the appointment of a successor Fiscal Agent.

(e) The retiring Fiscal Agent shall cause Written Notice of each resignation and each removal of the Fiscal Agent and each appointment of a successor Fiscal Agent to be provided to the Funding Lender. Each notice shall include the name of the successor Fiscal Agent and the address of the office of the successor Fiscal Agent.

**Section 11.11. *Acceptance of Appointment by Successor.***

(a) Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to the Governmental Lender and to the retiring Fiscal Agent an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Fiscal Agent shall become effective and such successor Fiscal Agent, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts and duties of the retiring Fiscal Agent; notwithstanding the foregoing, on request of the Governmental Lender or the successor Fiscal Agent, such retiring Fiscal Agent shall, upon payment of its charges, execute and deliver an instrument conveying and transferring to such successor Fiscal Agent upon the trusts herein expressed all the estates, properties, rights, powers and trusts of the retiring Fiscal Agent, and shall duly assign, transfer and deliver to such successor Fiscal Agent all property and money held by such retiring Fiscal Agent hereunder. Upon request of any such successor Fiscal Agent, the Governmental Lender shall execute any and all instruments for more fully and certainly

vesting in and confirming to such successor Fiscal Agent all such estates, properties, rights, powers and trusts.

(b) No successor Fiscal Agent shall accept its appointment unless at the time of such acceptance such successor Fiscal Agent shall be qualified and eligible under this Article, to the extent operative.

**Section 11.12. *Merger, Conversion, Consolidation or Succession to Business.*** Any corporation or association into which the Fiscal Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Fiscal Agent shall be a party, or any corporation or association succeeding to all or substantially all of the corporate trust business of the Fiscal Agent, shall be the successor of the Fiscal Agent hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. Notwithstanding the foregoing, any such successor Fiscal Agent shall cause Written Notice of such succession to be delivered to the Funding Lender within 30 days of such succession.

**Section 11.13. *Appointment of Co-Fiscal Agent.*** It is the purpose of this Funding Loan Agreement that there shall be no violation of any laws of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under this Funding Loan Agreement, the Borrower Loan Agreement, any other Borrower Loan Document or the Regulatory Agreement, and in particular in case of the enforcement of any of them on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Fiscal Agent or hold title to the properties, in trust, as herein provided, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent appoint an additional individual or institution as a separate or co-fiscal agent. The following provisions of this Section are adopted to these ends.

The Fiscal Agent is hereby authorized to appoint an additional individual or institution as a separate or co-fiscal agent hereunder, upon Written Notice to the Governmental Lender, the Funding Lender, the Equity Investor and the Borrower, and with the consent of the Governmental Lender and the Funding Lender, but without the necessity of further authorization or consent, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement, any Borrower Loan Document, the Regulatory Agreement or the Borrower Loan Agreement to be exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be exercisable by and vest in such separate or co-fiscal agent but only to the extent necessary to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-fiscal agent shall run to and be enforceable by either of them.

Should any instrument in writing from the Governmental Lender be required by the separate fiscal agent or co-fiscal agent appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request of the Fiscal Agent, be executed, acknowledged and delivered by the Governmental Lender. In case any separate fiscal agent or co Fiscal Agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate fiscal agent or co-fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a successor to such separate fiscal agent or co-fiscal agent.

**Section 11.14. *Loan Servicing.*** The Governmental Lender and the Fiscal Agent acknowledge that the Funding Lender shall have the right to appoint a Servicer to service and administer the Funding Loan and Borrower Loan, as set forth in a Servicing Agreement. The Funding Lender shall provide Written Notice to the Fiscal Agent of the appointment, termination or replacement of any Servicer. The Governmental Lender and the Fiscal Agent shall not be responsible for monitoring the performance of any Servicer or for any acts or omissions of such Servicer. The Funding Lender may, in its sole discretion, terminate or replace the Servicer.

**Section 11.15. *No Recourse Against Officers or Employees of Fiscal Agent.*** No recourse with respect to any claim related to any obligation, duty or agreement contained in this Funding Loan Agreement or any other Funding Loan Document shall be had against any officer or employee, as such, of the Fiscal Agent, it being expressly understood that the obligations, duties and agreements of the Fiscal Agent contained in this Funding Loan Agreement and the other Funding Loan Documents are solely corporate in nature.

**Section 11.16. *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such person's formation and existence as a legal entity and the identity of the owners or controlling persons thereof. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such person or other relevant documentation.

## ARTICLE XII MISCELLANEOUS

**Section 12.1. *Notices.*** All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, e-mail, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows:

If to the Borrower:

The Palms of Deerfield Townhomes, LLC  
c/o SHAG Palms of Deerfield Townhomes Developer, LLC  
1100 N.W. 4<sup>th</sup> Avenue  
Delray Beach, Florida 33444  
Attention: Darren Smith  
Email: [dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)

and a copy to:

Deerfield Beach Family Empowerment, Inc.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, Florida 33441

with a copy to:

Shutts & Bowen LLP  
200 South Biscayne Boulevard  
Suite 4100  
Miami, Florida 33131  
Attention: Robert Cheng, Esq.  
Telephone: (305) 415-9083  
Email: [rcheng@shutts.com](mailto:rcheng@shutts.com)

with a copy to:

Citibank, N.A.  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

If to the Governmental Lender:

Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director  
Telephone: (954) 357-4900

and a copy to:

Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Facsimile: (954) 357-5728



If to Funding Lender: Citibank, N.A.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (212) 723-8209

with a copy to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (805) 557-0924

and

with a copy to: Citibank, N.A.  
c/o Berkadia Commercial Mortgage LLC  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (215) 328-0305

And a copy of any notices  
of default sent to: Citibank, N.A.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (646) 291-5754

If to Fiscal Agent: The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 33256  
Attention: Broward HFA Relationship Manager  
Fax: (904) 886-1125

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this Funding Loan Agreement: (i) three Business Days after the same is deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, e-mail or other telecommunication device, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

**Section 12.2. *Term of Funding Loan Agreement.*** This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for; except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

**Section 12.3. *Successors and Assigns.*** All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

**Section 12.4. *Legal Holidays.*** In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

**Section 12.5. *Governing Law.*** This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

**Section 12.6. *Invalidity, Illegality or Unenforceability of Provisions.*** If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

**Section 12.7. *Execution in Several Counterparts.*** This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

**Section 12.8. *Nonrecourse Obligation of the Borrower.*** Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement pursuant to the provisions of the Borrower Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

**Section 12.9. *Waiver of Trial by Jury.*** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS FUNDING LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 12.10. *Electronic Transactions.***

(a) The transactions described in this Funding Loan Agreement may be conducted and the related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

(b) The Fiscal Agent shall have the right to accept and act upon instructions including funds transfer instructions ("Instructions") given pursuant to this Funding Loan Agreement and related financing documents and delivered using Electronic Means; provided, however, that Borrower and/or the Governmental Lender, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by Governmental Lender and/or the Borrower, as

applicable, whenever a person is to be added or deleted from the listing. For purposes of this subsection (b), "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Governmental Lender and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Governmental Lender and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Governmental Lender and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Governmental Lender, the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Governmental Lender and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Governmental Lender and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 12.11. *Prior Bond Documents.*** On the Conversion Date, this Funding Loan Agreement, the Governmental Lender Note and the Borrower Loan Agreement shall amend, restate and supersede the Indenture, the Bonds and the Loan Agreement, respectively.

[The remainder of this page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the Funding Lender, the Fiscal Agent and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

**CITIBANK, N.A.**, as the Funding Lender

By: \_\_\_\_\_  
Name:  
Title:  
Deal ID # \_\_\_\_\_

[Signature Page to Funding Loan Agreement – The Palms of Deerfield Townhomes]

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

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

[Signature Page to Funding Loan Agreement – The Palms of Deerfield Townhomes]

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA, as  
Governmental Lender**

By: \_\_\_\_\_  
Scott Ehrlich, Chair

[Signature Page to Funding Loan Agreement – The Palms of Deerfield Townhomes]

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS GOVERNMENTAL LENDER NOTE AGREES (A) THAT (I) IT HAS EXECUTED THE **REQUIRED TRANSFEREE REPRESENTATIONS** IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT, IF REQUIRED, AND (II) IT WILL NOT SELL OR OTHERWISE TRANSFER THIS GOVERNMENTAL LENDER NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS GOVERNMENTAL LENDER NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE NOTE, SERIES [2023]  
(THE PALMS OF DEERFIELD TOWNHOMES)

[\$PERMANENT PERIOD AMOUNT]

Date of Issuance: [CONVERSION DATE]

FOR VALUE RECEIVED, the undersigned Housing Finance Authority of Broward County, Florida (“Obligor”), promises to pay to the order of CITIBANK, N.A. (“Holder”) the maximum principal sum of \_\_\_\_\_ MILLION AND NO/100 DOLLARS (\$[PERMANENT PERIOD AMOUNT]) on [December] 1, 20\_\_ or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement dated as of [CONVERSION DATE] (the “Funding Loan Agreement”), among Obligor, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as fiscal agent (the “Fiscal Agent”), and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on this Governmental Lender Note then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of this Governmental Lender Note so paid. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

Obligor shall pay to the Holder on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.



This Governmental Lender Note is a pass-through obligation relating to a permanent loan (the "Borrower Loan") made by Obligor from the proceeds of the Funding Loan to THE PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company, as borrower (the "Borrower"), under that certain Borrower Loan Agreement dated as of [CONVERSION DATE] (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under this Governmental Lender Note.

This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and moneys and Security pledged and assigned under the Funding Loan Agreement. THIS GOVERNMENTAL LENDER NOTE IS NOT A DEBT OR AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NEITHER THE FAITH, REVENUES, CREDIT NOR TAXING POWER OF THE OBLIGOR, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY), OR INTEREST ON THIS GOVERNMENTAL LENDER NOTE. THIS GOVERNMENTAL LENDER NOTE IS PAYABLE, AS TO PRINCIPAL, PREMIUM (IF ANY), AND INTEREST, SOLELY OUT OF THE PLEDGED REVENUES AND THE SECURITY WHICH IS THE SOLE ASSET OF THE OBLIGOR PLEDGED THEREFOR, AND THEN ONLY TO THE EXTENT PROVIDED IN THE FUNDING LOAN AGREEMENT. NEITHER THE MEMBERS OF THE OBLIGOR NOR ANY PERSONS EXECUTING THIS GOVERNMENTAL LENDER NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE BY REASON OF THE ISSUANCE HEREOF. THE OBLIGOR HAS NO TAXING POWER.

THIS GOVERNMENTAL LENDER NOTE HAS BEEN ISSUED PURSUANT TO THE RESOLUTIONS AND IN ACCORDANCE WITH THE ACT.

NO MEMBER, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY INDIVIDUAL EXECUTING THE FUNDING LOAN AGREEMENT OR THIS NOTE, SHALL BE LIABLE PERSONALLY ON THIS GOVERNMENTAL LENDER NOTE OR FOR ANY REASON RELATING TO THE ISSUANCE OF THIS GOVERNMENTAL LENDER NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS GOVERNMENTAL LENDER NOTE, OR FOR ANY CLAIM BASED ON THIS GOVERNMENTAL LENDER NOTE, OR OTHERWISE IN RESPECT OF THIS GOVERNMENTAL LENDER NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENT THERETO, AGAINST ANY MEMBER, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE CONSIDERATION FOR THE ISSUE OF THIS GOVERNMENTAL LENDER NOTE, EXPRESSLY WAIVED AND RELEASED.

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or the Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments or the like shall be payable to the extent allowed by law.

This Governmental Lender Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

The rights and remedies of the Holder hereof during the occurrence of a default are as set forth in the Funding Loan Agreement. All of the covenants, conditions and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Lender Note.

No delay or omission on the part of the Holder in exercising any remedy, right or option under this Governmental Lender Note or the Funding Loan Documents shall operate as a waiver of such remedy, right or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right or option on a future occasion. The rights, remedies and options of the Holder under this Governmental Lender Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies and options of the Holder at law or in equity or under any other agreement.

Subject to the limits on liability set forth herein and in the Funding Loan Agreement, and solely from the collateral pledged therefor, Obligor shall pay all costs of collection on demand by the Holder, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

The transfer of this Governmental Lender Note is subject to certain restrictions as provided in the Funding Loan Agreement and described below and to registration by the holder in person or by the holder's attorney hereof upon surrender of this Governmental Lender Note at the designated corporate trust office of the Fiscal Agent, duly endorsed or accompanied by a written instrument or instruments of transfer in form satisfactory to the Fiscal Agent and the Governmental Lender and executed by the holder hereof or his, her or its attorney duly authorized in writing, containing written instructions as to the details of the registration of the transfer of this Governmental Lender Note. Thereupon the Obligor shall execute (if necessary) and the Fiscal Agent shall authenticate and deliver in the name of the transferee or transferees (but not registered in blank or to "bearer" or a similar designation), a new Governmental Lender Note.

This Governmental Lender Note may not be changed orally. Presentment for payment, notice of dishonor, protest and notice of protest are hereby waived. The acceptance by the Holder of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Holder of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Holder to any action of Obligor which is subject to consent or approval of the Holder hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

(SEAL) OBLIGOR:  
HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Scott Ehrlich, Chair

Attest:

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

**CERTIFICATE OF AUTHENTICATION**

This Governmental Lender Note is the Governmental Lender Note described in the within mentioned Funding Loan Agreement.

Date \_\_\_\_\_ of \_\_\_\_\_  
Authentication: \_\_\_\_\_

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent

\_\_\_\_\_  
Authorized Signatory

## EXHIBIT B

### FORM OF REQUIRED TRANSFEREE REPRESENTATIONS

[ \_\_\_\_\_, 20\_\_ ]

The undersigned, as holder (the “Holder”) of a loan (the “Funding Loan”) in the Maximum Amount of \$[PERMANENT PERIOD AMOUNT] from CITIBANK, N.A. (the “Funding Lender”) to the Housing Finance Authority of Broward County, Florida (the “Governmental Lender”) pursuant to a Funding Loan Agreement dated as of [CONVERSION DATE] (the “Funding Loan Agreement”), among the Funding Lender, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the “Fiscal Agent”), and the Governmental Lender, evidenced by the Multifamily Housing Revenue Note (The Palms of Deerfield Townhomes), Series [2023] (the “Governmental Lender Note”), or an interest therein, hereby represents that:

1. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the Project to be able to evaluate the risk and merits of the investment represented by the Governmental Lender Note. The Holder is able to bear the economic risks of such investment.

2. The Holder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project, the use of proceeds of the Governmental Lender Note and the security therefor so that, as a reasonable lender, the Holder has been able to make its decision to make the Funding Loan and to acquire the Governmental Lender Note. The Holder acknowledges that it has not relied upon the addressee hereof for any information in connection with the Holder’s purchase of the Governmental Lender Note. In addition, the Funding Lender has not relied upon the use of any offering memorandum, placement memorandum or any other similar document with regards to its decision to make the Funding Loan and to acquire the Governmental Lender Note. The Holder is making its decision to make the Funding Loan to the Governmental Lender directly through its credit review and due diligence concerning the Project. The undersigned is acquiring the Governmental Lender Note directly from the Governmental Lender and not through a placement of the Governmental Lender Note with the Holder through any financial institution acting as an intermediary between the Governmental Lender and the Holder

3. The Holder is an Approved Transferee (as defined in the Funding Loan Agreement).

4. The Holder acknowledges that it is making the Funding Loan and acquiring the Governmental Lender Note for investment for its own account and not with a present view toward resale or the distribution thereof, in that it does not now intend to resell or otherwise

dispose of all or any part of its interests in the Governmental Lender Note; provided, however, that the Holder may transfer the Governmental Lender Note as provided in Section 2.6 of the Funding Loan Agreement.

5. The Holder will not utilize any placement memorandum in connection with any sale or transfer of the Governmental Lender Note without providing the Governmental Lender with a draft of any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Governmental Lender Note evidencing the Funding Loan, and the Governmental Lender shall have the right to approve any description of the Governmental Lender and the Governmental Lender Note therein (which approval shall not be unreasonably withheld).

6. The Holder understands that the Governmental Lender Note is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Note are expressly limited as set forth in the Funding Loan Agreement and related documents.

7. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan Agreement.

[Remainder of page intentionally left blank.]

[Signature Page to Required Transferee Representations]

[ ], as Holder

By

Name

Its

**APPENDIX D**  
**BORROWER LOAN AGREEMENT**

[ATTACHD]

**BORROWER LOAN AGREEMENT**

**among**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA,  
as Governmental Lender**

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

**and**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,  
as Borrower**

**Relating to**

**Dated as of \_\_\_\_\_, 202\_ [Conversion Date]**

**Relating to**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Note, Series [2023]  
(The Palms of Deerfield Townhomes)**

**Borrower Loan Principal Amount: \$ \_\_\_\_\_**

**All of the right, title and interest of the Housing Finance Authority of Broward County, Florida in and to this Borrower Loan Agreement (except for its Unassigned Rights) are being assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of \_\_\_\_\_, 20\_\_ by and among the Governmental Lender, the Funding Lender named therein and the Fiscal Agent.**



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## BORROWER LOAN AGREEMENT

**THIS BORROWER LOAN AGREEMENT** (this "**Borrower Loan Agreement**") is made and entered into as of \_\_\_\_\_, 20\_\_\_, by and among the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA** (the "Governmental Lender"), a public body corporate and politic organized and existing under the laws of the State of Florida (the "State"), **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 (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the "Fiscal Agent"), and **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a limited liability company duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the "Borrower").

### RECITALS

WHEREAS, pursuant to Ordinance 79-41, enacted by the Board of County Commissioners of Broward County, Florida (the "County") on June 20, 1979, as amended and a resolution adopted by the County on November 14, 2023, and Resolution No. 2023-\_\_\_ adopted by the Governmental Lender on October 18, 2023, and in accordance with Florida Housing Finance law, Sections 159.601 through 159.623, Florida Statutes, as amended (the "Act"), the Governmental Lender is empowered to issue its revenue bonds, notes or other evidences of indebtedness to finance the acquisition, rehabilitation and equipping of multifamily rental housing facilities for persons of low, moderate and middle income at prices or rentals they can afford; and

WHEREAS, the Act authorizes the Governmental Lender: (a) to make loans to provide financing for multifamily residential housing located within the jurisdiction of the Governmental Lender; (b) to issue its revenue bonds, notes or other evidence of indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans in order to secure the payment of the principal or prepayment amount of and interest on such bonds, debentures, notes or other evidence of indebtedness; and

WHEREAS, on November \_\_, 2023 (the "Delivery Date") pursuant to and in accordance with the Act and a Trust Indenture dated as of November 1, 2023 (the "Indenture") between the Governmental Lender and the Fiscal Agent, the Governmental Lender issued and sold its \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Bonds"), and used the proceeds thereof to make a loan to Borrower upon the terms and conditions of a promissory note dated November \_\_, 2023 from the Borrower to the Governmental Lender in the original principal amount of \$[14,000,000] and the Loan Agreement dated as of the same date as the Indenture between the Governmental Lender and the Borrower (the "Loan Agreement"), for purposes of funding a portion of the costs of acquiring, rehabilitating and equipping a multifamily rental

housing project located in the City of Deerfield Beach, Broward County, Florida, known as The Palms of Deerfield Townhomes, which contains 56 affordable rental housing units (the “Project”); and

WHEREAS, in connection with the issuance of the Bonds, the Funding Lender entered into a [Forward Commitment Agreement with the Borrower and Citibank, N.A., in its capacity as construction lender] (the “Construction Lender”), dated as of [November 1], 2023 (the “Citi Forward Commitment”), whereby the Funding Lender committed, subject to the satisfaction on or before the Termination Date (as defined in the Citi Forward Commitment) of the Conditions to Conversion set forth in the Citi Forward Commitment, to facilitate the permanent financing of the Project by making the Funding Loan (defined below) pursuant to the provisions of this Funding Loan Agreement; and

WHEREAS, as of the date hereof, the Funding Lender has determined that the Conditions to Conversion have been satisfied and, as a result, (i) the Bonds are subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of the Bonds is being paid with amounts on deposit under the Indenture, (iii) a portion of the principal amount of the Bonds is being cancelled such that the principal amount outstanding equals the Permanent Period Amount (as defined in the Citi Forward Commitment), (iv) the Bonds are being removed from the Book-Entry System and being converted to a physical Governmental Lender Note (as described below) which is being purchased by the Funding Lender, (v) this Funding Loan Agreement and the Borrower Loan Agreement dated as of the Conversion Date (the “Borrower Loan Agreement”) by and between the Governmental Lender and the Borrower are being delivered by the respective parties and becoming effective and superseding the Indenture and the Loan Agreement, and (vi) the taxable mortgage loan provided by the Construction Lender is being paid in full in accordance with the Indenture; and

WHEREAS, pursuant to the Funding Loan Agreement, the Funding Lender will (i) advance funds (the “Funding Loan”) to or for the account of the Governmental Lender, and (ii) apply the proceeds of the Funding Loan to make a loan (the “Borrower Loan”) to the Borrower; and

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

WHEREAS, to evidence its payment obligations under this Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Note (as defined in this Borrower Loan Agreement) and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Borrower’s leasehold interest in the land upon which the Project is located pursuant to a [Multifamily Mortgage, Assignment of Rents,

Security Agreement and Fixture Filing], dated as of the date hereof (as amended, restated and/or supplemented from time to time, the “**Security Instrument**”), encumbering the Borrower’s leasehold interest in the Project, made by the Borrower in favor of the Governmental Lender and assigned to the Fiscal Agent for the benefit of the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** Capitalized terms not otherwise defined herein shall have the meanings provided in the Funding Loan Agreement, the Security Instrument or the Loan Covenant Agreement. The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

“Act of Bankruptcy” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“ADA” shall have the meaning set forth in Section 4.1.38 hereof.

“Additional Borrower Payments” shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments), Section 2.6 (Overdue Payments; Payments in Default) and Section 5.15 (Expenses) of this Borrower Loan Agreement; and Section 10 (Prepayments) of the Borrower Note.

“Agreement of Environmental Indemnification” shall mean the Agreement of Environmental Indemnification, dated as of the date hereof, executed by the Borrower and the Guarantor for the benefit of the Beneficiary Parties (as defined therein) and any lawful holder, owner or pledgee of the Borrower Note from time to time.

“Authorized Borrower Representative” shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

“Bankruptcy Code” shall mean the United States Bankruptcy Reform Act of 1978, as amended from time to time, or any substitute or replacement legislation.

“Bankruptcy Event” shall have the meaning given to that term in the Security Instrument.

“Bankruptcy Proceeding” shall have the meaning set forth in Section 4.1.8 hereof.

“Beneficiary Parties” shall mean, collectively, the Fiscal Agent, the Governmental Lender and the Funding Lender.

“Borrower” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Borrower Affiliate” shall mean, as to the Borrower, the Borrower Manager or the Guarantor, (i) any entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of Borrower, the Borrower Manager or the Guarantor, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Borrower, the Borrower Manager or the Guarantor, (iii) any partner, shareholder or, if a limited liability company, member of Borrower, the Borrower Manager or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, the Borrower Manager or the Guarantor (to the extent any of the Borrower, the Borrower Manager or the Guarantor is a natural person).

“Borrower Controlling Entity” shall mean, if the Borrower is a partnership, any general partner or managing general partner of the Borrower, or if the Borrower is a limited liability company, the manager or authorized member of the Borrower, or if the Borrower is a not-for-profit corporation, the members or directors thereof, as applicable.

“Borrower Loan” shall mean the mortgage loan made by the Governmental Lender to the Borrower, as of the Conversion Date, pursuant to this Borrower Loan Agreement, in the principal amount of \$\_\_\_\_\_ as evidenced by the Borrower Note.

“Borrower Loan Documents” shall mean this Borrower Loan Agreement, the Loan Covenant Agreement, the Borrower Note, the Security Instrument, the Agreement of Environmental Indemnification, the Guaranty, the Replacement Reserve Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

“Borrower Loan Payment Date” shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

“Borrower Loan Payments” shall mean the monthly loan payments payable pursuant to the Borrower Note.



“Borrower Manager” shall mean (i) SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company, and/or (ii) any other Person that the members of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender’s approval pursuant to the Borrower Loan Documents), select to be a manager or authorized member of the Borrower. As of the date of this Borrower Loan Agreement, SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company, is the Borrower Manager.

“Borrower Payment Obligations” shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the offices of the Fiscal Agent in Jacksonville, Florida, or federally insured depository institutions in New York, New York are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

“Calendar Month” shall mean each of the twelve (12) calendar months of the year.

“CC&R’s” shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements affecting the Project or the Mortgaged Property.

“Code” shall mean the Internal Revenue Code of 1986, as in effect on the Delivery Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Delivery Date, together with applicable proposed, temporary and final regulations promulgated (the “Regulations”), and applicable official public guidance published, under the Code.

“Collateral” shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Governmental Lender and/or the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document which collateral shall include the Project, all of which collateral (exclusive of the Unassigned Rights) is pledged and assigned to the Fiscal Agent for the benefit of the Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

“Computation Date” shall have the meaning ascribed thereto in Section 1.148-3(e) of the Regulations.

“Condemnation” shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Project, whether direct or indirect.

“Conditions to Conversion” shall have the meaning given to such term in the Citi Forward Commitment.

“Continuing Disclosure Agreement” shall mean that certain Continuing Disclosure Agreement dated as of the date hereof, by and between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the Project, the Borrower and the Funding Loan subsequent to the Conversion Date, as amended, supplemented or restated from time to time.

“Contractual Obligation” shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

“Conversion Date” shall mean \_\_\_\_\_, 20\_\_\_, the date on which the Conditions to Conversion are satisfied and the Funding Lender is funding the Funding Loan as evidenced by the Governmental Lender Note.

“County” shall mean Broward County, Florida.

“County Authorization” shall have the meaning given to that term in the Funding Loan Agreement.

“Day” or “Days” shall mean calendar days unless expressly stated to be Business Days.

“Debt” shall mean, as to any Person, any of such Person’s liabilities, including all indebtedness (whether recourse and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

“Default Rate” shall have the meaning given to that term in the Borrower Note.

“Determination of Taxability” shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Note issued by the National Office of the Internal Revenue Service in which the Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Note, other than a holder who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the

Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

“Developer” shall mean, collectively, SHAG Palms of Deerfield Townhomes Developer, LLC, a Florida limited liability company, and Deerfield Beach Family Empowerment, Inc., a Florida not-for-profit corporation, and their respective successors and assigns.

“Equipment” shall have the meaning given to the term “Personalty” in the Security Instrument.

“Equity Contributions” shall mean the equity to be contributed by the Equity Investor to Borrower, in accordance with and subject to the terms of the Operating Agreement.

“Equity Investor” shall mean HCP-ILP, LLC, a Nevada limited liability company, as the investor member of the Borrower, and its permitted successors and assigns.

“ERISA” shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

“Event of Default” shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall “exist” if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

“Excess Revenues” shall have the meaning ascribed thereto in Section 2.2(e) hereof.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Expenses of the Project” shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower Loan Documents), a management fee (however characterized) not to exceed the Underwritten

Management Fee, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

“Fair Market Value” shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“Fiscal Agent” shall mean the fiscal agent from time to time under and pursuant to the Funding Loan Agreement. Initially, the Fiscal Agent is The Bank of New York Mellon Trust Company, N.A.

“Funding Lender” shall mean Citibank, N.A., a national banking association, in its capacity as lender under the Funding Loan, and its successors and assigns.

“Funding Loan” means the Funding Loan made by the Funding Lender to the Governmental Lender under the Funding Loan Agreement in the principal amount of \$[PERMANENT PERIOD AMOUNT].

“Funding Loan Agreement” means the Funding Loan Agreement dated of even date herewith, by and among the Governmental Lender, the Fiscal Agent and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

“Funding Loan Documents” shall have the meaning given to that term in the Funding Loan Agreement.

“GAAP” shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

“Governmental Authority” shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence.

“Governmental Lender” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Governmental Lender Note” shall mean that certain Multifamily Housing Revenue Note, Series [2023] (The Palms of Deerfield Townhomes) dated [Conversion Date], in the principal amount of \$[Permanent Period Amount], made by the Governmental Lender and payable to the Funding Lender, as it may be amended, supplemented or replaced from time to time.

“Gross Income” shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of the Borrower and derived from the ownership or operation of the Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by the Borrower in accordance with applicable law.

“Gross Proceeds” shall mean, without duplication, the aggregate of:

- (a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;
- (b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;
- (c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and
- (d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

“Ground Lease” shall mean that certain [Ground Lease], dated as of \_\_\_\_\_, 20\_\_\_, by and between the Deerfield Beach Housing Authority, as Lessor, and the Subordinate Lender, as Lessee, as assigned to, and assumed by, Borrower pursuant to that certain [Assignment and Assumption Agreement] dated as of November \_\_\_, 2023.

“Guarantor” and “Guarantors” shall mean, individually and collectively, the Borrower, \_\_\_\_\_ and \_\_\_\_\_, an individual, or any other person or entity which may hereafter become a guarantor of any of the Borrower’s obligations under the Borrower Loan.

“Guaranty” or “Guaranties” shall mean, individually and collectively, the Governmental Lender Guaranties, the Non-Recourse Guaranty, and the Agreement of Environmental Indemnification.

“Indemnified Party” shall have the meaning set forth in Section 5.16 hereof.

“Installment Computation Date” shall mean any Computation Date other than the first Computation Date or the final Computation Date.

“Interest Rate” shall mean, with respect to the Borrower Note, the rate of interest accruing on such Borrower Note pursuant to the terms thereof.

“Land” means the real property described on Exhibit A to the Security Instrument.

“Late Charge” shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in Section 7 of the Borrower Note and Section 2.5(a)(v) hereof.

“Legal Action” shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator or other Governmental Authority.

“Legal Requirements” shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the Project or any property (including the Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the Project, or (ii) in any way limit the use and enjoyment thereof.

“Liabilities” shall have the meaning set forth in Section 5.16 hereof.

“Licenses” shall mean all rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“Lien” shall mean any interest, or claim thereof, in the Project securing an obligation owed to, or a claim by, any Person other than the owner of the Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Project.

“Loan Covenant Agreement” shall mean the Loan Covenant Agreement between the Borrower and the Funding Lender, dated the date hereof.

“Management Agreement” shall mean the [Management Agreement] dated as of \_\_\_\_\_, 2023, between the Borrower and the Property Manager, pursuant to which the Property Manager is to manage the Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“Material Adverse Change” means any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Borrower Loan Agreement or any other Borrower Loan Document; (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, or results of operations of the Borrower, Borrower Manager, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, Borrower Manager or Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender or the Fiscal Agent under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or the Fiscal Agent or, upon the assignment of the Borrower Loan to it, of the Funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

“Moody’s” shall mean Moody’s Investors Service, Inc., or its successor.

“Mortgaged Property” shall have the meaning given to that term in the Security Instrument.

“Nonpurpose Investment” shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

“Non-Recourse Guaranty” shall mean the Exceptions to Non-Recourse Guaranty, dated as of the date of this Borrower Loan Agreement, by Guarantor for the benefit of the Beneficiary Parties.

“Other Charges” shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

“Operating Agreement” shall mean that certain Amended and Restated Operating Agreement of the Borrower dated [the Delivery Date], as the same may be amended, restated or modified in accordance with its terms.

“Patriot Act” shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

“Patriot Act Offense” shall have the meaning set forth in Section 4.1.48 hereof.

“Permitted Encumbrances” shall have the meaning given to that term in the Security Instrument.

“Permitted Lease” shall mean a lease and occupancy agreement pursuant to the form approved by Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

“Person” shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

“Plan” shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

“Potential Default” shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice or the passage of time, or both, be an Event of Default.



“Prepayment Premium” shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any prepayment premium as set forth in the Borrower Note).

“Project” shall mean the Mortgaged Property and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the “Mortgaged Property.”

“Project Agreements and Licenses” shall mean any and all Management Agreements and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the Project or the Mortgaged Property.

“Property Manager” shall mean Housing Authority of the City of Deerfield Beach d/b/a Deerfield Beach Housing Authority, or any other management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

“Provided Information” shall have the meaning set forth in Section 9.1.1(a) hereof.

“Qualified Project Costs” shall mean costs paid with respect to the Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) any reasonable fees for supervisory services actually rendered by such affiliate, and (C) any overhead expenses incurred by such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an “affiliated group” (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to April 19, 2023, being the date on which the Governmental Lender first declared its “official intent” to reimburse costs paid with respect to the Project (within the meaning of Section 1.150-2 of the

Regulations) or the date or dates of issue of the Funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the Project were previously paid and are to be reimbursed with proceeds of the Funding Loan such costs were (A) “preliminary expenditures” (within the meaning of Section 1.150-2(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Funding Loan (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) costs of issuance shall not be deemed to be Qualified Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Project Costs and other costs and expenses to be paid from the proceeds of the Funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Project Costs.

“Rebate Amount” shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the Funding Loan.

“Rebate Analyst” shall mean the rebate analyst, if any, selected by the Borrower pursuant to Section 5.35(d) and acceptable to the Governmental Lender and the Funding Lender. The initial Rebate Analyst shall be [Dufresne CPA Services, P.A.]

“Rebate Analyst’s Fee” shall mean the annual fee of the Rebate Analyst payable by the Borrower to the Rebate Analyst.

“Rebate Fund” shall mean the Rebate Fund created pursuant to Section 5.36(b) hereof.

“Regulations” shall have the meaning given to the term in the definition of the “Code” in this Section 1.1.

“Regulatory Agreement” shall mean that certain Land Use Restriction Agreement, dated as of the date hereof, among the Governmental Lender, the Fiscal Agent and the Borrower.

“Related Documents” shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Operating Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating

to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

“Replacement Reserve Agreement” shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

“Replacement Reserve Fund Requirement” means the Borrower’s funding obligations from time to time under the Replacement Reserve Agreement.

“Resolution” shall mean the resolution of the Governmental Lender adopted on October 18, 2023 authorizing the Funding Loan, as evidenced by the Governmental Lender Note and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

“Review Fee” shall mean the three thousand dollar (\$3,000) fee payable to Funding Lender in connection with the review of requests from the Borrower in connection with events requiring the consent and/or approval of the Funding Lender, including, but not limited to, subordinate financings and easements.

“Secondary Market Disclosure Document” shall have the meaning set forth in Section 9.1.2 hereof.

“Secondary Market Transaction” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities” shall have the meaning set forth in Section 9.1.1 hereof.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Security Documents” shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan Agreement, the Guaranty, the Agreement of Environmental Indemnification, and such other security instruments that Funding Lender may reasonably request.

“Security Instrument” shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

“Servicer” shall mean the servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

“Servicing Agreement” shall mean any servicing agreement or master servicing agreement, between the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

“Standard & Poor’s” or “S&P” shall mean S&P Global Ratings, its successors and assigns.

“State” shall mean the State of Florida.

“Subordinate Lender” shall mean, with respect to the Subordinate Loan, The Palms of Deerfield Beach, LP, a Florida limited partnership, prior owner of the leasehold interest in the Project, which leasehold interest was assigned to Borrower on the Delivery Date.

“Subordinate Loans” shall mean, collectively, (i) the tax-exempt loan made to Borrower by the Subordinate Lender in the principal amount of \$[5,000,000], and (ii) the taxable loan made to Borrower by the Subordinate Lender in the principal amount of \$[13,247,477], each pursuant to the Subordinate Loan Documents, the proceeds of which have been used to provide purchase money financing for the Borrower for a portion of the costs of the acquisition of the Borrower’s leasehold interest in the Project.

“Subordinate Loan Documents” shall mean any loan agreement, financing agreement, security agreement and all other documents pursuant to which the Subordinate Loans are funded or secured.

“Tax Counsel” shall have the meaning set forth in the Funding Loan Agreement.

“Taxes” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

“Term” shall mean the term of this Borrower Loan Agreement pursuant to Section 10.13.

“Title Company” means Old Republic National Title Insurance Company.

“Title Insurance Policy” shall mean the mortgagee title insurance policy, or marked title insurance commitment, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

“Transfer” shall have the meaning given to that term in the Security Instrument.

“UCC” shall mean the Uniform Commercial Code as in effect in the State.

“Underwritten Management Fee” shall have the meaning set forth in the Loan Covenant Agreement.

“Unit” shall mean a residential apartment unit within the Improvements.

“Written Consent” and “Written Notice” shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## ARTICLE II GENERAL

**Section 2.1 Origination of the Borrower Loan.** In order to provide funds for the permanent financing of the Project, the Governmental Lender, pursuant to the County Authorization and in accordance with the Act, will enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan are being advanced in full on the Conversion Date by the Funding Lender to the Fiscal Agent for payment to or for the benefit of the Borrower in accordance with the terms of the Funding Loan Agreement, the Loan Covenant Agreement and this Borrower Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf (other than with respect to the Unassigned Rights) to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1.

### **Section 2.2 Security for the Funding Loan.**

(a) As security for the Funding Loan, the Governmental Lender has pledged and assigned to the Fiscal Agent for the benefit of the Funding Lender under and pursuant to the Funding Loan Agreement (a) the Borrower Note and all of its right, title and interest in and to this Borrower Loan Agreement and the Borrower Loan Documents (except for the Unassigned Rights) and all revenues and receipts therefrom and the security therefor (including the Security Instrument) and (b) the amounts on deposit from time to time in any and all funds established under the Funding Loan Agreement other than the Rebate Fund and Expense Fund created and established thereunder. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be delivered to the Funding Lender. The Borrower hereby acknowledges and consents to such assignment to the Fiscal Agent for the benefit of the Funding Lender.

(b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

(i) *Tax Covenants.* Seek specific performance of, and enforce, the tax covenants of the Funding Loan Agreement, the Regulatory Agreement, the Tax Certificate and this Borrower Loan Agreement, seek injunctive relief against acts which may be in violation of any of

the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate Fund; and

(ii) *Regulatory Agreement.* Seek specific performance of the obligations of the Borrower or any other owner of the Project under the Regulatory Agreement and injunctive relief against acts which may be in violation of the Regulatory Agreement or otherwise in accordance with the provisions of the Regulatory Agreement; provided, however, that the Governmental Lender may enforce any right it may have under the Regulatory Agreement for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender or Fiscal Agent under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) only against Excess Revenues (defined below), if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the use of other funds; and

(iii) *Unassigned Rights.* Take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only enforce any right it may have for monetary damages (which term shall not be deemed to include fees, expenses and indemnification obligations payable by the Borrower to the Governmental Lender or Fiscal Agent under the Regulatory Agreement, the Funding Loan Agreement or this Borrower Loan Agreement) against Excess Revenues, if any, of the Borrower, unless the Funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

(c) In no event shall the Governmental Lender, except at the express written direction of the Funding Lender:

(i) prosecute its action to a lien on the Project; or

(ii) take any action which has a substantial likelihood of or that has a result of, impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

(iii) interfere with the exercise by the Fiscal Agent, the Funding Lender or the Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the Funding Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the Funding Loan.

(d) The Governmental Lender shall provide Written Notice to the Funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the Funding Loan Documents.

(e) As used in this Section 2.2, the term “Excess Revenues” means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of all interest expense, the amortization of all principal of all indebtedness coming due, including but not limited to, the Subordinate Loans, during such period (whether by maturity, mandatory sinking fund payment, acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, and the Subordinate Loans, the payment of all operating, overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to agreement, but excluding depreciation and amortization of intangibles.

### **Section 2.3 Loan; the Borrower Note.**

As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The Governmental Lender shall assign the Borrower Note to the Fiscal Agent on the Conversion Date as a condition to Conversion.

### **Section 2.4 Borrower Loan Payments.**

(a) The Borrower shall make Borrower Loan Payments in accordance with the Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the Servicer by 2:00 p.m., New York City time, on the date that is two (2) Business Days prior to the Borrower Loan Payment Date. Each such payment shall be made to the Fiscal Agent or Servicer, as applicable, by deposit to such account as the Fiscal Agent or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or

counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(b) Unless there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer and the Servicer shall then remit such funds to the Fiscal Agent for deposit into the Funding Loan Payment Fund created under the Funding Loan Agreement. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Fiscal Agent.

**Section 2.5 Additional Borrower Payments.**

(a) The Borrower shall pay the following amounts:

(i) to the Fiscal Agent, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.36 hereof and the Rebate Analyst's Fee to be deposited in the Expense Fund and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

(ii) to the Fiscal Agent for remittance to the Governmental Lender, the Governmental Lender Fee, and, on demand, all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents, the Funding Loan Documents or the Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(iii) all costs of issuance and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

(iv) to the Funding Lender, on demand, all charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the Project, including, without limitation, any Review Fee, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit;

(v) all Late Charges due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection



(v) shall be made to the Servicer, and, if there is no Servicer, such payments shall be made to the Funding Lender;

(vi) to the Fiscal Agent, the Fiscal Agent's Fees as and when the same become due;

(vii) to the Governmental Lender, any Late Reporting Fee and any Issuer's Compliance Fee, each as defined and specified in the Regulatory Agreement;

(viii) to the Fiscal Agent, all fees, charges, costs, advances, indemnities and expenses, including without limitation agent and counsel fees, of the Fiscal Agent incurred under the Borrower Loan Documents or the Funding Loan Documents as and when the same become due; and

(ix) to the entity entitled thereto, when due and payable, all taxes and assessments levied by public agencies on the Project.

(b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

(i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender, Fiscal Agent or the Servicer, as applicable;

(ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document; and

(iii) all expenses, costs and fees relating to inspections of the Project required by the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

**Section 2.6 Overdue Payments; Payments in Default.** If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer, a Late Charge in the amount and to the extent set forth in the Borrower Note, if any.

**Section 2.7 Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds.** The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender in accordance with the terms of the Borrower Note; (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument; and (c)

deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

**Section 2.8 Grant of Security Interest; Application of Funds.** To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts (other than the Rebate Fund and the Expense Fund) created and held by the Fiscal Agent, the Funding Lender or the Servicer for the Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Fiscal Agent, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Fiscal Agent (other than sums held in the Rebate Fund and the Expense Fund), the Funding Lender and the Servicer with respect to the Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

**Section 2.9 Marshalling; Payments Set Aside.** The Governmental Lender, the Fiscal Agent and the Funding Lender shall be under no obligation to marshal any assets in favor of the Borrower or any other Person or against or in payment of any or all of the proceeds. To the extent that the Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Funding Lender, or the Governmental Lender, the Fiscal Agent or the Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender, the Fiscal Agent or the Funding Lender and any and all remedies available to the Governmental Lender, the Fiscal Agent or the Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against the Borrower, any Guarantor or the Borrower Manager and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender, the Fiscal Agent and the Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by the Borrower for the initial asset transfer,

plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender, the Fiscal Agent or the Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender, the Fiscal Agent or the Funding Lender in connection with the exercise by the Governmental Lender, the Fiscal Agent or the Funding Lender of its rights under this Section 2.9.

**ARTICLE III  
RESERVED**

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES**

**Section 4.1 Borrower Representations.** To induce the Governmental Lender, the Fiscal Agent and the Funding Lender to execute this Borrower Loan Agreement, the Borrower represents and warrants for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Conversion Date, and subject to Section 4.2 herein, shall survive the making of the Borrower Loan.

**Section 4.1.1 Organization; Special Purpose.** The Borrower is a Florida limited liability company in good standing under the laws of the State, has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper limited liability company action, has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, in the name of and on behalf of the Borrower Manager, is(are) fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership (of a leasehold interest in), management and operation of the Project.

**Section 4.1.2 Proceedings; Enforceability.** Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

**Section 4.1.3 No Conflicts.** The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Operating Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower.

**Section 4.1.4 Litigation; Adverse Facts.** There is no Legal Action, nor is there a basis known to the Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened in writing, against or affecting the Borrower, any Borrower Manager or any Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the Funding Loan Documents, upon the ability of each of the Borrower, each Borrower Manager and any Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the Project), properties or operations of the Borrower, the Borrower Manager or any Guarantor. None of the Borrower, any Borrower Manager or any Guarantor is in default (and to the Borrower's knowledge no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of the Borrower, any Borrower Manager and any Guarantor to perform their respective obligations under the Borrower Loan Documents, the Funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, any Borrower Manager or any Guarantor. None of the Borrower, any Borrower Manager or any Guarantor is (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the Project), or condition (financial or otherwise) of the Borrower, any Borrower Manager or any Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would

have a material adverse effect on the business, operations, assets (including the Project), or condition (financial or otherwise) of the Borrower, any Borrower Manager or any Guarantor, as applicable; or (c) in default with respect to any agreement to which the Borrower, any Borrower Manager or any Guarantor, as applicable, is a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), or condition (financial or otherwise) of the Borrower, any Borrower Manager or any Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower, any Borrower Manager or any Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the Funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

**Section 4.1.5 Agreements; Consents; Approvals.** Except as contemplated by the Borrower Loan Documents and the Funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the Project, or the Borrower's business, properties, operations or financial condition, except the Permitted Encumbrances. The Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a party or by which it or the Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**Section 4.1.6 Title.** The Borrower shall have good title to a leasehold interest in the Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the Borrower's leasehold interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or

assessments, including water and sewer charges, with respect to the Project, nor are there any claims for payment for work, labor or materials affecting the Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

**Section 4.1.7 Survey.** To the best knowledge of the Borrower, the survey for the Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the Project or the title thereto.

**Section 4.1.8 No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a “Bankruptcy Proceeding”), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Conversion Date, the Borrower has the ability to pay its debts as they become due.

**Section 4.1.9 Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the Project or the business, operations or financial condition of the Borrower or the Borrower’s ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

**Section 4.1.10 No Plan Assets.** The Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

**Section 4.1.11 Compliance.** The Borrower, the Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which would materially adversely affect the financial condition or the business of the Borrower. There has not been committed by the Borrower or any Borrower Affiliate involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the Project or any part thereof or any moneys paid in performance of the Borrower’s obligations under any Borrower Loan Document or any Funding Loan Documents.

**Section 4.1.12 Contracts.** All service, maintenance or repair contracts affecting the Project have been entered into at arm’s length (except for such contracts between the Borrower its affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary

course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

**Section 4.1.13** Financial Information. All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

**Section 4.1.14** Condemnation. No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the Project or for the relocation of roadways providing access to the Project.

**Section 4.1.15** Federal Reserve Regulations. No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

**Section 4.1.16** Utilities and Public Access. To the best of the Borrower's knowledge, the Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the Project are or will be located in the public right-of-way (or adjacent property pursuant to a recorded easement agreement) abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and

share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

**Section 4.1.17** Not a Foreign Person. The Borrower is not a “foreign person” within the meaning of Section 1445(f)(3) of the Code.

**Section 4.1.18** Separate Lots. As of the Conversion Date, each parcel comprising the Land is a separate tax lot and is not a portion of any other tax lot that is not a part of the Land.

**Section 4.1.19** Assessments. There are no pending or, to the Borrower’s best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the Project that may result in such special or other assessments.

**Section 4.1.20** Enforceability. The Borrower Loan Documents and the Funding Loan Documents are not subject to, and the Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury.

**Section 4.1.21** Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument and has delivered to the Servicer copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

**Section 4.1.22** Use of Property; Licenses. The Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the Project. To the Borrower’s knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower’s knowledge, pending or threatened that would result in a change of the zoning of the Project.

**Section 4.1.23** Flood Zone. No structure within the Mortgaged Property lies or is located in an identifiable or designated Special Flood Hazard Area, or if the Mortgaged Property is determined to be in a Special Flood Hazard Area, Borrower will obtain appropriate flood insurance as required under the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as amended, or as required by the Servicer pursuant to its underwriting guidelines.

**Section 4.1.24** Physical Condition. The Project, including all Improvements, parking facilities, systems, fixtures, Equipment and landscaping, are in good and habitable condition in



all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the Project is not in material violation of the ADA, if required under applicable law.

**Section 4.1.25** Encroachments. All of the Improvements included in determining the appraised value of the Project lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

**Section 4.1.26** State Law Requirements. The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable state laws relating to the Borrower Loan, the Funding Loan and the Project.

**Section 4.1.27** Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the Project to the Borrower have been paid. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

**Section 4.1.28** Investment Company Act. The Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

**Section 4.1.29** Fraudulent Transfer. The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower’s assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower’s assets is and will, immediately following the execution and delivery of the Borrower Loan Documents

and the Funding Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

**Section 4.1.30** Ownership of the Borrower. Except as set forth in the Operating Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in the Borrower.

**Section 4.1.31** Environmental Matters. To the best of the Borrower's knowledge, the Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument. The Borrower will execute and deliver the Agreement of Environmental Indemnification on the Conversion Date.

**Section 4.1.32** Name; Principal Place of Business. Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the Project and such principal place of business.

**Section 4.1.33** Subordinated Debt. There is no secured or unsecured indebtedness with respect to the Project or any residual interest therein, other than Permitted Encumbrances and the permitted indebtedness described in Section 6.7 hereof.

**Section 4.1.34** Filing of Taxes. The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

**Section 4.1.35** General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Certificate are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

**Section 4.1.36** Approval of Borrower Loan Documents and Funding Loan Documents. By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form

and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (d) it has not relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer in any manner.

**Section 4.1.37** Funding Loan Agreement. The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

**Section 4.1.38** Americans with Disabilities Act. The Project, as designed, will conform in all material respects, with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and its implementing regulations and the American Disabilities Act Amendments Act (ADAAA) Pub. L. 10-325 and all subsequent amendments (the "ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

**Section 4.1.39** Requirements of Act, County Authorization, Code and Regulations. The Project satisfies all requirements of the Act, the County Authorization, the Code and the Regulations applicable to the Project.

**Section 4.1.40** Regulatory Agreement. The Project is, as of the date of origination of the Funding Loan, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement, including all applicable requirements of the Act, the Resolution, the County Authorization, the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

**Section 4.1.41** Intention to Hold Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42** Concerning Borrower Manager.

(a) The Borrower Manager of the Borrower is a Florida limited liability company, duly organized and validly existing under the laws of the State of Florida. The Borrower Manager has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by the Borrower Manager for its own account and on behalf of the Borrower, as authorized member of the Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

(b) The Borrower Manager has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Borrower Manager.

(c) The Borrower Manager is duly authorized to do business in the State.

(d) The execution, delivery and performance by the Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of the Borrower Manager on behalf of the Borrower, and by all necessary action on behalf of the Borrower Manager.

(e) The execution, delivery and performance by the Borrower Manager, on behalf of the Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) the Borrower Manager's organizational documents; (ii) any other Legal Requirement affecting the Borrower Manager or any of its properties; or (iii) any agreement to which the Borrower Manager is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

**Section 4.1.43** Government and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that the Borrower is not required to have as of the Delivery Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All such orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders,

consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of the Borrower, are required for the due execution, delivery and performance by the Borrower or Borrower Manager of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by the Borrower or Borrower Manager, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

**Section 4.1.44** Concerning Guarantors. The Borrower Loan Documents and the Funding Loan Documents to which the Guarantors are a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantors and are legally valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**Section 4.1.45** No Material Defaults. Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by the Borrower under, and, to the best knowledge of the Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the Project or to which the Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which the Borrower or the Project may be bound; or (iv) any mortgage, instrument, agreement or document by which the Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of the Borrower, the Borrower Manager or any Guarantor or to perform any of their respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

**Section 4.1.46** Payment of Taxes. Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of the Borrower, Borrower Manager and Guarantors required to be filed have been timely filed, and all taxes, assessments, fees and other governmental charges upon the Borrower, Borrower Manager and Guarantors, and upon their respective properties, assets, income and franchises, which are due and payable have been paid

when due and payable; and (ii) the Borrower knows of no proposed tax assessment against it or against Borrower Manager or any Guarantor, other than any federal estate taxes which may be due in connection with the Estate of Mitchell M. Friedman, that would be material to the condition (financial or otherwise) of the Borrower, Borrower Manager or any such Guarantor, and neither the Borrower nor Borrower Manager have contracted with any Governmental Authority in connection with such taxes.

**Section 4.1.47** Rights to Project Agreements and Licenses. The Borrower is the legal and beneficial owner of all rights in and to the Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. The Borrower's interest in the Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents, the Funding Loan Documents and the Subordinate Loan Documents or as otherwise approved by Funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business.

**Section 4.1.48** Patriot Act Compliance. The Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified the Borrower in writing is now included in "Government Lists," or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that the Funding Lender notified the Borrower in writing is now included in "Government Lists."

**Section 4.1.49** Reserved.

**Section 4.1.50** Subordinate Loan Documents. The Subordinate Loan Documents are in full force and effect and the Borrower has paid all amounts due and payable to the Subordinate Lender thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice of the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

**Section 4.1.51** Other Documents. Each of the representations and warranties of the Borrower or the Borrower Manager contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of the Funding Lender and the Governmental Lender.

**Section 4.1.52** [Reserved].

**Section 4.2** **Survival of Representations and Covenants.** All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (ii) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided, however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 11.1 hereof.

## ARTICLE V AFFIRMATIVE COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer that:

**Section 5.1** **Existence.** The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

**Section 5.2** **Taxes and Other Charges.** The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

The Borrower covenants to pay all Taxes and Other Charges of any type or character charged to the Funding Lender affecting the amount available to the Funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including Taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Funding Lender and taxes based upon or measured by the net income or gross receipts (to the extent such Taxes are assessed outside the Property Jurisdiction) of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such Taxes or Other Charges and to require the Funding Lender, at the Borrower's expense, to protest and contest any such Taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such Taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.3 Repairs; Maintenance and Compliance; Physical Condition.** The Borrower shall cause the Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or Equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

**Section 5.4 Litigation.** The Borrower shall give prompt Written Notice to the Governmental Lender, the Funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the Project.

**Section 5.5 Performance of Other Agreements.** The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of any agreement or instrument affecting or pertaining to the Project.

**Section 5.6 Notices.** The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has actual knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower



shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

**Section 5.7 Cooperate in Legal Proceedings.** The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender, the Fiscal Agent and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

**Section 5.8 Further Assurances.** The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that the Borrower's construction or renovation of the Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the Project, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer, the Fiscal Agent and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer, the Fiscal Agent and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer, the Fiscal Agent or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater liability under the Borrower Loan Documents and the Funding Loan Documents or decreasing Borrower's rights under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's, the Fiscal Agent's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Funding Lender in each of the locations reasonably designated by the Servicer or the Funding Lender.

**Section 5.9 Delivery of Financial Information.** After notice to the Borrower of a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to

the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

**Section 5.10 Environmental Matters.** So long as the Borrower owns or is in possession of the Project, the Borrower shall (a) keep the Project in compliance with all Hazardous Materials Laws (as defined in the Security Instrument), (b) promptly notify the Funding Lender, the Fiscal Agent, the Governmental Lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Security Instrument) are on or near the Project in violation of Hazardous Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or the Agreement of Environmental Indemnification.

**Section 5.11 Title to the Project.** The Borrower will warrant and defend its leasehold title to the Project, subject only to Permitted Encumbrances against the claims of all Persons.

**Section 5.12 Governmental Lender's, Fiscal Agent's and Funding Lender's Fees.** The Borrower covenants to pay the reasonable fees, costs and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee), the Fiscal Agent and the Funding Lender or any agents, attorneys, accountants, consultants selected by each of the Governmental Lender, the Fiscal Agent and/or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

**Section 5.13 Estoppel Statement.** The Borrower shall furnish to the Funding Lender or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after written request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the Borrower Note, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request

by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the Project in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

**Section 5.14 Defense of Actions.** The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all reasonable costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the Project to make repairs or take other action to protect the security of the Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Funding Lender appears to be prior or superior to the Borrower Loan Documents or the Funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice to or demand upon the Borrower, but the Funding Lender shall endeavor to notify the Borrower upon taking any of such action (but the Funding Lender shall have no liability for any failure to do so). No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or Funding Loan Documents. In the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the Funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

**Section 5.15 Expenses.** The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the Funding Loan, including reasonable fees and expenses of the Governmental Lender's, the Fiscal Agent's, the Funding Lender's and the Servicer's attorneys, environmental, engineering and other

consultants, and fees, charges or taxes for the recording or filing of the Borrower Loan Documents and the Funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the Funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the Fiscal Agent, the Funding Lender, the Fiscal Agent and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer under the Borrower Loan Documents and the Funding Loan Documents arising out of an Event of Default or with respect to the Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the date of disbursement until the date of reimbursement to the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer, all of which shall constitute part of the Borrower Loan and the Funding Loan and shall be secured by the Borrower Loan Documents and the Funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.15 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the Funding Loan Documents, including the acquisition of the Borrower's leasehold interest in the Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by Section 18(i) of the Security Instrument. Notwithstanding anything to the contrary in this Agreement, neither the Borrower nor the Governmental Lender shall be responsible for any costs associated with any securitization of the Borrower Loan as permitted under this Borrower Loan Agreement.

**Section 5.16 Indemnity.** In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of the Governmental Lender, the Fiscal Agent or the Funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Servicer, the Beneficiary Parties, and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party"), against any

and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

(a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any of the Borrower's obligations under Article IX);

(b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the Project or any part thereof;

(c) Any lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender, the Fiscal Agent or the Funding Lender in respect of any portion of the Project;

(d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance or hazardous material from, the Project or any part thereof; provided, however, Borrower's liability under this provision shall not extend to cover the period of any violation that first arose, commenced or occurred as a result of actions of the Indemnified Party, after the satisfaction, discharge, release, assignment, termination or cancellation of the Security Instrument following the payment in full of the Borrower Note and all other sums payable under the Borrower Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under common control with Borrower following foreclosure of the Security Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure;

(e) The enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(f) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of the

Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party;

(g) Any Determination of Taxability;

(h) Any breach (or alleged breach) by the Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written representation, presentation, report, appraisal or other information given or delivered by the Borrower, Borrower Manager, Guarantor or their Affiliates to the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer or any other Person in connection with the Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by the Borrower of any agreement with respect to the provision of any substitute credit enhancement);

(i) any failure (or alleged failure) by the Borrower, the Funding Lender or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan;

(j) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the Project or any part thereof; or

(k) the use of the proceeds of the Borrower Loan and the Funding Loan,

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Liabilities are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender, or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Liabilities are caused by the gross negligence or willful misconduct of such Indemnified Party

Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement, which

approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.16 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnify hereunder shall survive the final payment or defeasance of the Borrower Loan and the Funding Loan and in the case of the Servicer, any resignation or removal. The provisions of this Section 5.16 shall survive the termination of this Borrower Loan Agreement.

**Section 5.17 No Warranty of Condition or Suitability by the Governmental Lender or Funding Lender.** Neither the Governmental Lender nor the Funding Lender make any warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Borrower's purposes or needs.

**Section 5.18 Right of Access to the Project.** The Borrower agrees that the Governmental Lender, the Funding Lender, the Fiscal Agent, and the Servicer and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon not less than five (5) days prior written notice and subject to the rights of residential tenants, to enter onto the Land (a) to examine, test and inspect the Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the Project.

**Section 5.19 Notice of Default.** The Borrower will provide the Governmental Lender, the Funding Lender and the Servicer as soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Potential Default or Event of Default, with a statement

of an Authorized Borrower Representative describing the details of such Potential Default or Event of Default and any curative action Borrower proposes to take.

**Section 5.20 Covenant with Governmental Lender, the Fiscal Agent and the Funding Lender.** The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Note and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Note from time to time.

**Section 5.21 Reserved.**

**Section 5.22 Maintenance of Insurance.** Borrower will maintain the insurance required by the Security Instrument.

**Section 5.23 Information; Statements and Reports.** The Borrower shall furnish or cause to be furnished to the Funding Lender and, upon written request, the Governmental Lender:

(a) *Financial Statements; Rent Rolls.* In the manner and to the extent required under the Security Instrument, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the form and within the time periods required therein;

(b) *Reserved.*

(c) *Audit Reports.* Promptly upon receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(d) *Notices; Certificates or Communications.* Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the Project or to the Borrower or Borrower Manager naming the Governmental Lender or the Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the Project or the ability of the Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

(e) *Certification of Non-Foreign Status.* Promptly upon request of the Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by the Funding Lender;



(f) *Compliance Certificates.* Together with each of the documents required pursuant to Section 5.23(a) hereof submitted by or on behalf of the Borrower, a statement, in form and substance satisfactory to the Funding Lender and certified by an Authorized Borrower Representative, to the effect that the Borrower is in compliance with all covenants, terms and conditions applicable to the Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by the Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of the Borrower's actions to correct such noncompliance, Event of Default or Potential Default, as applicable; and

(g) *Other Items and Information.* Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of the Borrower, Borrower Manager, Guarantors or the Project, as the Funding Lender or the Governmental Lender reasonably requests from time to time.

In addition, and notwithstanding the foregoing, the Borrower shall furnish or cause to be furnished to the Governmental Lender all reports required under the Regulatory Agreement.

**Section 5.24 Additional Notices.** The Borrower will, promptly after becoming aware thereof, give written notice to the Funding Lender and the Governmental Lender of:

(a) any Lien affecting the Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

(b) any Legal Action which is instituted by or against the Borrower, Borrower Manager or any Guarantor, or any Legal Action which is threatened against the Borrower, Borrower Manager or any Guarantor which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, assets, management, ownership or condition (financial or otherwise) of the Borrower, Borrower Manager, any Guarantor or the Project;

(c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which the Borrower, Borrower Manager or any Guarantor is a party or by or to which the Borrower, Borrower Manager or any Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of the Borrower, Borrower Manager or any Guarantor, as applicable;

(d) any default, alleged default or potential default on the part of the Borrower under the Subordinate Loan Documents or any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

(e) any notice of material default, alleged material default or potential material default on the part of the Borrower received from any tenant or occupant of the Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the Project have been received by the Borrower with respect to, or alleging, the same default, alleged default or potential default;

(f) any change or contemplated change in (i) the location of the Borrower's or Borrower Manager's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by the Borrower or Borrower Manager; or (iii) the nature of the trade or business of the Borrower; and

(g) any default, alleged default or potential default on the part of any member (including, without limitation, Borrower Manager and the Equity Investor) under the Operating Agreement.

**Section 5.25 Compliance with Other Agreements; Legal Requirements.**

(a) The Borrower shall timely perform and comply with, and shall cause Borrower Manager to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Operating Agreement, and the Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

(b) The Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the Project, and will furnish the Funding Lender with reports of any official searches for or notices of violation of any requirements established by such Governmental Authorities. The Borrower will comply and, to the extent it is able, will use commercially reasonable efforts to cause others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, fixturing, use or operation of the Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements comply with all applicable building, zoning and other Legal Requirements, and do not violate any restrictions of record against the Project or the terms of any other lease of all or any portion of the Project. The Funding Lender shall at all times have the right to audit, at the Borrower's expense, the Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and the Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with the Funding Lender in any such audit; provided, however, that so long as no Event of Default has occurred and is continuing, the Borrower shall have no obligation to bear the expense of more than one (1) audit every three years. Without limiting the generality of the foregoing, the Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to

the Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to rehabilitate, occupy, operate, market and lease the Project.

**Section 5.26 Maintenance of Project.** The Borrower shall maintain the Project as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of first class maintenance.

**Section 5.27 Fixtures.** The Borrower shall deliver to the Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which the Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

**Section 5.28 Income from Project.** The Borrower shall first apply all Gross Income to Expenses of the Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose

**Section 5.29 Leases and Occupancy Agreements.**

(a) Lease Approval.

(i) Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without the Funding Lender's prior Written Consent if:

(A) The lease is a Permitted Lease;

(B) The Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the lease; and

(ii) If any Event of Default has occurred and is continuing, the Funding Lender may make written demand on the Borrower to submit all future leases for the Funding Lender's approval prior to execution. The Borrower shall comply with any such demand by the Funding Lender.

(iii) No approval of any lease by the Funding Lender shall be for any purpose other than to protect the Funding Lender's security for the Borrower Loan and to preserve the Funding Lender's rights under the Borrower Loan Documents and the Funding Loan Documents. No approval by the Funding Lender shall result in a waiver of any default of the Borrower. In

no event shall any approval by Funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant or guarantor.

(b) Landlord's Obligations. The Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Project or any space within the Improvements, other than the Ground Lease.

(c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with the Property Manager, the Borrower shall not without the approval of the Funding Lender enter into any leasing or marketing agreement and the Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

**Section 5.30 Project Agreements and Licenses**. To the extent not heretofore delivered to the Funding Lender, the Borrower will furnish to the Funding Lender, as soon as available, true and correct copies of all Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to the Funding Lender and consents to such assignments where required by the Funding Lender, all in form and substance acceptable to the Funding Lender. Neither the Borrower nor Borrower Manager has assigned or granted, or will assign or grant, a security interest in any of the Project Agreements and Licenses, other than to Funding Lender and the Subordinate Lender.

**Section 5.31 Payment of Debt Payments**. In addition to its obligations under the Borrower Note, the Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of the Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform the Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to the Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

**Section 5.32 ERISA**. To the extent applicable, the Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

**Section 5.33 Patriot Act Compliance**. The Borrower shall use its good faith and commercially reasonable efforts to comply with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. The Funding Lender shall have the right to audit the Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over the Borrower and/or the Project, including those relating to money laundering and terrorism. In the event that the Borrower fails to comply with the Patriot Act or any such requirements of Governmental

Authorities, then the Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Section 4.1.48 and this Section 5.33 to become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Section 4.1.48 and this Section 5.33 remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any reasonable expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

**Section 5.34 Funds from Equity Investor.** The Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms of the Operating Agreement.

**Section 5.35 Tax Covenants.** The Borrower further represents, warrants and covenants as follows:

(a) General. The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Note from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof

and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Lender Note, the Funding Loan or affecting the Project. Capitalized terms used in this Section 5.35 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the Funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Note, unless it has received and filed with the Governmental Lender and the Funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Governmental Lender Note for a period during which such portion of the Governmental Lender Note is held by a “substantial user” of any facility financed with the proceeds of the Governmental Lender Note or a “related person,” as such terms are used in Section 147(a) of the Code), the Borrower will comply with this Section 5.35.

(b) Use of Proceeds. The use of the net proceeds of the Funding Loan at all times will satisfy the following requirements:

(i) Limitation on Net Proceeds. At least ninety-five percent (95%) of the net proceeds of the Funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified Project Costs that are costs of a “qualified residential rental project” (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property that is “functionally related and subordinate” thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

(ii) Limit on Costs of Issuance. The proceeds of the Funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the Funding Loan Agreement and no portion thereof in excess of two percent (2%) of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay costs of issuance of the Funding Loan.

(iii) Prohibited Facilities. The Borrower shall not use or permit the use of any proceeds of the Funding Loan or any income from the investment thereof to provide any airplane, skybox, or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(iv) Limitation on Land. Less than twenty-five percent (25%) of the net proceeds of the Funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the Funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

(v) Limitation on Existing Facilities. No portion of the net proceeds of the Funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the construction expenditures with respect to any building and the equipment therefor equal or exceed fifteen percent (15%) of the cost of acquiring such building financed with the proceeds of the Funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting one hundred percent (100%) for fifteen percent (15%)). For purposes of the preceding sentence, the term “construction expenditures” shall have the meaning set forth in Section 147(d)(3) of the Code.

(vi) Accuracy of Information. The information furnished by the Borrower and used by the Governmental Lender in preparing its certifications with respect to Section 148 of the Code and the Borrower’s information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of origination of the Funding Loan.

(vii) Limitation of Project Expenditures. The acquisition, rehabilitation and equipping of the Project were not commenced (each within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on April 19, 2023, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, rehabilitation or equipping of the Project was paid or incurred prior to 60 days prior to such date, except for permissible “preliminary expenditures” not in excess of 20% of the aggregate issue price of the Funding Loan which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs (other than land acquisition, site preparation and similar costs incident to commencement of rehabilitation) incurred prior to the commencement of the rehabilitation or acquisition of the Project.

(viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code’s regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code, and that for the greatest number of buildings the proceeds of the Funding Loan shall be deemed allocated on a pro rata basis to each building in the Project and Borrower’s leasehold interest in the land on which it is located so that the buildings (including eligible furniture and fixtures and functionally related subordinate facilities) and Borrower’s leasehold interest in the land on which they are located will have been financed fifty percent (50%) or more by the proceeds of the Funding Loan for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders or payees of the Funding Loan and the Borrower Note for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and

provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or event of default under this Borrower Loan Agreement or the Funding Loan Agreement.

(c) Limitation on Maturity. The average maturity of the Governmental Lender Note does not exceed 120 percent of the average reasonably expected economic life of the Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Delivery Date or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

(d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Governmental Lender Note or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause a Governmental Lender Note to be classified as an “arbitrage bond” within the meaning of Section 148 of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Borrower Loan Agreement or the Borrower Note relating to the Funding Loan, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Funding Loan, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Funding Loan, invest or cause any Gross Proceeds to be invested in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Funding Loan to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Funding Loan and the interest thereon, including, subject to the second paragraph of this Section 5.35(d), the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Delivery Date for the calculation of rebatable amounts to the United States Treasury Department. Subject to the second paragraph of this Section 5.35(d), the Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts not later than forty-five days after the fifth anniversary of the Delivery Date and each five years thereafter and not later than forty-five days after the final Computation Date and agrees that the Borrower will pay all costs



associated therewith. Subject to the second paragraph of this Section 5.35(d), the Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

Notwithstanding the foregoing provisions of this subparagraph (d) with respect to the engagement of a Rebate Analyst, the Borrower shall not be required to engage a Rebate Analyst so long as on each Computation Date, the Borrower provides to the Funding Lender and the Fiscal Agent a written certification that, as of such Computation Date, no moneys have been received with respect to the Borrower Loan or, to the Borrower's knowledge, after diligent inquiry, the Funding Loan which, under the Funding Loan Documents, are pledged directly or indirectly to pay principal and/or interest on the Borrower Loan or the Funding Loan, other than regularly scheduled payments of principal and interest on the Borrower Loan. If such certification is not given when due, the Borrower agrees to immediately (and no later than 15 days after such Computation Date) engage a Rebate Analyst and to have the Rebate Analyst remain engaged to calculate any Rebate Amount which might be owed with respect to the Governmental Lender Note with respect to such Computation Date.

(e) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(f) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Note for federal income tax purposes, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

(g) Qualified Residential Rental Project. The Borrower hereby covenants and agrees that the Project will be operated as a "qualified residential rental project" within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Note remains outstanding, to the end that the interest on the Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Note to be filed with the Internal Revenue Service within prescribed time limits.

(i) Funding Loan Not a Hedge Bond. The Borrower covenants and agrees that not more than 50% of the proceeds of the Funding Loan will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Funding Loan will be used to carry out the governmental purposes of the Funding Loan within the three-year period beginning on the Delivery Date.

(j) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate in accordance with Section 10.13 hereof, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the Funding Loan will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Funding Loan.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.35 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Borrower Loan Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Fiscal Agent, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Note to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion to the effect that such proposed amendment will not adversely impact the excludability of interest on the

Governmental Lender Note in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.35, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.35; provided, however, that the Funding Lender shall take no action under this Section 5.35 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.35.

The Borrower irrevocably authorizes and directs the Funding Lender, the Fiscal Agent and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Funding Lender, the Fiscal Agent, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Funding Loan in an amount related to the amount of the Borrower Loan.

**Section 5.36 Payment of Rebate.**

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Governmental Lender Note in accordance with Section 148(f) of the Code including:

(i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Fiscal Agent, the Governmental Lender, the Servicer, or, if there is no Servicer, to the Funding Lender, within 55 days after each Computation Date:

(A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

(B) (1) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that,

together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any “previous rebate payments” made to the United States (as that term is used in Section 1.148-3(f)(1) of the Regulations); and

(C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

(ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.36 of an amount described in Section 5.36(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Servicer (for deposit to the Rebate Fund) and cause the Fiscal Agent to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the Regulations, within 175 days after any discovery or notice and (2) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Note from becoming an arbitrage bond within the meaning of Section 148 of the Code.

(iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.36 for at least six years after the later of the final maturity of the Governmental Lender Note or the date the Funding Loan is retired in full.

(iv) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount.

(v) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Borrower Loan Agreement, the Governmental Lender, the Funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.36,

such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

(b) Rebate Fund. The Fiscal Agent shall establish under the Funding Loan Agreement and hold a separate fund designated as the "Rebate Fund." The Servicer shall deposit or transfer to the credit of the Rebate Fund each amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

(c) Within fifteen (15) days after each receipt or transfer of funds to the Rebate Fund, the Fiscal Agent shall withdraw from the Rebate Fund and pay to the United States of America the entire balance of the Rebate Fund.

(d) All payments to the United States of America pursuant to this Section 5.36 shall be made by the Fiscal Agent for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Servicer by the Borrower or the Rebate Analyst as set forth in this Section 5.36).

(e) The Borrower shall preserve all statements, forms and explanations received or delivered pursuant this Section 5.36 and all records of transactions in the Rebate Fund until six years after the retirement of the Funding Loan.

(f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Funding Lender, the Fiscal Agent or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the Funding Lender to secure the Funding Loan or any other obligations.

(g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender, the Fiscal Agent and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender, the Fiscal Agent and the Funding Lender with respect to such withdrawal.

(h) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.36 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a Tax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender and the Fiscal Agent.

**Section 5.37 Covenants under Funding Loan Agreement.** The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the Funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the Funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

**Section 5.38 Continuing Disclosure Agreement.** The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Funding Loan, the Borrower and other matters as specifically provided for in such agreement. The duties and obligations of the Borrower under the Continuing Disclosure Agreement shall be as set forth in the Continuing Disclosure Agreement.

**Section 5.39 Subordinate Loans.** Borrower shall comply in all respects with all of the covenants contained in the Subordinate Loan Documents. Borrower shall deliver to Funding Lender for its prior written approval all requests for proceeds of the Subordinate Loans, together with copies of any other forms for rehabilitation-related or non-rehabilitation-related disbursements submitted by Borrower in connection with the Subordinate Loans.

## ARTICLE VI NEGATIVE COVENANTS

The Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Borrower Payment Obligation or other obligation of the Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. The Borrower covenants and agrees that it will not, directly or indirectly:

**Section 6.1 Management Agreement.** Without first obtaining the Funding Lender's prior Written Consent, enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Property Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Property Manager to terminate the Management Agreement (or such successor management agreement); provided, however, that Funding Lender's prior Written Consent shall not be required for any extension or renewal of the Management Agreement on the same terms and conditions.

**Section 6.2 Dissolution.** Dissolve or liquidate, in whole or in part, merge with or consolidate into another Person.

**Section 6.3 Change in Business or Operation of Property.** Enter into any line of business other than the ownership and operation of the Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the Project as a multi-family property or terminate such business for any reason whatsoever.

**Section 6.4 Debt Cancellation.** Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

**Section 6.5 Assets.** Purchase or own any real property or personal property incidental thereto other than the Project.

**Section 6.6 Transfers.** Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument, nor transfer any material License required for the operation of the Project.

**Section 6.7 Debt.** Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the Project or interest therein or in the Borrower or any member thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iii) trade payables incurred in the ordinary course of business, (iv) the Subordinate Loans, and (v) unsecured deferred developer fees as permitted pursuant to the terms of the Development Services Agreement. Members of the Borrower may make unsecured loans to the Borrower in accordance with the Operating Agreement.

**Section 6.8 Assignment of Rights.** Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

**Section 6.9 Principal Place of Business.** Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender, the Governmental Lender, the Fiscal Agent and the Servicer.

**Section 6.10 Operating Agreement.** Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld, conditioned or delayed) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive

or release in any material respect, any of its rights or remedies under the Operating Agreement; provided, however, the consent of the Funding Lender is not required for (i) modifications necessary to reflect the occurrence of a “Permitted Transfer” as defined in and permitted by the Security Instrument or (ii) modifications that do not: (A) impose any additional or greater obligations on the Borrower or any of the partners, managers or members of Borrower, (B) reduce or relieve the Borrower or any of the partner, managers or members of the Borrower of any of their obligations, (C) modify the timing, amounts, number, conditions or other terms of the installments or other payment obligations of the partners or members of the Borrower or (D) impair the collateral for the loan from the Funding Lender; provided, however, that the Borrower shall promptly provide to the Funding Lender a copy of any modifications to the Borrower’s organizational documents that do not require the Funding Lender’s consent.

**Section 6.11 ERISA.** To the extent applicable, maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to, any Plan, or permit the assets of the Borrower to become “plan assets,” whether by operation of law or under regulations promulgated under ERISA.

**Section 6.12 No Hedging Arrangements.** Without the prior Written Consent of the Funding Lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13 Loans and Investments; Distributions; Related Party Payments.**

Without the prior Written Consent of the Funding Lender in each instance, the Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower, or make any distribution, in cash or in kind, in respect of interests in the Borrower, any Borrower Affiliate or any other Person owning an interest, directly or indirectly, in the Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.28 hereof).

**Section 6.14 Amendment of Related Documents or CC&R’s.** Without the prior Written Consent of Funding Lender in each instance, except as provided herein or in the Loan Covenant Agreement, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R’s (including, without limitation, those contained in this Borrower Loan Agreement and any



Management Agreement, but excluding the Operating Agreement, which is covered by Section 6.10 hereof), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

**Section 6.15 Personal Property.** The Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than the Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in the Borrower at the time of installation, without the Funding Lender's prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

**Section 6.16 Fiscal Year.** Without the Funding Lender's Written Consent, which shall not be unreasonably withheld, neither the Borrower nor the Borrower Manager shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

**Section 6.17 Publicity.** Neither the Borrower nor the Borrower Manager shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify the Funding Lender or any of its Affiliates as the source of the financing provided for herein, without the prior written approval of the Funding Lender in each instance (provided that nothing herein shall prevent the Borrower or the Borrower Manager from identifying the Funding Lender or its Affiliates as the source of such financing to the extent that the Borrower or the Borrower Manager are required to do so by disclosure requirements applicable to publicly held companies).

**Section 6.18 Subordinate Loan Documents.** Without the Funding Lender's prior Written Consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

**Section 6.19 [Reserved].**

**ARTICLE VII  
RESERVED**

**ARTICLE VIII  
DEFAULTS**

**Section 8.1 Events of Default.** Each of the following events shall constitute an "Event of Default" under this Borrower Loan Agreement:

(a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Note,

or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

(b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

(c) an Event of Default, as defined or described in the Borrower Note, the Security Instrument or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower or any Guarantor of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

(d) any representation or warranty made by any of the Borrower, any Guarantor or the Borrower Manager in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, any Guarantor or the Borrower Manager in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Delivery Date;

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due;

(f) a Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21 of the Security Instrument; which, in the case of a non-profit controlled by the Borrower Controlling Entity, may be replaced within sixty (60) days of such event with another non-profit the Borrower Controlling Entity acceptable to the Funding Lender, in which case no Event of Default shall be deemed to have occurred;

(g) the failure by the Borrower or any ERISA Affiliate of the Borrower to comply in all respects with ERISA, if applicable, or the occurrence of any other event (with respect to the failure of the Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of the Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to

impose upon the Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(h) a Bankruptcy Event shall occur with respect to the Borrower, any Borrower Manager or Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document, provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(i) all or any part of the property of the Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released within thirty (30) days of the date thereof;

(j) subject to Section 10.15 hereof, the Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of One Hundred Thousand Dollars (\$100,000), and such failure continues beyond the expiration of any applicable cure or grace periods;

(k) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, any Borrower Manager or Guarantor, or property of Borrower, any Borrower Manager or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any Borrower Manager or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(l) a final judgment or decree for monetary damages in excess of Fifty Thousand Dollars (\$50,000) or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any Borrower Manager or any Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged or stayed within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty) , provided that any such judgment, decree, fine or penalty against any Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which each Guaranty has terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(m) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of Fifty Thousand Dollars (\$50,000) or more shall be rendered against the Borrower, any Borrower Manager or Guarantor, or against any of their respective assets, that is not paid, superseded or stayed within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against the Borrower, any Borrower Manager or any Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of the Borrower, any Borrower Manager or any Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhandled and unstayed for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder, provided that any such judgment, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and the Borrower replaces such Guarantor with a person or entity satisfying the Funding Lender's mortgage credit standards for principals and acceptable to the

Funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the Funding Lender;

(n) the Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any required approval, license, or permit shall be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days;

(o) a default shall occur under any of the Subordinate Loan Documents, which shall continue beyond the expiration of all applicable notice and cure periods and which shall not be waived by the Subordinate Lender; or

(p) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document. Notwithstanding anything to the contrary contained herein, the Equity Investor shall have the right in its sole discretion to cure an Event of Default and the Funding Lender agrees to accept such performance as if provided by the Borrower itself.

## **Section 8.2**      **Remedies.**

**Section 8.2.1**      Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action (whether directly or by directing the actions of the Fiscal Agent), without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and

upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

**Section 8.2.2 Remedies Cumulative.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender or the Fiscal Agent against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until it has exhausted all of its remedies, the Security Instrument has been foreclosed, the Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations have been paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the entire Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender, the Fiscal Agent and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 8.2.3 Delay.** No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender or the Fiscal Agent shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender and the Fiscal Agent

reserve the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the Project, the Rents, the funds or any other collateral.

**Section 8.2.4** Setoff; Waiver of Setoff. Upon the occurrence of an Event of Default, the Funding Lender may, at any time and from time to time, without notice to the Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of the Borrower to the Funding Lender or the Fiscal Agent arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not the Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and the Borrower hereby grants to the Funding Lender, as security for the Borrower Payment Obligations, a security interest in, any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Debt at any time held or owing by the Funding Lender to or for the credit or the account of the Borrower.

**Section 8.2.5** Assumption of Obligations. In the event that the Funding Lender, the Fiscal Agent or the assignee or designee of either shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

**Section 8.2.6** Accounts Receivable. Upon the occurrence of an Event of Default, the Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing the Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

**Section 8.2.7** Defaults under Other Documents. The Funding Lender shall have the right to cure any default under any of the Related Documents and Subordinate Loan Documents, but shall have no obligation to do so.

**Section 8.2.8** Reserved.

**Section 8.2.9** Reserved.

**Section 8.2.10** Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies

hereunder with or without involvement of the Governmental Lender or the Fiscal Agent, provided that only the Governmental Lender may enforce the Unassigned Rights. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument, the covenants, terms and conditions of the Security Instrument shall prevail.

**Section 8.2.11** Power of Attorney. Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, the Borrower hereby constitutes and appoints Funding Lender, or an independent contractor selected by the Funding Lender, as its true and lawful attorney-in-fact with full power of substitution, for the purposes of completion of the Project and performance of the Borrower's obligations under this Borrower Loan Agreement in the name of the Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

- (a) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;
- (b) to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or the Improvements, or clearance of objections to or encumbrances on title;
- (c) to execute all applications and certificates in the name of the Borrower, which may be required by any other construction contract;
- (d) to prosecute and defend all actions or proceedings in connection with the Project, which the Borrower might do on its own behalf;
- (e) to let new or additional contracts to the extent not prohibited by their existing contracts;
- (f) to employ watchmen and erect security fences to protect the Project from injury; and
- (g) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the Funding Loan Documents. The parties hereto acknowledge that,



among the possible outcomes to the pursuit of such remedies, is the situation where the Funding Lender assignees or designees become the owner of the Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and Funding Loan Documents remain outstanding.

## ARTICLE IX SPECIAL PROVISIONS

### **Section 9.1    Sale of Note and Secondary Market Transaction.**

**Section 9.1.1    Cooperation.** Subject to the restrictions of Section 2.5 and Section 2.6 of the Funding Loan Agreement, at the Funding Lender’s or the Servicer’s request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the Funding Lender or the Servicer in connection with one or more permitted sales or assignments of all or a portion of the Governmental Lender Note or participations therein or securitizations of single or multi-class securities (the “Securities”) secured by or evidencing ownership interests in all or a portion of the Governmental Lender Note (each such sale, assignment and/or securitization, a “Secondary Market Transaction”); provided that the Borrower shall not incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the Funding Lender or the Servicer, and shall not materially modify the Borrower’s rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

(a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the Project, the Borrower, the Property Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the Funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I’s and, if appropriate, Phase II’s), engineering reports and other due diligence investigations of the Project, as may be reasonably requested from time to time by the Funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Funding Lender or the Servicer pursuant to this paragraph (a) being called the “Provided Information”), together, if customary, with appropriate verification of and/or consents (including, without limitation, auditor consents) to include or incorporate by reference the Provided Information in an offering document or otherwise provide the Provided Information to investors and potential investors or opinions of

counsel of independent attorneys acceptable to the Funding Lender or the Servicer and the Rating Agencies;

(b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project, the Borrower, the Borrower Loan Documents and the Funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

(c) execute such amendments to the Borrower Loan Documents and the Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the economic terms of the Borrower Loan Documents and the Funding Loan Documents, does not impose any additional administrative burden on the Borrower, and is not otherwise adverse to the Borrower in its reasonable discretion.

**Section 9.1.2 Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1(c) hereof, with the Funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

**Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents.** In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Property Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the Project or the third party); provided that the Borrower shall not be required to incur any third party or other out of pocket costs or expenses in connection therewith. The Borrower shall, if requested by the Funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project or the Property Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project or the Property Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the

statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties. Furthermore, the Borrower hereby indemnifies the Funding Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon a misrepresentation by the Borrower in the Provided Information in a Secondary Market Disclosure Document; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties (except with respect to the information it provided to such parties).

**Section 9.1.4 Borrower Indemnity Regarding Filings.** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify the Funding Lender, the Governmental Lender, the Fiscal Agent, the underwriter group for any securities (the “Underwriter Group”) for any Liabilities to which Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading and (ii) reimburse the Funding Lender, the Servicer, the Governmental Lender, the Fiscal Agent, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Funding Lender, the Governmental Lender, the Fiscal Agent, the Servicer or the Underwriter Group in connection with defending or investigating the Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.5 Indemnification Procedure.** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation; provided however, that each indemnified party shall have the right to employ separate counsel in any such action or proceeding and to participate in the

investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel, investigation and defense if, in such indemnified party's good faith judgment (based on the advice of counsel) a conflict of interest exists or could arise by reason of common representation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower, and an indemnified party shall have the right to review and approve or disapprove any compromise or settlement by the Borrower, which approval shall not be unreasonably withheld, prior to the acceptance of any compromise or settlement by the Borrower.

**Section 9.1.6 Contribution.** In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Notices.** All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or Funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower:                   The Palms of Deerfield Townhomes, LLC  
  c/o SHAG Palms of Deerfield Townhomes, LLC  
  1100 N.W 4<sup>th</sup> Avenue  
  Delray Beach, Florida 33444  
  Attention: Darren Smith  
  Telephone: \_\_\_\_\_  
  Email: [dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)

and a copy to:                         Deerfield Beach Family Empowerment, Inc.  
  533 S. Dixie Highway, Suite 201  
  Deerfield Beach, Florida 33441

with a copy to:                         Shutts & Bowen LLP  
  200 South Biscayne Boulevard, Suite 4100  
  Miami, Florida 33131  
  Attention: Robert Cheng, Esq.  
  Telephone: (305) 415-9083  
  Email: rcheng@shutts.com

with copy to:                           Citibank, N.A.  
  \_\_\_\_\_  
  \_\_\_\_\_  
  \_\_\_\_\_  
  Attention: \_\_\_\_\_  
  Email: \_\_\_\_\_

with copy to:                           \_\_\_\_\_  
  \_\_\_\_\_  
  Attention: \_\_\_\_\_  
  Email: \_\_\_\_\_

If to the Governmental                 Housing Finance Authority of Broward County, Florida  
Lender:                                   110 N.E. 3rd Street, Suite 300  
  Ft. Lauderdale, Florida 33301  
  Attention: Executive Director  
  Telephone: (954) 357-4900

and a copy to: Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.  
Facsimile: (954) 357-5728

If to Funding Lender: Citibank, N.A.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction and Asset Management Group  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (212) 723-8209

with a copy to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (805) 557-0924

and

Citibank, N.A.  
c/o Berkadia Commercial Mortgage LLC  
323 Norristown Road, Suite 300  
Ambler, Pennsylvania 19002  
Attention: Client Relations Manager  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (215) 328-0305

And a copy of any notices of  
default sent to: Citibank, N.A.  
388 Greenwich Street, 17th Floor  
New York, New York 10013  
Attention: General Counsel's Office  
Re: The Palms of Deerfield Townhomes  
Deal ID# \_\_\_\_\_  
Facsimile: (646) 291-5754

If to Fiscal Agent:                   The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 33256  
Attention: Broward HFA Relationship Manager  
Facsimile: (904) 886-1125

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Borrower Loan Agreement and related financing documents and delivered using Electronic Means; provided, however, that Borrower, and/or the Governmental Lender, as applicable, or and such other party giving such instruction (the "Sender") shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by Governmental Lender and/or the Borrower, as applicable, the Sender whenever a person is to be added or deleted from the listing. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder. If the Governmental Lender and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Governmental Lender and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Governmental Lender and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Governmental Lender, the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Governmental Lender and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Governmental Lender and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to

the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Governmental Lender and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

**Section 10.2 Brokers and Financial Advisors.** The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

**Section 10.3 Survival.** This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Fiscal Agent the Funding Lender and the Servicer.

**Section 10.4 Preferences.** The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender, the Fiscal Agent or the Servicer, or the Governmental Lender, the Fiscal Agent or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

**Section 10.5 Waiver of Notice.** The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender, the Fiscal Agent or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan



Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender, the Fiscal Agent or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender, the Fiscal Agent or the Servicer to the Borrower.

**Section 10.6 Offsets, Counterclaims and Defenses.** The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender, the Fiscal Agent, the Governmental Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of the Funding Lender's, the Governmental Lender's or the Fiscal Agent's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower.

**Section 10.7 Publicity.** The Funding Lender and the Servicer (and any Affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the Funding Lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the Funding Lender or the Servicer or one of its or their Affiliates. All news releases, publicity or advertising by the Borrower or its Borrower Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the Funding Loan Documents, the Borrower Loan, the Funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the Funding Lender or the Servicer, as applicable.

**Section 10.8 Construction of Documents.** The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the Funding Loan Documents and that the Borrower Loan Documents and the Funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

**Section 10.9 No Third Party Beneficiaries.** The Borrower Loan Documents and the Funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document

shall be deemed to confer upon anyone other than the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

**Section 10.10 Assignment.** The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the Funding Loan Documents and all Funding Lender's or Fiscal Agent's rights, title, obligations and interests therein may be assigned by the Funding Lender or the Fiscal Agent, as appropriate, at any time in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) or otherwise, subject to the requirements of Article II of the Funding Loan Agreement. Upon such assignment, all references to Funding Lender or the Fiscal Agent, as appropriate, in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the Funding Lender or the Fiscal Agent, as appropriate. The Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to the Borrower, Borrower Manager, Guarantors or any Borrower Affiliate, or the Project, including information that the Borrower is required to deliver to Funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or Funding Loan Documents, or the Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

**Section 10.11 Governmental Lender, Funding Lender, Fiscal Agent and Servicer Not in Control; No Partnership.** None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, the Fiscal Agent, the Funding Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer. Neither the Governmental Lender, the Funding Lender, the Fiscal Agent nor the Servicer undertakes or

assumes any responsibility or duty to the Borrower or to any other person with respect to the Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Fiscal Agent, the Servicer and the Borrower, or to create an equity interest in the Project in the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer, or any sharing of liabilities, losses, costs or expenses.

**Section 10.12 Release.** The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

**Section 10.13 Term of this Borrower Loan Agreement.** This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.12, 5.15, 5.16, 9.1.4, 9.1.5, 9.1.6 and 10.14 hereof shall survive the termination of this Borrower Loan Agreement.

**Section 10.14 Reimbursement of Expenses.** If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender, the Fiscal Agent or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender, the Fiscal Agent and the Servicer for fees of such attorneys and such other expenses so incurred.

**Section 10.15 Permitted Contests.** Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object

in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not prejudicial to Funding Lender's rights or the Governmental Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to the Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless the Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of the Borrower's intent to so contest or object thereto, and unless (i) the Borrower has, in the Funding Lender's judgment, a reasonable basis for such contest, (ii) the Borrower pays when due any portion of the claim, demand, levy or assessment to which the Borrower does not object, (iii) the Borrower demonstrates to Funding Lender's reasonable satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) if required by the Funding Lender, the Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as reasonably requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the Project, (v) the Borrower at all times prosecutes the contest with due diligence, and (vi) the Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, the amount so determined to be due and owing by the Borrower. In the event that the Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by the Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by the Borrower, in order to make such payment.

**Section 10.16 Funding Lender Approval of Instruments and Parties.** All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by the Funding Lender. The Funding Lender's approval of any matter in connection with the Project shall be for the sole purpose of protecting the security and rights of the Funding Lender. No such approval shall result in a waiver of any default of the Borrower. In no event shall the Funding Lender's approval be a representation of any kind with regard to the matter being approved.

**Section 10.17 Funding Lender Determination of Facts.** The Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

**Section 10.18 Calendar Months.** With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of such specified number of Calendar Months that corresponds numerically to the date so specified; provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

**Section 10.19 Determinations by Lender.** Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

**Section 10.20 Governing Law.** This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

**Section 10.21 Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the County. The state and federal courts and authorities with jurisdiction in the County shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

**Section 10.22 Successors and Assigns.** This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.

**Section 10.23 Severability.** The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

**Section 10.24 Entire Agreement; Amendment and Waiver.** This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver.

**Section 10.25 Counterparts.** This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

**Section 10.26 Captions.** The captions of the sections of this Borrower Loan Agreement are for convenience only and shall be disregarded in construing this Borrower Loan Agreement.

**Section 10.27 Servicer.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 38 of the Security Instrument: (a) from time to time, the Governmental Lender or the Funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan Documents, and to otherwise service the Borrower Loan and (b) unless the Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same force and effect.

**Section 10.28 Beneficiary Parties as Third Party Beneficiary.** Each of the Beneficiary Parties shall be a third party beneficiary of this Borrower Loan Agreement for all purposes.

**Section 10.29 Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES OTHER THAN THE GOVERNMENTAL LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY OTHER THAN THE GOVERNMENTAL LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**Section 10.30 Time of the Essence.** Time is of the essence with respect to this Borrower Loan Agreement.

**Section 10.31 [Reserved]**

**Section 10.32 Americans with Disabilities Act.** The Borrower hereby certifies that it will comply with the ADA. The Borrower will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the ADA. The Borrower will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by the Borrower, relating to this Borrower Loan Agreement, to the extent allowed hereunder, shall be subject to the provisions of this Section.

**ARTICLE XI  
LIMITATIONS ON LIABILITY**

**Section 11.1 Limitation on Liability.** Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Note.

**Section 11.2 Limitation on Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. Any obligation or liability of the Governmental Lender created by or arising out of this Borrower Loan Agreement (including, without limitation, any liability created by or arising out of the representations, warranties or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Governmental Lender or a charge upon its general credit, but shall be payable solely out of the moneys due and to become due under the Funding Loan Documents (and not from any moneys due or to become due to the Governmental Lender pursuant to the Unassigned Rights). Neither the issuance of the Funding Loan nor the delivery of this Borrower Loan Agreement shall, directly or indirectly or contingently, obligate the Governmental Lender to make any appropriation for payment of the Funding Loan. No agreements or provisions contained in this Borrower Loan Agreement, the Funding Loan Agreement, any other Funding Loan Document, nor any agreement, covenant or undertaking by the Governmental lender contained in any document executed by the Governmental Lender in connection with the Project or the issuance, sale and delivery of the Governmental Lender Note shall give rise to any pecuniary liability of the Governmental Lender or a charge against its general credit or taxing powers, or shall obligate the Governmental Lender financially in any way. Nothing in the Funding Loan or this Borrower Loan Agreement or the proceedings of the Governmental Lender authorizing the Funding Loan or in the Act or laws of the State or in any other related document shall be construed to authorize the Governmental Lender to create a

debt of the Governmental Lender within the meaning of constitutional or statutory provision of the State. No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Governmental Lender in his or her individual capacity, and neither any employee or officer of the Governmental Lender nor any officer thereof executing the Governmental Lender Note shall be liable personally on the Governmental Lender Note or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee or agent of the Governmental Lender shall incur any personal liability with respect to any other action taken by him or her pursuant to this Borrower Loan Agreement, the Funding Loan Agreement, the Act or the Law. No breach of any pledge, obligation or agreement of the Governmental Lender hereunder may impose any pecuniary liability upon the Governmental Lender or any charge upon its general credit. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement and the Borrower Note, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) of and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) of or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

THE FUNDING LOAN IS ORIGINATED PURSUANT TO THE ACT AND IN ACCORDANCE WITH THE COUNTY AUTHORIZATION, THE RESOLUTION AND THE ACT AND IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY NOR ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER, NOR ANY PERSON EXECUTING THE FUNDING LOAN, SHALL BE LIABLE PERSONALLY ON THE FUNDING LOAN OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THE FUNDING LOAN AGREEMENT. NEITHER THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY OTHER POLITICAL



CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE GOVERNMENTAL LENDER, THE COUNTY, THE STATE NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF OR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT THE PRINCIPAL OF PREMIUM, IF ANY, OR INTEREST ON THE FUNDING LOAN, THE GOVERNMENTAL LENDER NOTE OR OTHER COSTS INCIDENT THERETO. THE FUNDING LOAN AND GOVERNMENTAL LENDER NOTE ARE NOT DEBTS OF THE UNITED STATES OF AMERICA. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Funding Loan or for any claim based thereon or upon any obligation, covenant or agreement in this Borrower Loan Agreement contained, against any past, present or future member of the Governmental Lender, the County, its respective governing body, officers, attorneys, accountants, financial advisors, agents or staff or the officers, attorneys, accountants, financial advisors, agents or staff of any successor public entity, as such, either directly or through the Governmental Lender, the County or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of any member of the Governmental Lender, its governing body and its officers, attorneys, accountants, financial advisors, agents and staff is hereby, and by the acceptance of the Funding Loan, expressly waived and released as a condition of, and in consideration for, the execution of this Borrower Loan Agreement and the issuance of the Funding Loan. It is recognized that notwithstanding any other provision of this Borrower Loan Agreement, neither the Borrower, the Funding Lender nor the Fiscal Agent shall look to the members of the Governmental Lender or the County or its officers, program participants, attorneys, accountants, financial advisors, agents or staff, past, present or future, for damages suffered by the Borrower, the holders or such Fiscal Agent as a result of the failure of the Governmental Lender to perform any covenant, undertaking or obligation under this Borrower Loan Agreement, the Funding Loan, the Regulatory Agreement, any of the other Funding Loan Documents or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, nor for any other reason except for representations made by the Governmental Lender in any certificate of the Governmental Lender and the opinion of counsel to the Governmental Lender delivered on the date of origination of the Funding Loan. Although this Borrower Loan Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Borrower Loan Agreement shall be construed to preclude in any way

any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

**Section 11.3 Waiver of Personal Liability.** No member, director, officer, agent, elected official or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Funding Loan or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

**Section 11.4 Limitation on Liability of Funding Lender's Officers, Employees, Etc.**

(a) The Borrower assumes all risks of the acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender, provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender, the Fiscal Agent and the Funding Lender at law or under any other agreement. None of Governmental Lender, the Fiscal Agent or the Funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender, the Fiscal Agent and the Funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender, the Fiscal Agent and the Funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender, the Fiscal Agent or the Funding Lender.

(b) None of the Governmental Lender, the Fiscal Agent, the Funding Lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the Project. The Governmental Lender, the Fiscal Agent and the Funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of the Governmental Lender, the Fiscal Agent or the Funding Lender for any purpose. Neither the Governmental Lender, the Fiscal Agent nor the Funding Lender is a joint venture partner or member with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted

herein, the Governmental Lender, the Fiscal Agent and the Funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by the Governmental Lender, the Fiscal Agent and the Funding Lender. Approvals granted by the Governmental Lender, the Fiscal Agent and the Funding Lender for any matters covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender, the Fiscal Agent and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the Project or any of the Governmental Lender's, the Fiscal Agent's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

**Section 11.5 Delivery of Reports, Etc.** The delivery of reports, information and documents to the Governmental Lender, the Fiscal Agent and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's, the Fiscal Agent's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender, the Fiscal Agent and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender, the Fiscal Agent and the Funding Lender.

**Section 11.6 Prior Bond Documents.** On the Conversion Date, this Borrower Loan Agreement, the Governmental Lender Note and the Funding Loan Agreement shall amend, restate and supersede the Loan Agreement, the Bonds and the Indenture, respectively.

[The remainder of this page is intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

BORROWER:

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC**, a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

[Signature Page to Borrower Loan Agreement – The Palms of Deerfield Townhomes]

GOVERNMENTAL LENDER:

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA,**  
as the Governmental Lender

By: \_\_\_\_\_  
Scott Ehrlich, Chair

FISCAL AGENT:

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

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

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

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

[Signature Page to Borrower Loan Agreement – The Palms of Deerfield Townhomes]

**Agreed to and Acknowledged by:**

**FUNDING LENDER:**

**CITIBANK, N.A.**

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

[Signature Page to Borrower Loan Agreement – The Palms of Deerfield Townhomes]

**EXHIBIT "B"**

**FORM OF**

**LOAN AGREEMENT**

**[ATTACHED]**



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

**and**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC**

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**LOAN AGREEMENT**

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**Relating to**

**[\$14,000,000]**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

**Dated as of November 1, 2023**

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The interest of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the “Issuer”) in this Loan Agreement has been assigned (except for “Reserved Rights of the Issuer” defined in this Loan Agreement) pursuant to the Trust Indenture (the “Indenture”) dated as of the date hereof by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), and is subject to the security interest of the Trustee thereunder.

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT (“Agreement”)** is entered into as of November 1, 2023, between the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA**, a public body corporate and politic duly organized and existing under the laws of the State of Florida (the “**Issuer**”), and **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company (the “**Borrower**”).

### RECITALS

A. The Legislature of the State of Florida (the “**State**”) has enacted the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended (the “**Act**”), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic, to be known as a housing finance authority of the county for which it was created, for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority.

B. Pursuant to the Act, the Board of County Commissioners of Broward County, Florida (the “**County**”), enacted Ordinance No. 79-41 on June 20, 1979 (the “**Ordinance**”), creating the Housing Finance Authority of Broward County, Florida to carry out and exercise all powers and public and governmental functions set forth in and contemplated by the Act.

C. The Act authorizes the Issuer: (a) to make loans to any person, or to purchase loans, including federally insured mortgage loans, in order to provide financing for residential rental developments located within the Issuer’s area of operation, which are to be occupied by persons of low, moderate or middle income; (b) to issue its revenue bonds pursuant to the Act, for the purpose of obtaining money to make or to purchase such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, and receipts to be received by the Issuer from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds.

D. The Borrower has requested the Issuer to issue its \$[14,000,000] Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “**Bonds**”), the proceeds of which will be utilized to make a loan to the Borrower for purposes of funding a portion of the costs of the acquisition, rehabilitation and equipping of a multifamily rental housing project located in the State known as The Palms of Deerfield Townhomes, which, upon completion, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related uses (the “**Project**”).

E. Pursuant to and in accordance with the Act, the Issuer desires to provide funds to finance a portion of the acquisition, rehabilitation and equipping of the Project by issuing the Bonds, pursuant to a Trust Indenture by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee, of even date herewith (the “**Indenture**”).

F. The proceeds of the Bonds will be used to make a loan to the Borrower (the “**Loan**”) which will be evidenced by this Agreement and a promissory note dated the date of delivery of the Bonds (the “**Note**”) from the Borrower to the Issuer.

G. The obligations of the Borrower under the Loan Agreement and the Note will be secured by the Trust Estate established under the Indenture.

H. Citibank, N.A., a national banking association, in its capacity as construction lender (the “**Mortgage Lender**”), has agreed to provide a construction loan (the “**Mortgage Loan**”) to the Borrower, the proceeds of which shall be advanced pursuant to the Mortgage Loan Documents and used to finance a portion of the costs of the acquisition, rehabilitation and equipping of the Project. The Mortgage Lender will administer the Mortgage Loan during the Construction Phase in accordance with the Mortgage Loan Documents.

I. Citibank, N.A., a national banking association, in its capacity as funding lender (“**Citi**”), has entered into a [Forward Commitment Agreement with the Borrower and the Mortgage Lender] dated as of [November 1], 2023 (the “**Citi Forward Commitment**”), whereby Citi has committed, subject to the satisfaction on or before the Termination Date (as defined in the Citi Forward Commitment) of the Conditions to Conversion set forth in the Citi Forward Commitment, to facilitate the financing of the Project in the Permanent Phase

J. If the Conditions to Conversion are satisfied on or before the Termination Date, Conversion will occur on the Conversion Date and, on such Conversion Date, (i) the Bonds shall be subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of the Bonds shall be paid with amounts on deposit in the Collateral Fund (and other Eligible Funds held under the Indenture), (iii) a portion of the principal amount of the Bonds shall be cancelled such that the principal amount outstanding equals the Permanent Loan Amount (as determined by Citi at such time), (iv) the Bonds shall be removed from the Book-Entry System and converted to a physical Governmental Lender Note (in the form attached to the Funding Loan Agreement) which shall be purchased by Citi, (v) the Funding Loan Agreement attached to the Indenture as Appendix C and the Borrower Loan Agreement attached to the Indenture as Appendix D shall be delivered by the respective parties and become effective and shall supersede the Indenture and this Loan Agreement, respectively, (vi) the proceeds of the Citi Purchase Price, along with other funds of the Borrower, shall be deposited into the Mortgage Loan Prepayment Fund, and (vii) the Mortgage Loan shall be paid in full with amounts on deposit in the Mortgage Loan Prepayment Fund and all security related to the Mortgage Loan shall be released or assigned to Citi. If the Conditions to Conversion are not satisfied on or before the Termination Date, the Loan will not convert from the Construction Phase to the Permanent Phase, and Citi will not have any obligation with respect to the purchase of the Governmental Lender Note.

K. The Issuer has expressly determined and hereby confirms that the issuance of the Bonds will accomplish a valid public purpose of the Issuer by enabling the Issuer to require the Borrower to comply with the provisions of this Agreement with respect to the Project and the Tax Regulatory Agreement, dated as of the same date as this Agreement.

## AGREEMENTS

NOW THEREFOR, the parties hereto, intending to be legally bound hereby, and for and in consideration of the premises and the mutual covenants hereinafter contained, do hereby covenant, agree and bind themselves as follows; *provided* that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a debt or a pledge of the faith and credit or the taxing power of the State, but shall be payable solely out of the Trust Estate (as defined in

the Indenture), anything herein contained to the contrary by implication or otherwise notwithstanding.

## **ARTICLE I DEFINITIONS**

### **Section 1.01 *Definitions.***

All capitalized, undefined terms used herein shall have the same meanings as used in Article I of the Indenture.

### **Section 1.02 *Uses of Phrases.***

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words “Bond,” “Bondholder,” “Holder,” “Owner,” “registered Holder” and “person” shall include the plural as well as the singular number, and the word “person” shall include corporations and associations, including public bodies, as well as persons. Any percentage of Bonds, specified herein for any purpose, is to be figured on the unpaid principal amount thereof then Outstanding. All references herein to specific sections of the Code refer to such sections of the Code and all successor or replacement provisions thereto.

## **ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES**

### **Section 2.01 *Representations, Covenants and Warranties of the Issuer.***

The Issuer represents, covenants and warrants the following, as of the date hereof:

(a) The Issuer is a corporate body and an instrumentality of the State. Under the provisions of the Act, the Issuer is authorized to enter into this Agreement and the Indenture, and the transactions contemplated hereunder and thereunder and to carry out its obligations hereunder and thereunder. By proper action of its members, the Issuer has been duly authorized to execute and deliver the Issuer Documents and to issue and sell the Bonds.

(b) The Issuer will not pledge the amounts derived from this Agreement other than as contemplated by the Indenture.

(c) The Issuer has determined that financing the Project by the issuance of the Bonds will achieve the public purposes of the Act.

(d) No member or director of the Issuer, nor any other official or employee of the Issuer, has any interest, financial, employment or other, in the Borrower, the Project or in the transactions contemplated hereby.

(e) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the title to office of any member of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery

of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(f) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the rehabilitation and equipping of the Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

**Section 2.02 *Representations, Covenants and Warranties of the Borrower and the Authorized Member.***

The Borrower and the Authorized Member, as applicable, represent, covenant and warrant that:

(a) Good Standing; Single-Purpose Covenants.

1. The Borrower (i) is a limited liability company duly organized and existing in good standing under the laws of the State, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement and the Tax Certificate, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Borrower's business and purpose shall consist solely of the ownership, development, operation and management of the Project and such other lawful activities as are incidental, necessary or appropriate thereto. The Borrower shall not incur any indebtedness other than Project indebtedness approved by the Issuer and normal trade accounts payable in the ordinary course of the Borrower's business. The Borrower shall not assume or guaranty any other person's indebtedness or obligations. The Borrower shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Borrower shall not institute or consent to any bankruptcy, insolvency or reorganization proceedings with respect to it, consent to the appointment of a receiver or similar official with respect to it, make any assignment for the benefit of its creditors or admit in writing its inability to pay its debts generally as they become due.

The Borrower shall: maintain books and records and bank accounts separate from those of any other person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements. The Borrower shall not commingle its assets or funds with those of any other person.



2. The Authorized Member (i) is a limited liability company duly organized and existing in good standing under the laws of the State, (ii) has the power to own its property and to carry on its business as now being conducted and as contemplated by this Agreement, and the Tax Certificate, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State. The Authorized Member's business and purpose shall consist solely of acting as the authorized member of the Borrower. The Authorized Member shall not incur any indebtedness other than such obligations under the Project documents, the Borrower's Operating Agreement and related documents, the Borrower's Project indebtedness approved by the Issuer and normal trade accounts payable in the ordinary course of its and the Borrower's business and shall not assume or guaranty any other person's indebtedness or obligations. The Authorized Member shall not dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, transfer or lease its property and assets substantially as an entirety to any entity. The Authorized Member shall not, with respect to itself or the Borrower, institute or consent to any bankruptcy, insolvency or reorganization proceedings, consent to the appointment of a receiver or similar official, make or consent to any assignment for the benefit of creditors or admit in writing its or the Borrower's inability to pay debts generally as they become due.

The Authorized Member shall: maintain books and records and bank accounts separate from those of any other person; conduct its business in its own name and use separate stationery, invoices and checks; maintain its assets in such a manner that it is not costly or difficult to segregate and identify such assets; observe all organizational formalities and hold itself out to creditors and the public as a legal entity separate and distinct from any other entity; prepare separate tax returns and financial statements, or if part of a consolidated group, then be shown thereon as a separate member of such group; allocate and charge fairly and reasonably any common employee or overhead shared with affiliates; and transact all business with affiliates using reasonable and customary terms pursuant to enforceable agreements. The Authorized Member shall not commingle its assets or funds with those of any other person.

(b) Authority. The Borrower and the Authorized Member have full power and authority to (i) execute and deliver the Borrower Documents and Mortgage Loan Documents and (ii) incur the obligations provided for herein and therein, all of which have been duly authorized by all proper and necessary corporate action. All consents or approvals of any public authority which are required as a condition to the validity of this Agreement, the Tax Certificate, the Note, the Bond Purchase Agreement, and the Tax Regulatory Agreement have been obtained.

(c) Binding Agreements. The Borrower Documents and Mortgage Loan Documents have been properly executed by a duly authorized member of the Borrower and the Authorized Member and constitute valid and legally binding obligations of the Borrower, and are fully enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally, and with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose.

(d) Litigation. There is no litigation or proceeding pending or, to the knowledge of the Borrower, threatened against the Borrower, the Authorized Member or the Project before any court or administrative agency which, if determined adversely to the Borrower, will materially adversely

affect the Borrower or the Project, or the authority of the Borrower to enter into or perform under the Borrower Documents and Mortgage Loan Documents.

(e) Conflicts; Defaults. There is (i) no provision of the Borrower's or the Authorized Member's organizational documents or resolutions of the Borrower and no provision of any existing mortgage, indenture, contract or agreement binding on the Borrower or the Authorized Member or affecting any of the Borrower's property and (ii) to the Borrower's or the Authorized Member's knowledge, no provision of law or order of court binding upon the Borrower or the Authorized Member or affecting any of the Borrower's property, in either case which would conflict with or in any way prevent the execution, delivery, or performance of the terms of the Borrower Documents and Mortgage Loan Documents, or which would be in default or violated as a result of such execution, delivery or performance. The Borrower is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.

(f) Title to Project. The Borrower has or will have on the Closing Date good and marketable leasehold interest in the land constituting the site of the Project free and clear of any liens or encumbrances, other than the Permitted Encumbrances (as defined in the Mortgage Loan Security Agreement). The Borrower possesses, and will at all times possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(g) Indenture. The Indenture has been submitted to the Borrower for its examination, and the Borrower acknowledges, by execution of this Agreement, that it has reviewed the Indenture, and it hereby approves the Indenture. The Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform and any duties and obligations which the Borrower or the Issuer is required by the Indenture to perform. The foregoing shall not apply to any duty or undertaking of the Issuer which, by its nature, cannot be delegated or assigned.

(h) Events Affecting Tax Exemption. The Borrower has not taken or permitted to be taken any action that would impair the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds, and the Borrower has never been advised that the interest is or will be subject to inclusion in gross income. As of the Closing Date, the Borrower is in compliance with all requirements contained in the Tax Certificate, and the representations set forth in the Tax Certificate pertaining to the Borrower and the Project are true and accurate in all material respects. Notwithstanding the above, if the Borrower becomes aware of any situation, event or condition which would result in the interest on the Bonds being included in gross income for federal income tax purposes, the Borrower shall promptly give written notice thereof to the Issuer and the Trustee.

(i) Compliance with Laws. The Project is of the type authorized and permitted by the Act and will, from the Closing Date forward, be operated in compliance with the provisions of the Act and the provisions of the Code applicable thereto. The Borrower will use due diligence to cause the Project to be operated in accordance with the Act and all other applicable laws, rulings, regulations and ordinances of the State and the departments, agencies and political subdivisions thereof. The Borrower has obtained or will cause to be timely obtained all requisite approvals of

the State and of other federal and local governmental bodies required for the operation of the Project.

(j) No Material Misstatements. The representations and warranties of the Borrower contained in the Borrower Documents and Mortgage Loan Documents (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance or delivery of the Bonds on the Closing Date), contain no material misstatement of fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading in any material respect. The representations and warranties of the Borrower and the statements, information and descriptions contained in the Official Statement and in the Borrower's closing certificates, as of the Closing Date, are true, correct and complete in all material respects, do not contain any untrue statement or misleading statement of material fact, and do not omit to state a material fact necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading in any material respect. The estimates and assumptions contained in this Agreement and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the most accurate information available to the Borrower.

(k) Interest of Member or Agent of Issuer. To the knowledge of the Borrower, no member or agent of the Issuer has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other persons, in the loan of the bond proceeds, the Bonds, the Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Documents.

(l) Arbitrage Bonds. No money on deposit or to be deposited in any fund or account in connection with the Bonds, whether or not such money was or is to be derived from other sources, has been or will be used by or under the direction of the Borrower in any manner which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

(m) Tax Returns. The Borrower has filed or caused to be filed all required federal, state and local tax returns and has paid all taxes as shown on such returns as such taxes have become due. No claims have been assessed and are unpaid with respect to such taxes.

(n) No Reliance on Issuer. The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Issuer for any guidance or expertise in analyzing the financial or other consequences of such financing transactions or otherwise relied on the Issuer in any manner except to issue the Bonds.

(o) Fees. The Borrower shall pay all fees, including the Issuer Fee, as provided under the Note and in this Agreement.

(p) Place of Business of Borrower. The Borrower has a place of business in the State.

(q) Name of Borrower. The Borrower filed Articles of Organization with the State of Florida and since its date of filings has done business only under the name of “The Palms of Deerfield Townhomes, LLC”.

(r) Governmental Requirements. To the Borrower’s knowledge, no violation of any Governmental Requirement exists with respect to the Project, the Borrower, or any other asset of the Borrower, the Project 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, all necessary utilities are available to the Project, and the Borrower has obtained or will obtain all requisite zoning approvals necessary with respect to the Project.

(s) Condemnation. No condemnation, eminent domain or similar proceeding is pending, or to the knowledge of the Borrower, threatened, with respect to the Project or any portion thereof.

(t) Governmental Approvals. The Borrower has obtained, or will obtain and has maintained as currently in full force and effect, or will be in full force and effect, all consents, and permits, licenses, accreditations, certifications and other approvals (governmental or otherwise) that:

(i) would constitute a condition precedent to, or the absence of which would materially adversely affect, the enforceability of and the performance by the Borrower of its obligations hereunder; and

(ii) are necessary for the acquisition, rehabilitation, financing and operation of the Project.

***Section 2.03 Additional Representations, Warranties and Undertakings of the Borrower and the Authorized Member.***

The Borrower and the Authorized Member, as applicable, make the following additional representations as the basis for their covenants and agreements herein:

(a) The execution and delivery of the Borrower Documents and Mortgage Loan Documents, and the consummation of the transactions herein and therein contemplated, including the application of the proceeds of the Bonds as so contemplated, will not conflict with, or constitute a breach of, or default by it under its formation and governance documents, or any statute, indenture, mortgage, deed of trust, lease, note, loan agreement or other agreement or instrument to which it is a party or by which it or its properties are bound, and will not constitute a violation of any order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties. Additionally, the Borrower is not in breach, default or violation of any applicable statute, indenture, mortgage, deed of trust, note, loan agreement or other agreement or instrument which would allow the obligee or obligees thereof to take any action which would preclude performance under the Borrower Documents by the Borrower.

(b) There are no actions, suits or proceedings of any type whatsoever pending or, to its knowledge, threatened against or affecting it or its assets, properties or operations which, if determined adversely to it or its interests, could have a material adverse effect upon its financial condition, assets, properties or operations and it is not in default with respect to any order or decree

of any court or any order, regulation or decree of any federal, state, municipal or governmental agency, which default would materially and adversely affect its financial condition, assets, properties or operations, or the completion of the rehabilitation of the Project.

(c) Neither any information, exhibit or report furnished to the Issuer by the Borrower in connection with the negotiation of the Borrower Documents nor any of the foregoing representations contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading in any material respect.

(d) The Borrower shall pay all fees, costs and expenses required to be paid by the Borrower under the terms of this Agreement.

(e) None of the moneys in the Project Fund will be disbursed for or be used to pay any cost, or to reimburse the Issuer or the Borrower for any cost, which is not permitted by the Act, the Code, the Loan Agreement or the Indenture.

All representations of the Borrower contained herein and in any certificate or other instrument delivered by the Borrower pursuant to the Borrower Documents or in connection with the transaction contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds.

#### **Section 2.04 *Tax-Exempt Status of the Bonds.***

The Borrower hereby represents, warrants and agrees that the Tax Certificate executed and delivered by the Borrower concurrently with the issuance and delivery of the Bonds is true, accurate and complete in all material respects as of the date on which executed and delivered.

#### **Section 2.05 *Notice of Determination of Taxability.***

Promptly after the Borrower first becomes aware of any investigation relating to the tax status of the Bonds, or a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer and the Trustee at the address of each party listed in Article I of the Indenture.

#### **Section 2.06 *Conversion.***

The Borrower acknowledges and agrees that the Loan is subject to Conversion as provided for in Section 2.12 of the Indenture.

### **ARTICLE III REHABILITATION OF THE PROJECT; ISSUANCE OF THE BONDS**

#### **Section 3.01 *Agreement to Rehabilitate the Project.***

The Borrower agrees to make all contracts and do all things necessary for the rehabilitation of the Project. The Borrower further agrees that it will cause the rehabilitation of the Project with all reasonable dispatch and use its best efforts to cause the rehabilitation of the Project to be completed by the Completion Date, or as soon thereafter as may be practicable, delays caused by *force majeure* as defined in Section 7.01 hereof only excepted; but if for any reason such

rehabilitation is not completed by said Completion Date there shall be no resulting liability on the part of the Borrower or the Issuer and no diminution in or postponement of the payments required in Section 4.02 hereof to be paid by the Borrower.

**Section 3.02 *Agreement to Issue, Sell and Deliver the Bonds; Deposit of Bond Proceeds.***

In order to provide funds for the payment of the Costs of the Project, the Issuer, concurrently with the execution of this Agreement, will issue, sell, and deliver the Bonds and deposit the proceeds thereof with the Trustee, which amounts shall be immediately deposited as set forth in the Indenture.

**Section 3.03 *Disbursements from the Project Fund.***

In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project upon satisfaction of the requirements of the Indenture. The Trustee is directed in the Indenture to make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as Appendix B.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan and conditioned upon the deposit of Eligible Funds into the Collateral Fund as set forth in the Indenture.

**Section 3.04 *Furnishing Documents to the Trustee.***

The Borrower agrees to cause such Requisitions to be delivered to the Trustee as may be necessary to effect payments out of the Project Fund in accordance with Section 3.03 hereof.

**Section 3.05 *Establishment of Completion Date.***

(a) The Borrower Representative shall evidence completion of the Project and the actual date of completion to the Issuer and the Trustee (with copies to the Investor Member and Mortgage Lender) by an executed Completion Certificate. The Completion Certificate shall be executed by the Borrower Representative and shall state to the best information and belief of the Borrower, after due inquiry, that, except for amounts retained (subject to the provisions of this Section 3.05) by the Trustee at the Issuer's or the Borrower's direction and amount retained under the loan for any costs not then due and payable or costs due and payable, the payment of which is being diligently contested in good faith, rehabilitation of the Project has been substantially completed in material compliance with all applicable laws, regulations and agreements, and all costs of labor, services, materials and supplies used in the Project have been paid or provisions have been made for their payment, all equipment necessary for the operation of the Project has been purchased, installed and paid for, is suitable and sufficient for its intended purposes, and is fully operable, all costs and expenses incurred in connection with the Project have been paid except for amounts not yet due and payable or being diligently contested in good faith by the Borrower, and the multifamily units in the Project are suitable and sufficient for its intended purposes. Notwithstanding the foregoing, the Completion Certificate shall further state that it is given without prejudice to any rights of the Borrower against third parties which exist at the date of the Completion Certificate or which may subsequently come into being. The Completion Certificate

shall be furnished by the Borrower to the Issuer and the Trustee (with copies to the Investor Member and Mortgage Lender) promptly following the completion of the Project.

(b) Any amount (exclusive of amounts retained by the Trustee in the Project Fund for payment of Costs of the Project not then due and payable) of proceeds of the Bonds remaining in the Project Fund upon the Completion Date shall be transferred by the Trustee into the Bond Fund and used by the Trustee (i) to pay the principal of and interest on the Bonds or (ii) for any other purpose *provided* that the Trustee is furnished with an opinion of Bond Counsel to the effect that such use is lawful under the Act and will not cause interest on the Bonds to be included in gross income for federal income tax purposes. Until used for one or more of the foregoing purposes, such segregated amount may be invested as permitted by the Indenture *provided* that prior to any such investment the Trustee is provided with an opinion of Bond Counsel to the effect that such investment will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

### **Section 3.06 *Borrower Required to Pay in the Event Project Fund Is Insufficient.***

In the event the moneys in the Project Fund are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefore in the Project Fund. 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 Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower shall pay any portion of the Costs of the Project pursuant to the provisions of this Section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement.

### **Section 3.07 *Special Arbitrage Certifications.***

The Borrower and the Issuer covenant (i) not to take any action or fail to take any action which would cause the interest on any of the Bonds to be or become includable in the gross income of the Holders for federal income tax purposes and (ii) not to cause or direct any moneys on deposit in any fund or account to be used in a manner that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code. The Borrower certifies and covenants to and for the benefit of the Issuer and the Holders of the Bonds that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that will cause the Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code.

### **Section 3.08 *Rebate Calculations and Payments.***

Within thirty (30) days after the end of each Bond Year and within twenty (20) days after payment in full of the Bonds, if necessary, the Borrower shall cause the Rebate Analyst to calculate the Rebate Amount as of the end of that Bond Year or the date of such payment and the Rebate Analyst shall notify the Trustee and the Borrower and the Investor Member of that amount. If the amount then on deposit in the Rebate Fund created under the Indenture is less than the Rebate

Amount (taking into account the amount or amounts, if any, previously paid to the United States), the Borrower shall, within thirty (30) days after the date of the aforesaid calculation, deposit or cause to be deposited to the credit of the Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Rebate Amount. The obligation of the Borrower to make or cause to be made such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture or the termination of this Agreement. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

### **Section 3.09 *Rebate Analyst.***

In accordance with Section 3.08 hereof, the Rebate Analyst shall perform any calculations required under Section 4.06 of the Indenture at the sole expense of the Borrower. In the event the Issuer does not select a Rebate Analyst when any such calculation is required, the Borrower, with the consent of the Issuer, shall appoint a Rebate Analyst, the expense of which shall be borne by the Borrower, and the Borrower shall give prompt notice in writing to the Trustee of such appointment. The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project, it will require that the transferee execute a covenant similar to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds notwithstanding any other provision of this Agreement until the requirements for payment of any Rebate Amount has been fully satisfied.

## **ARTICLE IV LOAN PROVISIONS**

### **Section 4.01 *Loan of Proceeds.***

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. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in Section 3.03 hereof.

### **Section 4.02 *Amounts Payable.***

(a) The Borrower hereby covenants and agrees to repay the Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Indenture, until the principal of 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, in immediately available funds, a sum which, together with any other moneys available for such payment in any account of the Bond Fund, will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Indenture. Payments by the Trustee of principal of and interest on the Bonds from amounts in the Bond Fund shall be credited against the Borrower's obligation to pay principal and interest on the Loan. The Borrower also covenants and agrees to pay any additional interest, taxes or penalties that may be due as a result of a Determination of Taxability.



It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (a) of this Section 4.02 are assigned by the Issuer to the Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund). The Borrower consents to such assignment.

(b) In the event the Borrower should fail to make any of the payments required in this Section 4.02, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

#### **Section 4.03 *Fees and Expenses.***

On the Closing Date, the Borrower agrees to cause to be deposited amounts into the Costs of Issuance Fund as required under the Indenture, to pay: the Issuer Closing Fee, the portion of the Ongoing Issuer Fee due and payable on the Closing Date, rating agency fees, the portion of the Trustee's Fee due and payable on the Closing Date, the Remarketing Agent's Fee and the fee of the Rebate Analyst (including the reasonable fees and expenses of their respective counsel actually incurred) in connection with the issuance of the Bonds and the performance of their duties in connection with the transactions contemplated hereby, including, without limitation, all costs of recording and filing, to the extent such fees and expenses are not otherwise paid from the Costs of Issuance Fund in accordance with Section 4.07 of the Indenture. Following the Closing Date, all fees, charges, costs and expenses, including counsel fees and expenses, of the parties involved in the financing of the Project, including the Issuer Fee, the Trustee's Fee, the Remarketing Agent's Fee and the fees of the Rebate Analyst, shall be paid by the Borrower (i) directly to the parties entitled thereto for their own account, or (ii) to the Trustee for deposit to the funds and accounts established under the Indenture if otherwise required thereunder, as and when such amounts become due and payable. The Borrower will also pay any reasonable expenses actually incurred in connection with any redemption, underwriting or remarketing of the Bonds or amendments or modifications to the Documents. Specifically, and without limiting the foregoing, the Borrower agrees to pay to the Issuer, the Trustee or to any payee designated by the Issuer, within thirty (30) days after receipt of request for payment thereof, all reasonable expenses of the Issuer and the Trustee actually incurred and related to the Project and the financing thereof which are not paid from the funds held under the Indenture, including, without limitation, reasonable legal fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of any documents relating to the Project or the Bonds or in connection with questions or other matters arising under such documents.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, including the Tax Regulatory Agreement.

#### **Section 4.04 *Obligations of the Borrower Unconditional.***

The obligations of the Borrower to make the payments required under this Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Trustee or any other person. Subject

to termination as provided herein, the Borrower (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Agreement, (ii) will perform and observe all of its other agreements contained in this Agreement and (iii) will not terminate this Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement, whether express or implied, or any failure of the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture, whether express or implied.

**Section 4.05 *Remarketing of Bonds.***

The Borrower is hereby granted the right to (i) request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.03 of the Indenture and (ii) with the written consent of the Remarketing Agent (which consent shall not be unreasonably withheld), designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.01 and 3.03 of the Indenture. Notice of any such Remarketing Period and the related Mandatory Tender Date also shall be delivered to the Issuer, the Investor Member, the Mortgage Lender and the Trustee not later than fifteen (15) days prior to the Mandatory Tender Date.

**Section 4.06 *Mortgage Loan to Borrower.***

Contemporaneously with the issuance of the Bonds, it is expected that the Borrower shall proceed with obtaining the Mortgage Loan from the Mortgage Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the Mortgage Loan.

The Mortgage Lender will, from time to time, deliver Eligible Funds to the Trustee for deposit into the Collateral Fund to enable the Trustee to disburse an equal amount of Bond proceeds from the Project Fund, as approved by the Mortgage Lender in connection with a completed and fully executed Requisition, in substantially the form attached to the Indenture as Appendix B.

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## ARTICLE V SPECIAL COVENANTS

### **Section 5.01 *No Warranty of Condition or Suitability by Issuer.***

THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

### **Section 5.02 *Access to the Project.***

The Borrower agrees that the Issuer, the Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the rehabilitation thereof at all reasonable times upon prior written notice. The Borrower acknowledges that the Issuer shall monitor the rehabilitation of the Project. The Issuer, the Trustee and their duly authorized agents shall also be permitted, at all reasonable times upon prior written notice, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

### **Section 5.03 *Further Assurances and Corrective Instruments.***

The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

### **Section 5.04 *Issuer and Borrower Representatives.***

Whenever under the provisions of this Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by a duly authorized representative of the Issuer and for the Borrower by a Borrower Representative. The Trustee shall be authorized to act on any such approval or request pursuant to the Indenture.

### **Section 5.05 *Financing Statements.***

The Borrower shall, or shall cause to be filed any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Indenture, in the manner prescribed in the Indenture. The Borrower shall pay all costs of filing

such instruments and any fees and expenses (including reasonable attorney's fees) associated therewith.

**Section 5.06 *Borrower Receipt of Insurance or Condemnation Proceeds.***

In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Mortgage Lender to the extent required by the Mortgage Loan Documents. Such proceeds shall be used to either reduce the indebtedness evidenced by the Mortgage Loan Documents or to repair or restore the loss caused to the Project pursuant to the terms and conditions of the Mortgage Loan Documents.

**Section 5.07 *Borrower's Obligations Upon Tender of Bonds.***

If any tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund, or the Project Fund as provided in Section 3.01(e) of the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to Section 3.01(e) of the Indenture.

**Section 5.08 *Option to Terminate.***

The Borrower shall have the option to cancel or terminate this Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed and (c) the Mortgage Loan shall be repaid in full. Such option shall be exercised by the Borrower, with approval of the Investor Member, giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

**Section 5.09 *[Reserved].***

**ARTICLE VI  
RESTRICTION ON TRANSFER; ASSIGNMENT, SELLING, LEASING;  
INDEMNIFICATION**

**Section 6.01 *Restriction on Transfer; Removal of Authorized Member.***

(a) Except as otherwise provided for herein, the Borrower will not, directly or indirectly, by operation of law or otherwise, sell, assign, grant a deed of trust, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and will not encumber, alienate, hypothecate, grant a security interest in or grant any other ownership or control interest whatsoever in the Project, in the leases or in the rents, issues and profits therefrom.

(b) No interest in the Borrower and no ownership interest in the Authorized Member may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise other than the transfer of ownership interests after the parties have paid all installments of the equity contribution required to be delivered to the Trustee pursuant to the Operating Agreement.

(c) Notwithstanding anything contained in the subsections above and subject to subsection (l) hereof, each of the following transactions are hereby deemed to be expressly permitted hereunder:

(i) Issuance of ownership interests in the Borrower equal to 99.99% of the profits, losses, credits, distributions and other interests in the Borrower to the Investor Member;

(ii) The transfer by the Investor Member of the ownership interests in the Borrower to any other entity which is an Affiliate of the Investor Member or which is controlled by or under common control with the Investor Member or an Affiliate;

(iii) The transfer by the Investor Member of the ownership interests in the Borrower to any other entity which is not an Affiliate of the Investor Member or which is not controlled by the Investor Member with the prior written consent of the Issuer in its sole and absolute discretion, after sixty (60) days written notice to the Issuer of the intent to transfer;

(iv) The pledge and encumbrance of the interests of the Investor Member to or for the benefit of any financial institution which enables the Investor Member to make its capital contributions to the Borrower and any subsequent realization by any such lender upon the interests of the Investor Member in the Borrower;

(v) Following the occurrence of an Event of Default or in accordance with Subparagraph (k) of this Section, the removal of the Authorized Member by the Investor Member pursuant to the terms of the Operating Agreement of the Borrower and the replacement of the Authorized Member with the Investor Member or an Affiliate of the Investor Member;

(vi) A change in the beneficial ownership of the Investor Member, so long as each such entity remains controlled or under common control with HCP-ILP, LLC or an Affiliate thereof; and

(vii) The Borrower may amend the Operating Agreement to effect the transfers and removals permitted under this paragraph (c).

Except as otherwise provided, the Borrower shall provide written notice to the Issuer and the Trustee of any transfer or amendment pursuant to this paragraph (c) at least fifteen (15) days prior to such transfer.

(d) The Borrower will not become a party to any merger or consolidation, or agree to effect any asset acquisition or stock acquisition.

(e) The Borrower will not convert the ownership of the Project into condominium or cooperative housing corporation form of ownership other than a limited equity cooperative that is a qualified cooperative housing corporation as defined in Section 143(k)(9) of the Code.

(f) The Borrower will not seek the dissolution or winding up, in whole or in part, of the Borrower or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, or assignment for the benefit of creditors or similar proceedings.

(g) The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred without the prior written consent of the Issuer in its sole and absolute discretion.

(h) The Borrower will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income, for purposes of federal income taxation.

(i) This Agreement may not be sold, transferred or otherwise disposed of by the Borrower without the prior written consent of the Issuer (which consent shall be within the reasonable discretion of the Issuer), subject to each of the following conditions:

(i) No such assignment will relieve the Borrower from primary liability for any of its obligations hereunder (unless the Issuer agrees in writing to release the Borrower) and in the event of any such assignment, the Borrower will continue to remain primarily liable for payment of its obligations hereunder and for performance and observance of the other covenants and agreements on its part herein provided.

(ii) No such assignment will, in the opinion of Bond Counsel (all such expenses related to such opinion shall be paid by the Borrower), impair the excludability of interest on the Bonds from gross income for purposes of federal income taxation.

(iii) The assignee will assume in writing the obligations of the Borrower hereunder to the extent of the interest assigned in a form acceptable to the Issuer (the “**Assumption Agreement**”).

(iv) Prior to any such assignment, the Borrower will, furnish or cause to be furnished to the Issuer and the Trustee an executed original of the Assumption Agreement.

(j) The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; *provided* that it may do so if the surviving, resulting or transferee entity is other than the Borrower, it assumes in writing all of the obligations of the Borrower under the Borrower Documents and Mortgage Loan Documents and it has a net worth equal to or greater than that of the Borrower immediately prior to such consolidation, merger, sale or transfer. The Borrower shall not permit one or more other entities to consolidate with or merge into it; or take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein. No sale, assignment or transfer

of title to the Project, except as may be otherwise required by the Mortgage Lender, shall be made unless (a) the Mortgage Lender consents to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents and Mortgage Loan Documents, *provided* that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder, except the Borrower's obligation to indemnify the Issuer and the Trustee and reimburse the Issuer and the Trustee for the fees and expenses of the Issuer and the Trustee, and (c) no Event of Default as certified in writing to the Issuer and the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Issuer shall consent to any such assignment or transfer if (i) the Mortgage Lender notifies it in writing that the aforesaid condition (a) is satisfied, (ii) the Issuer and the Trustee receives an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the federal tax status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by an assignee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; *provided, however*, the Borrower shall not be released from its obligation to pay or reimburse the fees and expenses of the Issuer and the Trustee and to indemnify the Trustee and the Issuer without the express written consent of the Trustee and the Issuer, as applicable, which consent shall not be unreasonably withheld. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Mortgage Loan Documents.

(k) Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Mortgage Loan Documents. Notwithstanding anything to the contrary contained herein or in any other Borrower Documents or the Mortgage Loan Documents, and subject to the consent of the Mortgage Lender if required by the Mortgage Loan Documents, the following shall be permitted and shall not require the prior written approval of the Issuer or the Trustee, (a) the removal of the Authorized Member of the Borrower in accordance with the Borrower Documents and Mortgage Loan Documents and the replacement thereof with the Investor Member or any of its Affiliates, (b) the transfer of ownership interests in the Investor Member, (c) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Member in the Borrower to the Authorized Member or any of its Affiliates, and (d) any amendment to the Borrower Documents or Mortgage Loan Documents to memorialize the transfers or removal described above. The parties agree that this section shall control to the extent of any conflict in any Borrower Documents or Mortgage Loan Documents.

#### **Section 6.02 *Indemnification by Borrower and Authorized Member.***

(a) The Borrower and the Authorized Member (the “**Indemnitors**”) hereby agree to indemnify and save harmless the Issuer and the Trustee from and against all liabilities, obligations, suits, actions, claims, judgments, demands, damages, penalties, fines, assessments, losses, expenses, fees (including all fees of attorneys, auditors, and consultants), taxes (including rebate to the United States) but exclusive of income taxes on fees earned by the Trustee, contributions, and costs of every kind and nature (including litigation and court costs, amounts paid in settlement by or with the approval of the Borrower and amounts paid to discharge judgments) (collectively, “**Claims**”) incurred by, asserted or imposed against an Indemnified Party (hereinafter defined), the Indemnitors or any other person directly or indirectly resulting from or

arising out of or relating to (but excluding such Claims arising from the willful misconduct of the Issuer or the negligence or willful misconduct of the Trustee):

- (i) the issuance, offering, sale, delivery or remarketing of the Bonds;
- (ii) the design, rehabilitation, installation, operation, use, occupancy, maintenance, repair, management or ownership of the Project;
- (iii) the enforcement of (a) the provisions of this Agreement, the other Borrower Documents and Mortgage Loan Documents and any other document executed by the Borrower in connection with issuance of the Bonds and the making of the Loan and (b) the obligations of the Borrower imposed hereby or thereby;
- (iv) any untruthful, misleading or inaccurate information supplied by the Borrower relating to the Project, the Borrower, the Project manager or to the terms of financing relating to the Project, including, but not limited to, any breach of any representation or warranty of the Borrower set forth in the Borrower Documents and Mortgage Loan Documents or any certificate delivered pursuant thereto, and any representation, or warranty of the Borrower, or any information provided by the Borrower that contains or contained any untrue or misleading statement of fact or omits or omitted to state any material fact necessary to make the statements made therein not misleading in light of the circumstances under which they were made;
- (v) any breach or alleged breach (except in the case of a breach alleged by the Issuer or the Trustee and such alleged breach is not found by a court of competent jurisdiction) by the Borrower of the covenants contained herein;
- (vi) any injury to or death of any person or damage to property in or upon the Project or growing out of or connected with the repair, management, ownership, operation, use, non-use, maintenance, rehabilitation, design, installation, condition or occupancy of the Project or any part thereof, including any and all acts or operations relating to any rehabilitation, operation, use, non-use, design, management, ownership, condition, occupancy, maintenance, installation or repair performed by the Borrower in connection with the Project;
- (vii) violation or breach of any agreement, covenant, representation, warranty or condition of this Agreement (except in the case of a breach alleged by the Issuer or the Trustee and such alleged breach is not found by a court of competent jurisdiction) or the Note, except by the Issuer or the Trustee;
- (viii) any Determination of Taxability with respect to the Bonds, including, but not limited to, the fees and expenses of the Issuer or the Trustee and their counsel with respect to such Determination of Taxability in responding to any inquiry or audit by the Internal Revenue Service;
- (ix) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, or other placement or release in on or from the Project of Hazardous Materials or the violation or alleged violation of any Hazardous Materials Law or official interpretation thereof in connection with the Project or the land on which it is located arising out of or as



a result of events prior to the later of the full and final payment of the Bonds or the date of a transfer by the Borrower of all of its interests in the Project, as applicable;

(x) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever related to the Project or the Bonds, commenced or threatened against the Project or an Indemnified Party;

(xi) any action, suit, claim, demand or proceeding contesting or affecting title to the Project;

(xii) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Project or an Indemnified Party that might adversely affect the validity or enforceability of the Bonds, the Borrower Documents and Mortgage Loan Documents, or the performance by the Borrower or by any Indemnified Party of their respective obligations under the Borrower Documents and Mortgage Loan Documents, the Indenture or any other document executed in connection therewith by the Borrower or any Indemnified Party; and

(xiii) information provided by the Borrower or required and failed to be furnished by the Borrower relating to the Borrower or the Project, including, without limitation, information provided by the Borrower for inclusion in the preliminary or final Official Statement or any other offering document used in connection with the sale of the Bonds, any information furnished, or required and failed to be furnished, by the Borrower in accordance with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (if applicable), any information furnished by the Borrower for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer, any other information or certification obtained from the Borrower to assure the exclusion of the interest on the Bonds from gross income of the Holders thereof for federal income tax purposes, and the transactions contemplated by the Indenture, the Bonds, and the Borrower Documents and Mortgage Loan Documents and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture and the Borrower Documents and Mortgage Loan Documents.

All references to the Issuer and the Trustee in this Section shall be deemed to include all their respective past, present, and future officers, directors, members, employees, commissioners, and agents and their permitted successors and assigns (also referred to herein as “**Indemnified Parties**”).

The Indemnitors shall indemnify and save each Indemnified Party harmless from any such Claims (but excluding such Claims arising from the willful misconduct of the Issuer or the negligence or willful misconduct of the Trustee) and upon notice from such Indemnified Party, the Indemnitors shall defend them or either of them in any such action or proceeding as provided below.

Any Indemnified Party, after receipt of notice of the existence of a Claim in respect of which indemnity hereunder may be sought or of the commencement of any action against an Indemnified Party in respect of which indemnity hereunder may be sought, shall

notify the Indemnitors in writing of the existence of such Claim or commencement of such action. The Indemnitors shall undertake promptly to defend, at their sole cost and expense, any and all Claims against an Indemnified Party in connection with any of the matters indemnified against in this Section. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under this Agreement, the Indemnitors, upon receipt by either of written notice from the Indemnified Party, shall assume the investigation and defense of the Claims, including the employment of counsel selected by the Indemnitors, subject to the approval of the Indemnified Party in such party's sole discretion. The Indemnitors shall pay all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same, *provided* that the Issuer and the Trustee, as appropriate, shall have the right to review and approve or disapprove any such compromise or settlement. If (i) an Indemnified Party determines that a potential conflict of interest exists or may arise as a result of any of the Indemnitors assuming the investigation and defense of any claims, (ii) an Indemnified Party shall have been advised by counsel that there may be legal defenses available to it which are different from or additional to those available to the Indemnitors, or that a conflict exists that could affect the zealous defense of such Claims by the Indemnitors, (iii) the Indemnitors shall not have assigned the defense of such action and employed counsel therefor satisfactory to the Indemnified Party within a reasonable time after notice of commencement of such action, such Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense of the action or proceeding, and the Indemnitors shall pay the fees and expenses of such separate counsel.

(b) Notwithstanding the fact that it is the intention of the parties hereto that the Issuer shall not incur any pecuniary liability by reason of the terms of this Agreement or the Note or the undertakings required of the Issuer hereunder, by reason of the issuance of the Bonds, the execution of the Indenture or the performance of any act requested of the Issuer by the Borrower, including all claims arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the Issuer should incur any such pecuniary liability, then in such event the Indemnitors shall indemnify and hold the Issuer harmless against all such claims (but excluding such Claims arising from the willful misconduct of the Issuer) whatsoever, by or on behalf of any person, firm or corporation or other legal entity arising out of the same or lack of any offering statement in connection with the sale, resale or remarketing of the Bonds and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Borrower shall defend the Issuer in any such action or proceeding.

(c) Failure of an Indemnified Party to provide notification to the Indemnitors required under this Section shall not operate as a waiver of the Indemnitors' indemnification obligations in this Section.

(d) The obligations of the Indemnitors under this Section are joint and several, and are in addition to and shall not be limited by the provisions of Section 8.03 hereof and shall survive the termination of this Agreement.

**Section 6.03 Issuer to Grant Security Interest to Trustee.**

The parties hereto agree that pursuant to the Indenture, the Issuer shall assign to the Trustee, in order to secure payment of the Bonds, all of the Issuer's right, title and interest in and to this Agreement and the Note, except for Reserved Rights of the Issuer.

**ARTICLE VII  
DEFAULTS AND REMEDIES**

**Section 7.01 Defaults Defined.**

The following shall be "Defaults" under this Agreement and the term "Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amount required to be paid under subsection (a) or (b) of Section 4.02 hereof.

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed herein other than as referred to in subsection (a) of this Section or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Borrower Tax Certificate, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower and the Investor Member by the Issuer or the Trustee; *provided*, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such 60-day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby.

(c) The dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.

(d) The occurrence of an Event of Default under the Indenture (other than under Section 9.01(d) of the Indenture).

The provisions of subsection (b) of this Section are subject to the following limitation: if by reason of *force majeure* it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained herein (other than its obligations contained in Article IV hereof), the Borrower shall not be deemed in Default during the continuance of such inability. Such *force majeure* event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term "*force majeure*" as used herein shall mean,

without limitation, the following: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; explosions; and events not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement. The settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

### **Section 7.02 *Remedies on Default.***

Whenever any Default referred to in Section 7.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to Section 9.01 of the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Indenture) or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable; and

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement, the Note, the Tax Regulatory Agreement or any other Document in the event of default thereunder.

Any amounts collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

### **Section 7.03 *No Remedy Exclusive.***

Subject to Section 9.01 of the Indenture, no remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, the Tax Regulatory Agreement or the Note, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.***

In the event the Borrower should cause an Event of Default to occur under any of the provisions of this Agreement or under the Note, and the Issuer and/or the Trustee should employ attorneys or incur other expenses for the collection of payments required hereunder or under the Note, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein or in the Note, the Borrower and the Authorized Member agree that they will on demand therefor pay to the Issuer and the Trustee, as the case may be, the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Issuer and/or the Trustee. This Section 7.04 will continue in full force and effect notwithstanding the full payment of the obligations under the Agreement or the termination of this Agreement for any reason.

**Section 7.05 *No Additional Waiver Implied by One Waiver.***

In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Right to Cure.***

Notwithstanding anything herein to the contrary, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform and, as a result a Default or Event of Default occurs or may occur, the Investor Member shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such Default or Event of Default, provided such Default or Event of Default is cured within any applicable cure period or grace period provided herein to the Borrower.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.01 *Term of Agreement.***

Subject to Sections 2.12(b) and 11.07 of the Indenture, this Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Indenture shall have been fully paid or provision made for such payments, whichever is later, *provided* that all representations and certificates of the Borrower and the Authorized Member as to matters affecting the tax-exempt status of the Bonds, and the provisions of Sections 3.08, 6.02 and 7.04 hereof shall survive termination of this Agreement.

**Section 8.02 *Notices.***

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed each party's Notice Address. A duplicate copy of each notice, certificate or other communication given hereunder by the Issuer or the Borrower shall also be given to the Trustee. The Issuer, the Borrower, the Investor Member and the Trustee may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

With regard to copies of all notices which are sent to the Borrower under the terms of the Loan Documents, the Issuer and the Trustee shall send a courtesy copy to the Investor Member at HCP-ILP, LLC, c/o Hunt Capital Partners, \_\_\_\_\_, \_\_\_\_\_, Attention: Tax Credit Asset Management, The Palms of Deerfield Townhomes; *provided, however*, that any failure to give a duplicate copy of any such communication shall not invalidate any Notice given hereunder.

### **Section 8.03 *Nonrecourse Liability of Borrower.***

From and after the date of this Agreement, (i) the liability of the Borrower and its members, including the Authorized Member and its respective members, under this Agreement shall be limited to the Project Fund and the Collateral Fund, and the Issuer and the Trustee shall look exclusively thereto or to such other security as may from time to time be given or have been given for payment of the Bonds, and any judgment rendered against the Borrower or its members, including the Authorized Member, under this Agreement shall be limited to amounts held under the Project Fund and the Collateral Fund; and (ii) no deficiency or other personal judgment shall be sought or rendered against the Borrower or the Authorized Member or their respective members, officers, successors, transferees or assigns, in any action or proceeding arising out of this Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; *provided, however*, that nothing herein shall limit the Issuer's or the Trustee's ability to exercise any right or remedy with respect to any property pledged or granted to the Issuer or any trustee under this Agreement, or both, or to exercise any right against the Borrower or the Authorized Member, on account of any claim for fraud and deceit, and against any other person or entity on account of any claim for fraud and deceit. Notwithstanding anything herein to the contrary, nothing in this Section shall limit the rights of indemnification against the Borrower and the Authorized Member pursuant to Sections 6.02 and 7.04 hereof, each of which shall be recourse obligations of the Borrower and Authorized Member. Furthermore, notwithstanding anything to the contrary, the Borrower and the Authorized Member shall be fully liable for: (1) amounts payable to the Issuer constituting Reserved Rights of the Issuer, (2) any amount due and owing as a result of any calculation or determination which may be required in connection with the Bonds for the purpose of complying with Section 148 of the Code (including rebate liability) or any applicable Treasury regulation, and (3) the indemnification and the payment obligations to the Issuer under Sections 6.02 and 7.04.

The limit on the Borrower's and the Authorized Member's liability set forth in this Section shall not, however, be construed, and is not intended to in any way, to (i) constitute a release, in whole or in part, of the indebtedness evidenced by this Agreement; or (ii) constitute a release, in whole or in part, or an impairment of the security interest; or (iii), in case of any default or enforcement of any other right of the Issuer under this Agreement, alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Agreement.

Notwithstanding anything contained in this Agreement to the contrary, neither the Issuer nor the Trustee may assert any claim arising hereunder against the Borrower's interest in the Project, any reserve or deposit made with the Mortgage Lender, or in the rents or other income of the Project for the payment of any charge due hereunder.

The provisions of this Section shall survive the termination of this Agreement.

**Section 8.04 *No Pecuniary Liability of Issuer.***

No agreements or provisions contained in this Agreement or any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or any property of the Borrower financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer (including tax and rebate liability) or its past, present or future officers, directors, employees, commissioners, agents or members of its governing body and their successors and assigns or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Trust Estate. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer or its past, present or future officers, directors, employees, commissioners, agents and members of its governing body and their successors and assigns to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Trust Estate. Without limiting the requirement to perform its duties or exercise its rights and powers under this Agreement upon receipt of appropriate indemnity or payment, none of the provisions of this Agreement or the Indenture will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Agreement. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Agreement or in the Indenture; *provided* that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or made available under the Indenture by the Borrower and pledged to the payment of the Bonds.

No covenant, agreement or obligation contained herein or in any other financing instrument executed in connection with the Project or the making of the Loan shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee, commissioner, or agent of the Issuer in his or her individual capacity so long as he or she does not act in bad faith, and no such director, officer, employee, commissioner or agent of the Issuer in his or her individual capacity shall be subject to any liability under any agreement to which the Issuer is a party or with respect to any other action taken by him or her so long as he or she does not act in bad faith.

**Section 8.05 *Binding Effect.***

This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders of Bonds and their respective successors and assigns.

**Section 8.06 *Severability.***

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 8.07 *Amounts Remaining in Funds.***

Subject to the provisions of Section 4.05 of the Indenture, it is agreed by the parties hereto that any amounts remaining in any account of the Bond Fund, the Project Fund (other than amounts on deposit in the Subordinate Loan Account of the Project Fund), the Collateral Fund or any other fund (other than the Rebate Fund) created under the Indenture upon expiration or earlier termination of this Agreement, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of the Trustee and the Issuer in accordance with the Indenture, shall belong to and be paid to the Borrower by the Trustee so long as those remaining amounts do not constitute Bond Proceeds.

**Section 8.08 *Amendments, Changes and Modifications.***

Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), and except as otherwise herein expressly provided, this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, and in accordance with the provisions of the Indenture, particularly Article XI of the Indenture.

**Section 8.09 *Execution in Counterparts.***

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

**Section 8.10 *Applicable Law.***

This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 8.11 *Captions***

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

**Section 8.12 *Mortgage Loan Documents Independent.***

Failure of the Issuer or the Borrower to comply with any of the covenants set forth in this Agreement, the Indenture or the other Borrower Documents will not serve as a basis for default on the Mortgage Loan, the underlying mortgage, or any of the other Mortgage Loan Documents.

To the extent not otherwise set forth above in this Section 8.12, the provisions of Section 12.09 of the Indenture are incorporated herein by reference to the same extent as if set forth herein in full.

**Section 8.13 *[Reserved].***



**Section 8.14 *Use of Proceeds of the Bonds***

Notwithstanding anything contained in any of the documents executed in connection with the issuance of Bonds to the contrary, all of the proceeds of the Bonds shall, for federal income tax purposes, be (i) allocated on a pro rata basis to the building in the Project and the land on which such building is located and (ii) used exclusively to pay costs of the acquisition or rehabilitation of the Project which are includible in the aggregate basis of any building and the land on which the building is located (“Eligible Costs”) in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code. No proceeds of the Bonds will be deemed or considered to have been used to pay any of the Costs of the Issuance of Bonds, or to fund any reserve accounts other than a Project Fund Account to be used to pay Eligible Costs.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Issuer and the Borrower have caused this Agreement to be executed in their respective official names and their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

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

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

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

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC, a  
Florida limited liability company, its Authorized  
Member

By: \_\_\_\_\_  
Darren Smith, Manager

## **EXHIBIT A**

### **PROJECT DESCRIPTION**

Multifamily rental housing project located in the State known as The Palms of Deerfield Townhomes, which, upon completion of rehabilitation, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related uses.

## EXHIBIT B

### FORM OF PROMISSORY NOTE

#### PROMISSORY NOTE

[\$14,000,000.00]

November \_\_, 2023

FOR VALUE RECEIVED, **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company (the “Borrower”), promises to pay to the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA** (the “Issuer”), or its order, the principal sum of [FOURTEEN] MILLION AND NO/100 DOLLARS (\$[14,000,000.00]) (the “Loan”) or so much of that sum as may be advanced by the Issuer under the Loan Agreement of even date herewith executed between the Borrower and the Issuer (the “Loan Agreement”) with interest payable as set forth below.

Borrower promises to pay to the Issuer the principal sum of this Note, together with interest at the rate of \_\_\_\_% per annum (the “Initial Interest Rate”), and all assessments, taxes and premiums as follows:

One business day preceding each June 1 and December 1 of each year, beginning on the business day preceding June 1, 2024, to and including the business day preceding the earlier of (i) the Conversion Date, and (ii) December 1, 2026 (the “Initial Mandatory Tender Date”), the Borrower shall pay to the Issuer interest on the outstanding principal balance of the Loan at the Initial Interest Rate and thereafter the Remarketing Rate (as defined in the Indenture).

(a) The entire principal balance of the Note, plus any accrued but unpaid interest to and including December 1, 2056 (the “Maturity Date”), shall be due and payable one business day preceding the Maturity Date, unless previously called for redemption.

(b) Payments made by The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), as trustee for the Issuer’s Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “Bonds”) to the holders of the Bonds, from funds available under the Trust Indenture for the Bonds dated as of November 1, 2023 (the “Indenture”) between the Issuer and the Trustee, will be credited against the Borrower’s obligation to pay interest and principal under this Note. The Borrower shall be obligated to pay any deficiency between amounts due under this Note and amounts paid to bondholders by the Trustee pursuant to the Indenture.

(c) If any installment of interest, principal, or any other payment due under this Note is not paid within 10 days from the date that the installment or payment is due (other than any payment due at maturity, whether by acceleration or otherwise), the Borrower promises to pay to the Issuer a “late charge” equal to 5% of the aggregate monthly payment required by this Note.

(d) This Note is secured by (i) funds deposited into the Bond Fund, the Project Fund (other than funds on deposit in the Subordinate Loan Account of the Project Fund) and the Collateral Fund created pursuant to Section 4.01 of the Indenture, and (ii) the Trust Estate (as defined in the Indenture).

(e) Upon an Event of Default, as defined in the Indenture, the unpaid principal, together with all accrued interest thereon, and all other sums due and payable shall, at the option of the holder of this Note, become immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise this option in the event of any subsequent Event of Default.

(f) As to this Note and any other documents or instruments evidencing or securing the Loan (the "Loan Documents"), the Borrower and all guarantors, if any, severally waive all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also severally waive valuation and appraisal, presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and expressly agree that the maturity of this Note, or any payment under this Note, may be extended from time to time without in any way affecting the liability of the Borrower and all guarantors.

(g) All payments due under this Note shall be made during regular business hours at the Designated Office (as defined in the Indenture) of the Trustee or at any other place that the Issuer may designate in writing, and shall be made in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts.

(h) The Borrower represents and warrants that it is a limited liability company within the meaning set forth in Chapter 605, Florida Statutes, as amended, and further represents and warrants that the Loan evidenced by this Note was made and transacted solely for the purpose of carrying on or acquiring a business or commercial enterprise within the meaning of Chapter 605, Florida Statutes.

(i) Neither the Borrower, nor any member, officer or director of the Borrower, shall have any personal liability for principal or interest payments or any other payments due under this Note, except as provided in Section 8.03 of the Loan Agreement.

(j) The Borrower hereby acknowledges that, pursuant to the Indenture, the Issuer is assigning to the Trustee all of the Issuer's right, title, and interest in and to this Note and the Loan Agreement, exclusive of the Reserved Rights of the Issuer, to be held under the Indenture as part of the Trust Estate. Such assignment is being made as security for the payment of the Bonds of the Issuer. All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as part of this Note.

It is agreed that except as provided in Section 8.03 of the Loan Agreement, the execution of this Note shall impose no personal liability on the maker or any member hereof for payment of the indebtedness evidenced hereby and in the Event of a Default, the holder of this Note shall look solely to the Bond Fund, Project Fund (other than funds on deposit in the Subordinate Loan

Account of the Project Fund), and Collateral Fund created pursuant to Section 4.01 of the Indenture, and (ii) the Trust Estate (as defined in the Indenture) in satisfaction of the indebtedness evidenced hereby and will not seek or obtain any deficiency or personal judgment against the maker hereof except such judgment or decree as may be necessary to foreclose and bar its interest in the property and all other property mortgaged, pledged, conveyed or assigned to secure payment of this Note.

Enforcement of the covenants in this Note will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Borrower, the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Mortgage Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC**, a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company, its  
Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager



**ASSIGNMENT**

The **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA** (the “Issuer”), hereby irrevocably assigns, without recourse, the foregoing Note (exclusive of the Reserved Rights of the Issuer) to The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), under a Trust Indenture dated as of November 1, 2023 (the “Indenture”), with the Issuer and hereby directs The Palms of Deerfield Townhomes, LLC to make all payments of principal of, and interest thereon directly to the Trustee at its designated office in Jacksonville, Florida, or at such other place as the Trustee may direct in writing. Such assignment is made as security for the payment of the Issuer’s \$[14,000,000] Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes), issued pursuant to the Indenture.

(SEAL)

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

By: \_\_\_\_\_  
Scott Ehrlich, Chair

Attest:

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

**EXHIBIT C**  
**RESERVED**

**EXHIBIT D**  
**CONSTRUCTION DRAW SCHEDULE**  
**[ATTACHED]**

**EXHIBIT "C"**

**FORM OF**

**LAND USE RESTRICTION AGREEMENT**

**[ATTACHED]**

**THIS INSTRUMENT PREPARED**

**BY AND RETURN TO:**

Junious D. Brown III, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308

Draft #2 10/9/23  
NGN File No.: 370.58

LAND USE RESTRICTION AGREEMENT

Owner's Name and Address: THE PALMS OF DEERFIELD TOWNHOMES, LLC  
c/o SHAG Palms of Deerfield Townhomes Developer, LLC  
1100 N.W. 4<sup>th</sup> Avenue  
Delray Beach, Florida 33444

and

Deerfield Beach Family Empowerment, Inc.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, Florida 33441

Location of Property: [407 – 431] NW 1<sup>st</sup> Terrace  
Deerfield Beach, Florida 33441

Name of Project: The Palms of Deerfield Townhomes

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 November 1, 2023, by and among the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic created, organized and existing under the laws of the State of Florida, whose mailing address is listed above (the "Issuer"); THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, whose mailing address is 4655 Salisbury Road, Suite 300, Jacksonville, Florida 32256, as trustee (the "Trustee"), pursuant to the Trust Indenture dated as of November 1, 2023, between the Issuer and the Trustee (the "Indenture"), authorizing and securing the issuance of the Issuer's \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Senior Bonds"), and THE PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company, and its successors and assigns, whose mailing address is listed above (the "Owner");

WITNESSETH:

**WHEREAS**, Owner, the owner of a leasehold interest in the Project (as such term is herein defined), intends to acquire and rehabilitate a multifamily residential rental project located within Broward County, Florida (the "County") to be occupied by Lower-Income Persons and Eligible Persons (as such terms are herein defined), all for the public purpose of assisting persons or families of low, moderate or middle income within the County to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Issuer has authorized the issuance and delivery of the Senior Bonds in the original principal amount of \$[14,000,000] pursuant to the Indenture in order to make a loan to the Owner (the "Senior Loan") pursuant to a Loan Agreement dated as of November 1, 2023 (the "Loan Agreement"), by and between the Issuer and the Owner, to finance the acquisition, rehabilitation and equipping of the Project (as hereinafter defined) and certain costs incurred in connection with the issuance of the Senior Bonds, all under and in accordance with the Constitution and laws of the State of Florida (the "State"); and

**WHEREAS**, the Issuer has also authorized the issuance and delivery of the \$[5,000,000] Housing Finance Authority of Broward County, Florida Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the "Subordinate Note" and, together with the Senior Bonds, the "Bonds") directly to The Palms of Deerfield Beach, LP, a Florida limited partnership (the "Subordinate Lender"), in order to provide purchase money financing for the Borrower (the "Subordinate Loan" and, together with the Senior Loan, the "Loans") pursuant to a Subordinate Loan Agreement dated as of November 1, 2023 (the "Subordinate Loan Agreement"), by and between the Issuer and the Owner, for a portion of the costs of the acquisition of the Borrower's leasehold interest in the Project, which the Borrower intends to rehabilitate, and certain costs incurred in connection with the issuance of the Subordinate Note, all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Indenture and the Loan Agreement require, as a condition of making the Loans, the execution and delivery of this Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Issuer, the 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 real property in the County, as further described in Exhibit "A" hereto (the "Land"); and

**WHEREAS**, this Agreement shall be properly filed and recorded by the Owner within the official records of the County and shall constitute a restriction upon the use of Owner's interest in 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, the Owner covenants and agrees with the other parties hereto as follows:

Section 1. Definitions and Interpretation.

(a) The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Indenture and/or the Subordinate Loan Agreement, as applicable):

"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, collectively, the Senior Bonds and the Subordinate Note.

"Certificate of Continuing Program Compliance" means the certificate required to be delivered by the Owner to the Issuer 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 the Housing Act) but does not include earnings of children under 18, payments received for care of foster children or adults, lump sum insurance payments, inheritances, capital gains and settlements for personal or property losses, amounts received specifically for, or in reimbursement of, the cost of medical expenses, income of a live-in aide, certain student financial assistance, special pay to a member of the Armed Forces who is exposed to hostile fire, amounts received under certain training programs and other social service programs, temporary, nonrecurring or sporadic income or other forms of income that the Income Certification specifies may be excluded.

"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.

"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 Trust Indenture, dated as of November 1, 2023, between the Issuer and the Trustee relating to the issuance of the Senior Bonds, as amended or supplemented from time to time.

"Investor Member" means HCP-ILP, LLC, a Nevada limited liability company, the investor member of the Owner and its successors and assigns as permitted herein.

"Issuer's Compliance Fee" means a compliance monitoring fee in an annual amount (without proration for any partial year) equal to \$25.00 per rental unit in the Project (or such other amount as is implemented by the Issuer) to be paid by or on behalf of the Owner to the Issuer, if, but only if, at any time during the Qualified Project Period or for such longer period if the set-aside requirements required by the Code, Chapter 159, Part IV, Florida Statutes or other Issuer requirements remain in force, there are no longer 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" shall have the meaning given that term in the Recitals of this Agreement.

"Loan" means, collectively, the Senior Loan and the Subordinate Loan.

"Loan Agreement" means that certain Loan Agreement entered into between the Owner and the Issuer dated as of November 1, 2023, as amended or supplemented from time to time, executed in connection with the Senior Loan.

"Loan Documents" means all documents executed in connection with the issuance of the Bonds and the making of the Senior Loan and the Subordinate Loan to the Owner by the Issuer.

"Lower-Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Lower-Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a dwelling unit shall not fail to be treated as a dwelling unit that is occupied by Lower-Income Persons merely because such dwelling unit is occupied (a) by an individual who is a student and (i) receiving assistance under Title IV of the Social Security Act, (ii) was previously under the care and placement responsibility of the State agency program responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State or local laws, or (b) entirely by full-time students if such students are (i) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (ii) married and file a joint return.

"Mortgage" means, collectively, the Senior Mortgage and the Subordinate Mortgage.

"Project" means the acquisition, rehabilitation and equipping of a multifamily residential rental housing project known as The Palms of Deerfield Townhomes, located on the Land and financed with proceeds of the Bonds pursuant to the Loan Agreement. The Project consists of 56 units and will be occupied by Lower-Income Persons and Eligible Persons.

"Qualified Project Period" means the period beginning on the first (1<sup>st</sup>) day on which ten percent (10%) of the residential units in the Project are first occupied or the delivery date of the Bonds, whichever is later, and ending on the latest of (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied, or (b) the first (1<sup>st</sup>) day on which no tax-exempt private activity bond (as that term is defined in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

"Regulations" means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

"Senior Bonds" means the \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes).

"Senior Loan" means the loan to the Owner made in connection with the issuance and delivery of the Senior Bonds, evidenced by the Senior Note and further described in the Loan Agreement.

"Senior Mortgage" means the first lien [Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing] with respect to the Owner's leasehold interest in the Land and the Project, given by the Owner in favor of the Issuer and assigned by the Issuer to the Trustee, securing the repayment of the Note given in connection with the issuance and delivery of the Senior Bonds, as such Senior Mortgage may be amended from time to time.

"Senior Note" means the promissory note executed by the Owner to evidence the obligation to repay the Senior Loan.

"State" means the State of Florida.

"Subordinate Loan" means the loan to the Owner made in connection with the issuance and delivery of the Subordinate Note, evidenced by the Subordinate Note and further described in the Subordinate Loan Agreement.

"Subordinate Loan Agreement" means that certain Subordinate Loan Agreement entered into between the Owner and the Issuer dated as of November 1, 2023, as amended or supplemented from time to time, executed in connection with the Subordinate Note.

"Subordinate Promissory Note" means that certain Borrower Subordinate Promissory Note dated November \_\_, 2023, from Borrower to Issuer and assigned to the Subordinate Lender pursuant to that certain Assignment of Subordinate Mortgage and Subordinate Loan Documents dated as of November 1, 2023.

"Subordinate Mortgage" means the senior lien [Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing] with respect to the Owner's leasehold interest in the Land and the Project, given by the Owner in favor of the Issuer and assigned to the Subordinate Lender, securing the repayment of the Subordinate Promissory Note given in connection with the issuance and delivery of the Subordinate Note, as such Subordinate Mortgage may be amended from time to time.

"Subordinate Note" means the \$[5,000,000] Housing Finance Authority of Broward County, Florida Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes).

“Transition Period” means a period of up to twelve (12) months beginning on the issue date of the Bonds.

(b) Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

(c) The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees that:

- (a) The Owner will acquire, 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 rehabilitated 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 rehabilitated (except as to number of bedrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range or microwave oven, refrigerator and sink, all of which are separate and distinct from the other units.
- (c) None of the units in the Project will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.

- (d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to (1) Lower-Income Persons, or (2) Eligible Persons. Lower-Income Persons and Eligible Persons who are residents of the Project will have equal access to and enjoyment of all common facilities of the Project at all times. Except as permitted by law or regulation, the Owner will not discriminate against children of any age when renting the units in the Project.
- (e) The Land primarily consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Project primarily comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities financed with proceeds of the 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 and Eligible Persons. The Owner hereby represents, warrants and covenants as follows:

- (a) At all times during the Qualified Project Period, not less than forty percent (40%) of the residential units in the Project shall be occupied (or held available for occupancy) on a continuous basis by persons or families who at the time of their initial occupancy of such units are Lower-Income Persons. This occupancy requirement is referred to herein as the "Lower-Income Requirement."

During the Transition Period, the failure to satisfy the set-aside requirements in this paragraph (a) for Lower-Income Persons will not cause the Project to fail to qualify as a "qualified residential rental project" within the meaning of Section 142 of the Code. However, failure on the part of the Owner to have satisfied the set-aside requirements described in this paragraph (a) as of the end of such Transition Period shall cause the Project to not qualify as a "qualified residential rental project."

- (b) At all times during the term of this Agreement (as defined in Section 13 below), at least sixty percent (60%) of the completed units in the Project shall be rented to or be available for rent by Eligible Persons.
- (c) For purposes of paragraphs (a) and (b) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person (or Eligible Person). However, a Lower-Income Person whose income as of the most recent Income Certification (as described in Section 4(a) below) exceeds one hundred forty percent (140%) of the Applicable Income Limit shall not continue to be treated as a Lower-Income Person if after delivery of such Income Certification, but before the delivery of the next Income Certification, any residential unit in the Project of comparable or smaller size is occupied by a new resident who is not a Lower-Income Person. In addition, a unit that was occupied by a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person (or Eligible Person) only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person (or Eligible Person).

Section 4. Reporting Requirements; Payment of Issuer's Compliance Fee and Late Reporting Fee; Maintenance.

- (a) The Owner shall obtain and maintain on file an Income Certification from each Lower-Income Person and Eligible Person dated immediately prior to the initial occupancy of such tenant in the Project in the form and containing such information as may be required by Section 142(d) of the Code, as the same may be from time to time amended by the Issuer on the advice of 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 (10<sup>th</sup>) business day of each month, copies of the Income Certifications specified in Section 4(a) hereof obtained by the Owner during the previous month.
- (c) At all times during the term of this Agreement, the Owner will obtain and maintain on file from each Lower-Income Person residing in the Project the information demonstrating each tenant's income eligibility.
- (d) The Owner shall maintain complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Lower-Income Persons and Eligible Persons residing in the Project, and shall permit, upon five (5) business days' notice to the Owner, any duly authorized representative of the Issuer or the 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 at the beginning of the Qualified Project Period, subject to the Transition Period provisions in Section 3(a) hereof, and on the tenth (10<sup>th</sup>) day of each month thereafter, to the Issuer, rent rolls and a Certificate of Continuing Program Compliance in the form and content approved by the Issuer, executed by the Owner stating (i) the percentage of residential units that were occupied by Lower-Income Persons and Eligible Persons as of the 20th day of the previous month, (ii) that at all times during the previous month 60% of the residential units, were occupied (or held available for occupancy) by Eligible

Persons (as determined in accordance with Section 3 of this Agreement), (iii) that at all times during the previous month at least 40% of the residential units were occupied (or held available for occupancy) by Lower-Income Persons (as determined in accordance with Section 3 of this Agreement), and (iv) that no default has occurred under this Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Owner has taken or proposes to take to correct such default.

- (f) During the Qualified Project Period, the Owner shall submit to the Secretary of the Treasury (the "Secretary") (at such time and in such manner as the Secretary shall prescribe) an annual certification required by Section 142(d)(7) of the Code. As of the date of this Agreement, the Owner shall make such certification to the Secretary annually by completing and submitting IRS Form 8703 by March 31 after the close of the calendar year for which the certification is made. The Owner shall be responsible for making such certification at such other time or in such other manner as the Secretary may prescribe from time to time.
- (g) In the event the Issuer transfers responsibility for compliance monitoring to the 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 (and acceptance of such designation by 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 and/or the Subordinate Loan Agreement), the Owner shall pay the Issuer's Compliance Fee.
- (j) The Owner will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected as part of the Project, in good condition and repair (normal wear and tear excepted), will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Project or any part thereof. In order to ensure the Owner's compliance with this covenant, the Issuer or its representatives are hereby authorized to enter upon and inspect the Project at any time during normal business hours upon reasonable notice and subject to the rights of tenants. Notwithstanding the foregoing, the Issuer has no affirmative duty to make such inspection.

- (k) The Owner will 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, Loan, the Project, the issuance and delivery of the Bonds or the making of the Loan to finance the Project, any and all claims arising from any act or omission of the Owner or any of its agents, contractors, servants, employees or licensees in connection with the Project or the issuance and delivery 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 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 owners 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 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 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. All advertising and promotional material used in connection with the Project shall contain the phrase "Equal Housing Opportunity."

Section 8. Tenant Lists. All tenants lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Project, and shall be maintained, as required by the Issuer, the Subordinate Lender and/or the Trustee from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer, the Subordinate Lender and/or the Trustee. Failure to keep such lists and applications or to make them available to the Issuer, the Subordinate Lender and/or the Trustee after written request therefor will be a default hereunder.

Section 9. Tenant Lease Restrictions. All tenant leases shall contain clauses, among others, wherein each individual lessee:

- (a) Certifies the accuracy of the statements made in the Income Certification;
- (b) Agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of such lessee's tenancy; that such lessee will comply promptly with all requests for information with respect thereto from the Owner, the Trustee, the Issuer or the Subordinate Lender, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and
- (c) Agrees not to sublease to any person or family who does not execute and deliver an Income Certification.

Section 10. Sale, Assignment, Conveyance or other Disposition of Project or Interest in Owner. Except with respect to transfer of interests within the Owner, as permitted under the terms and conditions of the Owner's Amended and Restated Operating Agreement, dated as of November \_\_, 2023 (as may be further amended, the "Operating Agreement"), the Owner shall not sell, assign, convey or transfer any material portion of the Land, fixtures or improvements constituting a part of the Land or Project, or any material portion of the personal property constituting a portion of the Project during the term of this Agreement without (i) the prior written consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed, (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) upon receipt by the Issuer of a fee from the Owner upon transfer of ownership in excess of fifty percent (50%) interest in the Project or the Owner (which fee shall be refunded by the Issuer to the Owner in the event the Issuer does not approve the transfer of the Project to the proposed purchaser or assignee thereof, or in the event such transfer is not consummated) in the amount of (a) ten percent (10%) of the amount of the Bonds outstanding on the date of the written transfer request if up to ten percent (10%) of the units in the Project are rented; (b) two percent (2%) of the amount of the Bonds outstanding on the date of the written transfer if eleven percent (11%) to sixty percent (60%) of the units in the Project are rented; (c) one percent (1%) of the amount of the Bonds outstanding on the date of the written transfer if over sixty percent (60%) of the units in the Project are rented; or (d) one-half percent (.05%) of the amount of the Bonds outstanding on the date of the written transfer after one (1) year from the date of completion of rehabilitation of the Project, regardless of occupancy (the "Transfer Fee"). Provided that the above conditions have been satisfied, the Issuer will provide to the Owner and the purchaser or transferee on request its written consent to any transfer in accordance with this Section an estoppel certificate. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Owner,

and shall be ineffective to relieve the Owner of its obligations under this Agreement. Nothing contained in this Section 10 shall affect any provision of the Mortgage or any other document or instrument to which the Owner is a party which requires the Owner to obtain the consent of the holder of the Note or any other person as a precondition to sale, transfer or other disposition of the Project. The Transfer Fee will apply if a material portion of the Project financed with proceeds from the 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. Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this Section 10; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Except as permitted under the terms and conditions of the Operating Agreement, the Owner shall not sell or otherwise transfer the Project in whole, nor shall there be substituted a new manager of the Owner or a change in the controlling ownership of the manager 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, the Loan Agreement and the other Loan Documents, (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, the Loan Agreement and other Loan Documents relating to the Bonds 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 Loan, the Loan Agreement and this Agreement, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations hereunder and under the Loan Agreement arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this Section 10; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by this Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by this Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Project which is made expressly subject and subordinate hereto and, to the extent still outstanding, to the Mortgage, or (v) subject to the provisions of the Mortgage, any transfer of membership interests in the Owner or in the entities which are members in the Owner.

Section 11. Negative Covenants. During the term of this Agreement, the Owner shall not:

- (a) Except pursuant to the provisions of this Agreement, the Loan Agreement and the other Loan Documents, the Subordinate Loan agreement and the other Subordinate Loan Documents 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 vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Project and granted in connection with the day to day operation of an apartment complex), or permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Project;

- (b) Demolish any part of the Project necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Project; or
- (c) Permit the use of the dwelling accommodations of the Project for any purpose except rental residences in compliance with Section 142(d) of the Code.

Section 12. Covenants to Run with the Land. This Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding upon the Owner's assigns and successors and all subsequent owners of Owner's leasehold interest in 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 Owner's leasehold interest in 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 form of which is attached hereto as Exhibit B (the "Notice of Termination"). Pursuant to Resolution No. 2023-\_\_\_, adopted by the Issuer on October 18, 2023, the Chair and Vice Chair of the Issuer have each been authorized to execute and deliver the Notice of Termination.

Section 14. Correction of Noncompliance. The failure of the Owner to comply with any of the provisions of this Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of 60 days following the date that the Owner, or with respect

to the requirements of Sections 2 or 3 hereof, any of the parties hereto, learned of such failure or should have learned of such failure by the exercise of reasonable diligence (which 60-day period may be extended if (i) such failure cannot reasonably be corrected within such 60-day period, (ii) diligent action to correct such failure commences within such 60-day period, (iii) such action is diligently pursued until such failure is corrected, and (iv) with respect to a failure to comply with any of the requirements of Sections 2 or 3 hereof, the Owner delivers to the Issuer and the 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 herein, the Investor Member shall have the right, but not the obligation, to cure a default hereunder within the applicable cure period.

Section 15. Modification of Tax Covenants. Notwithstanding the provisions of Section 22(b) hereof, to the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of 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, 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. Subject to the provisions of (i) the Loan Agreement and the other Loan Documents, and (ii) the Subordinate Loan Agreement and the other Subordinate Loan Documents, if during the Qualified Project Period, the Project is damaged or destroyed or if all or a portion of the Land or Project is taken through eminent domain proceedings, or under the threat thereof, proceeds from insurance on the Project or any

condemnation awards pertaining to such eminent domain proceedings shall be applied as provided in the Mortgage.

Section 19. Remedies; Enforceability. The benefits of this Agreement shall inure to, and may be enforced by, respectively, the Issuer and the Trustee and its successors, the holder of the Bonds and their successors and assigns to the extent permitted by the Indenture and/or the Subordinate Loan Agreement, and solely as to Sections 2, 3 and 7 of this Agreement, the Lower-Income Persons and Eligible Persons and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to Section 3 of this Agreement for the period set forth in Section 13 hereof, whether or not the 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 and the Trustee 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, the Loan Agreement and the Subordinate 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.

The Owner hereby agrees that the appointment of a new manager may be necessary to serve the public purpose for which the Bonds were issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds following a violation of the provisions of this Agreement which is not cured within the period provided in Section 14 hereof. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a new manager to operate the Project following a violation by the Owner of the provisions of this Agreement which is not cured as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of a new manager in accordance with the terms hereof. The Owner further agrees that the Issuer shall have the right

to require the Owner to remove any manager or managing agent whose actions or inactions present a material risk of a breach of the agreements of the Owner herein, including, without limitation, a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Bonds and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent.

Section 20. Filing. Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public deed records of Broward County, Florida, and in such manner and in such other places as the Issuer or the 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 and the Subordinate Loan Agreement.

Section 23. Trustee or Compliance Agent to Monitor Compliance Upon Request of Issuer. If the Issuer requests in writing that the Trustee (and the Trustee agrees in writing to such request) or Compliance Agent assume the role of compliance monitoring, the Trustee or Compliance Agent, as the case may be, shall receive and examine all other reports, certifications and other documents required to be delivered to the Issuer or the 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 if a confirmation of transmission is produced by the sending machine (and a copy of each facsimile promptly shall be sent by first class United States mail, postage fully prepaid), (iv) when delivered, if sent by overnight mail or overnight courier, or (v) on the date delivery is refused, as indicated on the return receipt or the delivery records of the delivery service, as applicable, in each case to the parties at the addresses listed in the first paragraph of this Agreement. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Owner to the others, shall also be given to the Trustee and the Investor Member. Copies of all notices sent pursuant to this Agreement shall be sent in accordance with Section 12.06 of the Indenture and Section 9.01 of the Subordinate Loan Agreement.

Section 25. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 26. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 27. Release of Trustee. Notwithstanding anything in this Agreement to the contrary, on and after the date the Bonds are no longer outstanding under the Indenture, 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, the Loan Agreement and this Agreement shall survive such release and discharge.

Section 28. Conversion. Notwithstanding anything in this Agreement to the contrary, in the event Conversion of the Loan occurs pursuant to Section 2.12 of the Indenture, any and all references herein to the (i) "Bonds" shall be deemed to mean "Governmental Lender Note", (ii) "Indenture" shall be deemed to mean "Funding Loan Agreement", (iii) "Loan Agreement" shall be deemed to mean "Borrower Loan Agreement", and (iv) "Trustee" shall be deemed to mean "Fiscal Agent".

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the Issuer, the Trustee, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**ISSUER:**

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

[SEAL]

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

\_\_\_\_\_  
Milette 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 and MILETTE MANOS, Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic, on behalf of said Authority. They are (*check one*)  personally known to me or  have produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the Issuer, the Trustee, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**TRUSTEE:**

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

WITNESSES:

Print: \_\_\_\_\_

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

Shanna Cooke

Vice President Corporate Trust

Print: \_\_\_\_\_

Address: 4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023, by SHANNA COOKE, Vice President Corporate Trust of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., this \_\_\_\_ day of \_\_\_\_\_, 2023, on behalf of said bank. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment

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

Title or Rank: \_\_\_\_\_

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

**COUNTERPART SIGNATURE PAGE FOR  
LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the Issuer, the Trustee, and the Owner have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

**OWNER:**

**BORROWER:**

WITNESSES:

**THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company

\_\_\_\_\_  
Print: \_\_\_\_\_

By: SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company, its Authorized Member

\_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Darren Smith, Manager

Address: c/o SHAG Palms of Deerfield Townhomes Developer, LLC & Deerfield Beach Family Empowerment, Inc.  
1100 N.W. 4<sup>th</sup> Avenue  
Delray Beach, Florida 33444

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 DARREN SMITH, as Manager of SHAG PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company, the Authorized Member of THE PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company, on behalf of the limited liability companies. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**(The Palms of Deerfield Townhomes)**

[TO COME]

**EXHIBIT "B"**

**FORM OF  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

This NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT (the "Termination") is executed as of \_\_\_\_\_, 20\_\_\_\_, with an effective date of \_\_\_\_\_, 20\_\_\_\_, by the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Authority"), THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as Trustee (the "Trustee"), and \_\_\_\_\_, a Florida \_\_\_\_\_ (the "Current Owner").

1. That certain Land Use Restriction Agreement dated as of November 1, 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.

IN WITNESS WHEREOF, the Authority, the Trustee and the Current Owner hereby agree to terminate the Land Use Restriction Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**CURRENT OWNER:**

WITNESSES:

\_\_\_\_\_  
Print: \_\_\_\_\_

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

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

\_\_\_\_\_  
Print: \_\_\_\_\_

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

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

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment

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

Title or Rank: \_\_\_\_\_

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



**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**THE AUTHORITY:**

WITNESSES:

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

WITNESSES:

[SEAL]

\_\_\_\_\_  
Print: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Print: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was executed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic, on behalf of said Authority. They are (*check one*)  personally known to me or  have produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(The Palms of Deerfield Townhomes)**

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 \_\_\_\_\_, as a \_\_\_\_\_ of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, on behalf of said bank. Said person is (*check one*)  personally known to me or  has produced a valid driver's license as identification.

[Notary Seal]

\_\_\_\_\_  
Signature of person taking acknowledgment  
Name (typed, printed or stamped): \_\_\_\_\_  
Title or Rank: \_\_\_\_\_  
Serial number (if any): \_\_\_\_\_

**EXHIBIT "D"**

**FORM OF**

**BOND PURCHASE AGREEMENT**

**[ATTACHED]**

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**BOND PURCHASE AGREEMENT**

Dated November \_\_\_, 2023

by and among

**RAYMOND JAMES & ASSOCIATES, INC.**

and

**RBC CAPITAL MARKETS, LLC,**

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

and

**THE PALMS OF DEERFIELD TOWNHOMES, LLC**

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Relating to:

**\$14,000,000**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

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## **BOND PURCHASE AGREEMENT**

Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the “*Underwriter*”), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement dated November \_\_, 2023 (this “*Purchase Contract*”) with the Housing Finance Authority of Broward County, Florida (together with its successors and assigns, the “*Issuer*”) and The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “*Borrower*”), for the sale by the Issuer and the purchase by the Underwriter of the Bonds defined below which are being issued by the Issuer for the benefit of the Borrower. The Underwriter is an “underwriter” as defined in Section 2(a)(11) of the Securities Act of 1933, as amended (the “*1933 Act*”). This offer is made subject to the written acceptance hereof by the Issuer and the Borrower and delivery of such acceptance (in the form of one or more counterparts hereof) at or prior to 5:00 p.m., Eastern Time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing). Upon such acceptance, this Purchase Contract will be binding upon each of the Issuer, the Borrower and the Underwriter.

### **Section 1. Definitions and Background.**

1.1 Capitalized terms used in this Purchase Contract but not defined herein have the meanings assigned to them in the Trust Indenture by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., a national banking association (the “*Trustee*”) dated as of November 1, 2023 (the “*Indenture*”).

1.2 This Purchase Contract is for the sale and delivery of the Issuer’s Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the “*Bonds*”) which are being issued by the Issuer to provide financing for the Project. The Bonds will be issued pursuant to (i) that certain resolution of the Issuer adopted on October 18, 2023, and that certain resolution of the Board of County Commissioners of Broward County, Florida, adopted on November 14, 2023 (collectively, the “*Bond Resolution*”), (ii) Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended (the “*Act*”), and (iii) the terms of the Indenture. The Bonds will be payable from sources pledged under the Indenture, including the moneys and securities from time to time held by the Trustee in the funds and accounts established under the terms of the Indenture (collectively, the “*Trust Estate*”). In connection with the issuance of the Bonds, the Issuer will execute and deliver this Purchase Contract; the Indenture; the Loan Agreement by and between the Issuer and the Borrower (the “*Loan Agreement*”) dated as of November 1, 2023; the Tax Certificate (the “*Tax Certificate*”); and the Land Use Restriction Agreement dated as of November 1, 2023, by and among the Issuer, the Trustee and the Borrower (the “*Tax Regulatory Agreement*”) (collectively, the “*Issuer Documents*”) and the Borrower will execute and deliver this Purchase Contract, the Loan Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Tax Certificate, and the Tax Regulatory Agreement (collectively, the “*Borrower Documents*”). The Issuer Documents and the Borrower Documents are referred to herein as the “*Financing Documents*.”

### **Section 2. Purchase and Sale.**

2.1 Subject to the terms and conditions set forth in this Purchase Contract, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter, at the Closing (as hereafter defined), \$ \_\_\_\_\_ aggregate principal amount of its Bonds at a price set forth in Exhibit A attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate and price) set forth in Exhibit A attached hereto,

and will otherwise correspond to the description thereof contained in the hereinafter-defined Official Statement.

2.3 The Issuer, the Borrower and the Underwriter each acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed individually or collectively any advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no contractual obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Issuer and the Borrower have consulted their own legal, financial, accounting, tax and other advisors to the extent they deem appropriate in connection with the offering of the Bonds. The primary role of the Underwriter is to purchase the Bonds for resale to investors in an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter. The Underwriter has financial and other interests that differ from those of the Issuer.

### **Section 3. Issue Price.**

The Underwriter will provide to the Issuer an executed Issue Price Certificate dated the Closing Date (as defined herein) in the form attached as Exhibit E hereto or other form reasonably required by Bond Counsel in order to establish the issue price of the Bonds.

The Underwriter reserves the right to change such prices as it deems necessary in connection with the offering of the Bonds. Concessions from the public offering price may be allowed to selected dealers and special purchasers. The Borrower authorizes the Underwriter to complete the supplement to the Official Statement to insert the reoffering price for the Bonds selected by the Underwriter in its complete discretion.

### **Section 4. Closing.**

Subject to the terms and conditions hereof, the delivery of the Bonds and the payment of the purchase price of the Bonds as set forth in Exhibit A hereof (the "*Closing*") will take place at 10:00 a.m. Eastern Time on November \_\_\_, 2023, or at such other time or on such other date mutually agreed upon by the Issuer, the Borrower and the Underwriter, which date shall be referred to herein as the "*Closing Date*."

### **Section 5. Official Statement; Disclosure Matters.**

5.1 The Issuer and the Borrower each hereby (a) confirms its consent to the use by the Underwriter of the Preliminary Official Statement dated November \_\_\_, 2023, relating to the Bonds (the "*Preliminary Official Statement*") in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) the Official Statement dated November \_\_\_, 2023, relating to the Bonds (the "*Official Statement*") in final form in connection with the offering and sale of the Bonds.

5.2 The Issuer and the Borrower each agrees to the extent required and permitted by applicable law to cooperate (at the sole cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 ("*Rule 15c2-12*") under the Securities

Exchange Act of 1934, as amended (the “1934 Act”), and any other rules of the Securities and Exchange Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”), in connection with the offer and sale of the Bonds.

5.3 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b) respectively:

(a) The Issuer hereby certifies and agrees that the information in the Preliminary Official Statement as of its date and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” has been “deemed final” by the Issuer as of its date, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

(b) The Borrower hereby certifies and agrees that the Preliminary Official Statement and the Official Statement have been “deemed final” by the Borrower as of their dates, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

5.4 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b), respectively:

(a) The Issuer hereby represents that the information in the Preliminary Official Statement and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(b) The Borrower hereby represents that the information in the Preliminary Official Statement and the Official Statement under the headings “PRIVATE PARTICIPANTS,” “THE PROJECT,” “CERTAIN BOND-HOLDER RISKS,” “UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE” and “ABSENCE OF LITIGATION – The Borrower,” and, to its knowledge, in the remainder of the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

5.5 The Issuer and the Borrower will, at the expense of the Borrower, supply to the Underwriter the Official Statement, in such quantity as may be requested by the Underwriter no later than the earlier of (i) seven (7) business days after the date of this Purchase Contract or (ii) one (1) business day prior to the Closing Date, in order to permit the Underwriter to comply with Rule 15c2-12, and the applicable rules of the MSRB, with respect to distribution of the Official Statement. The Borrower shall provide to the Underwriter the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB’s Rule G-32 no later than one (1) business day prior to the Closing Date to enable the Underwriter to comply with MSRB Rule G-32.

5.6 During the period commencing on the date of this Purchase Contract and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the “Update Period”), if any event shall occur which would cause the Official



Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and in the judgment of the Underwriter, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower will, at the expense of the Borrower, prepare or cooperate in the preparation of such supplement or amendment to the Official Statement in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the sole expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to the Official Statement so that, as supplemented or amended, it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. If the Official Statement is so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Official Statement shall not preclude the Underwriter from thereafter terminating this Purchase Contract in accordance with the provisions of Section 12(c) hereof. The “*End of the Underwriting Period*” means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the “*End of the Underwriting Period*” shall be deemed to be the Closing Date, unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of 30 days each upon receipt of an additional written notification from the Underwriter containing the same information as required in the initial written notice.

5.7 If, during the Update Period, the Issuer becomes aware of any event relating to the information concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” of the Official Statement which would cause such portions of the Official Statement to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Issuer will promptly notify the Underwriter of such event.

5.8 The Issuer shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Issuer, of which the Issuer has actual knowledge, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.9 If, during the Update Period, the Borrower becomes aware of any event which would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, the Borrower will promptly notify the Underwriter and the Issuer of such event.

5.10 The Borrower shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Borrower, of which they receive written or actual notice, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.11 The Borrower represents and warrants to the Underwriter and the Issuer that neither the Borrower nor any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with Rule 15c2-12 in connection with any issue of municipal securities.

## **Section 6. Representations of the Issuer.**

6.1 In addition to the representations contained in Section 5 herein, the Issuer hereby makes the following representations to the Underwriter:

(a) The Issuer is a public body corporate and politic duly organized and existing under the laws of the State of Florida (the "State"), and has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents; and when executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against units of government of the State;

(b) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has approved and authorized the distribution of the Preliminary Official Statement and the Official Statement and authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby;

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending, or threatened against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the existence or powers of the Issuer relating to the sale of the Bonds;

(d) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer's part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment or decree to which the Issuer is subject, (ii) conflict with any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, nor (iii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument, except as provided by the Issuer Documents;

(e) Except as may be required under Blue Sky or other securities laws of any state and for filings to be made with the Internal Revenue Service on Form 8038, to the Issuer's knowledge, there is no consent, approval, authorization or other order of, or filing with, or certification by, any state court, or state or federal governmental agency, or public body of any state required for the execution and delivery of the Issuer Documents or the consummation by the Issuer of the transactions on its part contemplated herein or therein, which has not been duly obtained or made on or prior to the date hereof;

(f) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution;

(g) The Issuer has complied in all material respects with the Bond Resolution and the Issuer Documents; and

(h) The Bonds, when delivered in accordance with the Indenture and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

6.2 The execution and delivery of this Purchase Contract by the Issuer shall constitute a representation by the Issuer to the Underwriter that the representations and agreements contained in this Section are true as of the date hereof; provided, however, that as to information furnished by the Borrower pursuant to this Purchase Contract, the Issuer is relying solely on such information in making the Issuer's representations and agreements, and as to all matters of law the Issuer is relying on the advice of Bond Counsel; and provided further, that no member, officer, agent or employee of the Issuer shall be individually liable for the breach of any representation, or agreement contained herein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Purchase Contract shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the Trust Estate established under the Indenture. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 5.4(a) above, as to the Official Statement, or as to (i) the financial condition, results of operation, business or prospects of the Borrower or the Project, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or certifications.

#### **Section 7. Representations and Warranties of the Borrower.**

7.1 In addition to the representations and warranties made in Section 5 herein, the Borrower hereby makes the following representations and warranties to the Underwriter and the Issuer, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited liability company duly organized and existing under and pursuant to the laws of the State and is qualified to own the Project and conduct its business in the State.

(b) The Borrower has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) assist in the preparation, distribution and use of the Preliminary Official Statement and the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.

(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) preparation of the Preliminary Official Statement and the Official Statement, and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

(d) The Borrower Documents are, and, when executed and delivered by the Borrower and the other parties thereto, will be, the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower for the execution and delivery by the Borrower of the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing.

(f) The execution and delivery by the Borrower of the Borrower Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the organizational documents of the Borrower, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties are bound.

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any partner or member of the Borrower, in their respective capacities as such, nor, to the knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds, the use of the Preliminary Official Statement or the Official Statement in the marketing of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of any officer of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Preliminary Official Statement, the Official Statement or the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, (iv) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or (v) which questions the power or authority of the Borrower to carry out the transactions on its part contemplated by the Preliminary Official Statement, the Official Statement and the Borrower Documents, or the power of the Borrower to own or operate the Project. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the ownership and operation of its Project in the manner contemplated by the Preliminary Official Statement, the Official Statement and each of the Borrower Documents have been obtained or will be obtained, and said ownership and operation are not in conflict with any zoning or similar ordinance applicable to the Project. The Project conforms to all material environmental regulations.

(j) None of the Borrower, any guarantor of the Borrower or any “related person” to the Borrower within the meaning of Section 147 of the Code has acquired or shall acquire, pursuant to any arrangement, formal or informal, any Bonds.

(k) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(l) On the Closing Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete in all material respects.

(m) As of the Closing Date, the Borrower will not be in material default under any document, instrument or commitment to which the Borrower is a party or to which any of its property is subject which default would or could reasonably be expected to adversely affect the ability of the Borrower to carry out its obligations under the Borrower Documents. As of the Closing Date, the Borrower will be in compliance with all of its obligations under the Tax Regulatory Agreement.

(n) The Borrower is in compliance with all of its prior continuing disclosure undertakings entered into pursuant to Rule 15c2-12, if any.

7.2 Each of the representations and warranties set forth in this Section 7 will survive the Closing.

7.3 Any certificate signed by any officer of the Borrower and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

#### **Section 8. Covenants of the Issuer.**

The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter’s rights under Section 12(c) hereof.

(b) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Issuer Documents.

(d) The Issuer will not take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture and described in the

Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) Prior to the Closing, the Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Issuer Documents and the Bonds.

(f) The Issuer will reasonably cooperate with the Underwriter upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general or special consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

(g) The Issuer will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement so that it does 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 light of the circumstances under which they were made, not misleading, the Issuer shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

#### **Section 9. Covenants of the Borrower.**

The Borrower hereby makes the following covenants with the Underwriter and the Issuer:

(a) The Borrower will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter and the Issuer. It is understood pursuant to Section 12(c) that, in the event there arises an event or condition which, in the reasonable judgment of the Underwriter, requires the Official Statement to be amended or supplemented or has a material and adverse effect upon the marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds, the Underwriter shall have the right, pursuant to Section 12(c) hereof, to terminate this Purchase Contract without liability. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(c) hereof.

(b) The Borrower will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in light of the circumstances existing at the time it is delivered to the Underwriter, the Borrower shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable

number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Issuer and the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Prior to the Closing, the Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of the Underwriter.

(d) Prior to the Closing, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds, the Financing Documents or any indebtedness allowed under the loan from the Mortgage Lender.

(e) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by the Underwriter in conjunction with the Closing.

(f) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner other than as provided in the Indenture and described in the Preliminary Official Statement or the Official Statement and will not take or omit to take any action which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(g) The Borrower will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate.

(h) The Borrower agrees to cause the necessary amount to be paid to the Trustee and/or the escrow agent on the Closing Date to pay costs of issuance.

(i) The Borrower agrees to provide the Underwriter, at the Borrower's expense, a reasonable number of additional copies of the Financing Documents as the Underwriter shall request.

#### **Section 10. Conditions of Closing.**

10.1 The obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Financing Documents and the Official Statement shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) The Underwriter will have received orders for all of the Bonds (or such amount of the Bonds as is acceptable to the Underwriter) and (a) such orders have not been withdrawn at the time of the Closing and (b) the market price or marketability, at the initial offering price set forth in the Official Statement, of the Bonds shall not have been adversely affected, in the reasonable judgment of the Underwriter.

(e) The Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12 under the 1934 Act.

(f) The Issuer shall have received the executed Issue Price Certificate of the Underwriter, substantially in the form attached to this Purchase Contract as Exhibit E.

(g) The Underwriter shall have filed a disclosure and truth-in-bonding letter pursuant to Section 218.285, Florida Statutes, as amended, which is attached as Exhibit F hereto.

10.2 In addition to the conditions set forth in Section 10.1, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached to the Official Statement as Appendix F, and a letter of such counsel, addressed to the Underwriter and the Issuer, to the effect that such opinion may be relied upon, together with a supplemental opinion of Bond Counsel, satisfactory in form and substance to the Underwriter and the Issuer, dated the Closing Date, substantially in the form attached hereto as Exhibit B.

(b) An opinion of counsel to the Borrower, dated the Closing Date, satisfactory in form and substance to the Underwriter, the Trustee, Bond Counsel and the Issuer and in substantially the form attached hereto as Exhibit C.

(c) An opinion of Tiber Hudson LLC, counsel to the Underwriter, satisfactory in form and substance to the Underwriter.

(d) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in all other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Issuer has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; and (iii) the information contained in the Preliminary Official Statement and the Official Statement under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer" is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.



(e) Evidence that a public hearing has been duly held and the issuance of the Bonds has been duly approved as required by the Code.

(f) A certificate of the Issuer, dated the Closing Date and signed by an authorized officer of the Issuer, in form and substance satisfactory to the Issuer, the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(g) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, to the effect that:

(i) each of the Borrower's representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects;

(ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing;

(iii) since the date of the Official Statement and except as set forth therein, there has not been any material adverse change in the Borrower's operations, financial or otherwise;

(iv) the information contained in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading;

(v) 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 Borrower, threatened against or affecting the Borrower or any of its affiliates, nor, to the best knowledge of the Borrower, is there any basis therefor, wherein an unfavorable decision, ruling or finding would, in any way, adversely affect the transactions contemplated by the Loan Agreement or the operation and management of the Project, or that might result in any material adverse change in the business, operations, properties, assets, liabilities or condition (financial or other) of the Borrower or that affects the information in the Preliminary Official Statement and the Official Statement; and

(vi) such other matters as the Underwriter may reasonably request.

(h) A certificate of the Borrower dated the Closing Date and signed by its authorized representative, in form and substance satisfactory to the Underwriter and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(i) An opinion of counsel to the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Underwriter.

(j) The Borrower's 15c2-12 Certificate, substantially in the form attached hereto as Exhibit D, duly executed by the Borrower.

(k) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its members (if applicable) authorizing the execution and delivery of the Borrower Documents.

(l) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Issuer, Bond Counsel and the Underwriter.

(m) Written evidence satisfactory to the Underwriter that Moody's Investors Service, Inc. (the "Rating Agency") has issued a rating of "\_\_\_\_" for the Bonds and such rating shall be in effect on the Closing Date.

(n) Such additional legal opinions, certificates, instruments and other documents as the Underwriter, the Issuer or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained and of the Official Statement, and to evidence compliance by the Issuer and the Borrower with this Purchase Contract and all applicable legal requirements, and the due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.3 If any of the conditions set forth in Section 10.1 or 10.2 hereof have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Purchase Contract or proceed to Closing upon waiving any rights under this Purchase Contract with respect to any such condition. If this Purchase Contract is terminated pursuant to this Section 10, no party will have any rights or obligations to any other, except as provided in Section 13 hereof.

**Section 11. Actions and Events at the Closing.**

The following events will take place at the Closing:

(a) The Issuer will cause the Trustee to deliver the Bonds to the Underwriter. The Bonds so delivered will be in the form required by the Indenture, duly authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the offices of Bond Counsel, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2 hereof.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the purchase price of the Bonds as set forth in Exhibit A hereto.

**Section 12. Termination of Agreement.**

The Underwriter may terminate this Purchase Contract, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing, if:

(a) Legislation is enacted or introduced in the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either house of the Congress of the United States by a committee of such house to which such legislation has been referred for consideration, or a decision is rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice or official statement is issued or made: (i) by or on behalf of the President, the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the owners of the Bonds, or (ii) by or on behalf of the SEC, or any other governmental entity having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds or any arrangements underlying the Bonds, are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(b) The declaration of a general banking moratorium by federal, New York or State authorities, or general suspension of trading in securities on the New York Stock Exchange any other national securities exchange, or the establishment by the New York Stock Exchange, by the SEC, by any federal or state agency or by the decision of any court, of any limitation on prices for such trading, or any outbreak or escalation of hostilities or occurrence of any other national or international calamity or crisis, or escalation of such calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable for the Underwriter to proceed with the purchase and offering of the Bonds;

(c) Any event or condition which, in the reasonable judgment of the Underwriter, (i) renders untrue any statement of a material fact in the Official Statement, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (ii) causes the Official Statement to omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, and the Issuer and the Borrower do not agree to supplement or amend the Official Statement to correct the deficiency, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(d) The imposition by the New York Stock Exchange or other national securities exchange, or any governmental entity, of any restrictions not now in force with respect to any of the Bonds or obligations of the general character of the Bonds or securities generally, or the increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of the Underwriter;

(e) An order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the SEC, or any other governmental entity having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds or the issuance, offering or sale of the Bonds or any arrangements underlying the Bonds, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of the federal securities laws as then in effect;

(f) The rating on the Bonds shall have been downgraded or withdrawn by the Rating Agency; or

(g) A material disruption in commercial banking, securities settlement, payment, or clearance services shall have occurred.

### **Section 13. Fees and Expenses.**

13.1 The Borrower shall pay to the Underwriter a fee in the amount of \$ \_\_\_\_\_ plus \$ \_\_\_\_\_ for certain fees and expenses (the “Underwriter’s Fee”), payable in immediately available funds on the Closing Date from which the Underwriter will pay certain expenses. The Underwriter’s Fee shall not include the fee of the Underwriter’s counsel. The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Borrower has agreed to pay the Underwriter’s Fee set forth in this Section 13.1, and inclusive in the expense component of the Underwriter’s Fee are actual expenses incurred or paid for by the Underwriter on behalf of the Borrower in connection with the marketing, issuance, and delivery of the Bonds, including, but not limited to, advertising expenses, the costs of any preliminary and final blue sky memoranda, CUSIP fees, and transportation, lodging, and meals for the Borrower’s employees and representatives, if any.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of the Underwriter’s and the Issuer’s obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Purchase Contract, the Preliminary Official Statement and the Official Statement, as either may be supplemented or amended, the Indenture and the other Financing Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, counsel to the Issuer, counsel to the Trustee (if any), and counsel to the Underwriter; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer; (vi) CUSIP fees; (vii) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey to be used in connection with such sale; (viii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition leasehold interest in, rehabilitation and financing of the Project; (ix) the fees of the Rating Agency in connection with the rating of the Bonds; (x) normal travel costs, including reasonable transportation and lodging; (xi) ordinary and reasonable meals hosted by the Underwriter that are directly related to the offering contemplated by this Purchase Contract; and (xii) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds. Notwithstanding anything to the contrary, in the event the transaction contemplated hereby does not close, the Borrower shall pay all fees and expenses incurred in connection with the transaction.

13.3 In the event that the Issuer, the Borrower or the Underwriter shall have paid obligations of the other as set forth in this Section, appropriate adjustments will promptly be made.

13.4 In addition to the provisions set forth in Section 14 hereto, the Borrower shall indemnify the Issuer and the Underwriter with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated.

### **Section 14. Indemnification.**

14.1 The Borrower will indemnify and hold harmless the Issuer and the Underwriter, and each of their officers, directors, employees, agents, officials, members, commissioners, board members and each person who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Issuer and the Underwriter (each referred to individually as an “*Indemnified Party*” and collectively as the “*Indemnified Parties*”) against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys’ fees and expenses actually incurred), damages or liabilities, causes

of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”), joint or several, to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, (ii) any untrue statement or alleged untrue statement of any material fact contained in the Preliminary Official Statement or the Official Statement, or any supplement or amendment thereto, or (iii) any omission or alleged omission to state in the Preliminary Official Statement or the Official Statement a material fact necessary to be stated therein in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification, in that the Borrower shall not be required to indemnify an Indemnified Party more than once with respect to a specific indemnification obligation arising as the result of a specific event. Notwithstanding the foregoing, the Borrower shall not be required to indemnify the Indemnified Parties for the gross negligence or willful misconduct of the Indemnified Parties.

14.2 The indemnity agreements in paragraph 14.1 of this Section 14 shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each member, principal, official, officer, commissioner, board member, attorney or employee of the Borrower and to each person, if any, who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Borrower.

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “separate defense”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney’s fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense

is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

14.6 The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Indemnified Party.

14.7 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds; and provided, further, that the foregoing limitation on an Indemnified Party's liability or responsibility shall not be applicable if the indemnity provided for in paragraph 14.1 or 14.2 is unavailable or inapplicable due to the gross negligence or willful misconduct of any Indemnified Party. No person guilty of fraudulent misrepresentation (within Section 10(b) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

14.8 The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

14.9 Notwithstanding anything to the contrary in this Purchase Contract, the Issuer may employ its own counsel (whether one or more separate counsel) in any manner it deems appropriate and the Borrower shall indemnify the Issuer for fees and expenses of such counsel.

#### **Section 15. Limitation of Liability.**

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Underwriter or the Borrower, including any person executing this Purchase Contract, shall not bear any liability as a result of any failure of the Issuer, the Underwriter or the Borrower to perform the obligations of each, respectively, set forth in this Purchase Contract.

**Section 16. Miscellaneous.**

16.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following address or such other address as either of the parties shall specify:

If to the Underwriter: Raymond James & Associates, Inc.  
880 Carillon Parkway  
St. Petersburg, FL 33716  
Attention: Tim Wranovix

and: RBC Capital Markets, LLC  
100 2nd Avenue South, Suite 800  
St. Petersburg, FL 33701  
Attention: Helen Feinberg

If to the Issuer: Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, FL 33301  
Attention: Executive Director

If to the Borrower: The Palms of Deerfield Townhomes, LLC  
c/o SHAG Palms of Deerfield Townhomes Developer,  
LLC  
1100 N.W. 4th Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith

and

The Palms of Deerfield Townhomes, LLC  
c/o Deerfield Beach Family Empowerment, Inc.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, FL 33441  
Attention: \_\_\_\_\_

16.2 This Purchase Contract will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Section 14 hereof will not confer any rights upon any other person. The terms “successor” and “assigns” will not include any purchaser of any of the Bonds from the Underwriter merely because of such purchase.

16.3 This Purchase Contract may not be assigned by any of the parties hereto prior to the Closing.

16.4 If any provision of this Purchase Contract is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

16.5 This Purchase Contract will be construed in accordance with and governed by the internal laws of the State, without regard to conflict of law principles of the State.

16.6 This Purchase Contract may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which will be regarded as an original and all of which will constitute one and the same document.

**Section 17. Survival of Certain Representations and Obligations.**

The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and each of their respective officers set forth in or made pursuant to this Purchase Contract shall survive delivery of and payment for the Bonds and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Underwriter.



If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Purchase Contract and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

**RAYMOND JAMES & ASSOCIATES, INC.**

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

Tim Wranovix  
Director

[Signatures continue on following page]

[Issuer's signature page to Purchase Contract]

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

By: \_\_\_\_\_  
Scott Ehrlich  
Chair

[Signatures continue on following page]

[Borrower's signature page to Purchase Contract]

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith  
Manager

**EXHIBIT A**

**TERMS OF BONDS**

**Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

<b><u>Dated Date</u></b>	<b><u>Initial Mandatory Tender Date</u></b>	<b><u>Maturity Date</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price</u></b>
November __, 2023	December 1, 2026	December 1, 2056	\$14,000,000	__%	__%

**EXHIBIT B**

**PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL**

November \_\_\_, 2023

Raymond James & Associates, Inc.  
880 Carillon Parkway  
St. Petersburg, FL 33716

RBC Capital Markets, LLC  
100 2nd Avenue South, Suite 800  
St. Petersburg, FL 33701

**\$14,000,000**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

Ladies and Gentlemen:

This opinion is being rendered to you pursuant to the Bond Purchase Agreement (the “Bond Purchase Agreement”), dated November \_\_\_, 2023, among the Housing Finance Authority of Broward County, Florida (the “Issuer”), the Underwriter named therein (the “Underwriter”) and The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), relating to the sale by the Issuer of the above-captioned bonds (the “Bonds”) which are being issued pursuant to a Trust Indenture (the “Indenture”), dated as of November 1, 2023, by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee.

We have acted as Bond Counsel in connection with the issuance and sale of the Bonds, and in that capacity we have participated in various conferences with representatives of and counsel for the Underwriter, representatives of and counsel for the Borrower, and representatives of and counsel for the Issuer relating to the preparation of the Official Statement, dated November \_\_\_, 2023 (the “Official Statement”). In addition, we have participated in the preparation of the Indenture. We have also examined the documents and other items referred to in our opinion of even date herewith relating to the Bonds.

Based on and subject to the foregoing, and in reliance thereon, we are of the opinion that:

1. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

2. The statements contained in the Official Statement (except as to any statistical and financial data included in the Official Statement and except for the information relating to The Depository Trust Company, its Participants and its book-entry only system, as to which we do not express an opinion) under the captions “THE BONDS,” “TAX MATTERS,” “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE,” “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT” and “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE TAX REGULATORY AGREEMENT,” insofar as such statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Loan Agreement, the Tax Regulatory Agreement, and certain aspects of our firm’s opinion relating to the federal

and the State of Florida tax implications of certain aspects of the Bonds present an accurate summary of such matters.

3. The Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due execution and delivery by the other parties thereto, constitutes a valid, legal and binding special obligation of the Issuer enforceable in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights or contractual obligations generally and no opinion is being rendered as to the availability of any particular remedy thereunder.

This letter is furnished by us solely for your benefit and may not be relied upon by any other persons. This letter is not to be used, circulated, quoted, or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to be relied upon by the holders of the Bonds.

Very truly yours,

**EXHIBIT C**

**FORM OF OPINION OF COUNSEL TO THE BORROWER**

November \_\_, 2023

[Opinion forthcoming from Shutts & Bowen LLP]

## EXHIBIT D

### FORM OF BORROWER'S RULE 15c2-12 CERTIFICATE

**\$14,000,000**

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

**Multifamily Housing Revenue Bonds, Series 2023**

**(The Palms of Deerfield Townhomes)**

The undersigned hereby certifies and represents to Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the "Underwriter") that the undersigned is authorized to execute and deliver this certificate on behalf of The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"), and hereby further certifies to the Underwriter as follows:

(a) This certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the issuance and sale of the above-captioned securities (the "Bonds").

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated November \_\_, 2023, relating to the Bonds (the "Preliminary Official Statement") setting forth information concerning the Bonds and the Borrower.

(c) As used herein, "Permitted Omissions" shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the Underwriter(s), all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The section of the Preliminary Official Statement entitled "UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE" describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of November 1, 2023, executed by the Borrower and The Bank of New York Mellon Trust Company, N.A., as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: November \_\_, 2023

[Remainder of page intentionally left blank]



[Signature page to Rule 15c2-12 Certificate]

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith  
Manager

## EXHIBIT E

### FORM OF ISSUE PRICE CERTIFICATE

**\$14,000,000**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

The undersigned, on behalf of Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the “Underwriter”), on behalf of itself, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Sale of the Bonds. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Exhibit A attached to the Bond Purchase Agreement dated November \_\_, 2023, among the Underwriter, The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), and the Housing Finance Authority of Broward County, Florida (the “Issuer”).

2. Defined Terms.

(a) “*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.

(b) “*Maturity*” means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) “*Public*” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than the Underwriter or a related party to the Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) “*Underwriter*” means (i) collectively, Raymond James & Associates, Inc. and RBC Capital Markets, LLC, (ii) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (iii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (ii) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue

Service Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

Dated: November \_\_, 2023

[Underwriter's signature page to Issue Price Certificate]

Dated as of the date hereof.

**RAYMOND JAMES & ASSOCIATES, INC.**

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

**EXHIBIT F**

**FORM OF DISCLOSURE LETTER**

November \_\_, 2023

Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, FL 33301

Ladies and Gentlemen:

In reference to the issuance of those certain \$14,000,000 Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Bonds"), Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the "Underwriter"), pursuant to the Bond Purchase Agreement (the "Purchase Contract") among the Underwriter, The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"), and the Housing Finance Authority of Broward County, Florida (the "Issuer"), hereby makes the following disclosures to the Issuer:

1. The Underwriter is acting as underwriter to the Issuer for the public offering of the Bonds. The total fee to be paid to the Underwriter pursuant to the Purchase Contract is equal to approximately \$\_\_\_\_ per bond, of the total face amount of the Bonds, or \$\_\_\_\_\_.

2. The estimated expenses not included in the above number to be incurred by the Underwriter and to be charged to the Borrower in connection with the issuance of the Bonds are:

Underwriter's counsel (including disbursements) \$\_\_\_\_\_ (or \$\_\_\_\_ per Bond)

3. The names, addresses and estimated amounts of compensation of any person who is not regularly employed by, or not a partner or officer of, an underwriter, bank, banker or financial consultant or advisor and who enters into an understanding with either the Issuer or the Underwriter, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Underwriter or who exercises or attempts to exercise any influence to effect any transaction in the purchase of the Bonds are:

None

4. The amount of the underwriting risk and takedown expected to be realized is:

Takedown/Concession \$\_\_\_\_\_ or \$\_\_\_\_ per Bond.

5. The amount of the management fee to be charged by the Underwriter is:

\$\_\_\_\_\_ or \$\_\_\_\_ per Bond.

6. Any other fee, bonus, and other compensation estimated to be paid by the Underwriter in connection with the Bonds to any person not regularly employed or retained by the Underwriter is as follows:

Fee and Expenses

\$ \_\_\_\_\_ or \$ \_\_\_\_ per Bond (in addition to Underwriter's counsel fee)

7. The Issuer is proposing to issue \$ \_\_\_\_\_ of the Bonds for the purpose of financing the Project. The Bonds are expected to be repaid over a period of \_\_\_\_ years. At a forecasted interest rate of \_\_\_\_%, total interest paid over the life of the Bonds will be \$ \_\_\_\_\_.

8. The source of repayment or security for the Bonds is the Trust Estate. Authorizing this debt or obligation will result in \$0.00 of the Issuer's moneys not being available to finance the other services of the Issuer each year the Bonds are Outstanding.

9. The name and address of the Underwriter connected with the Bonds is:

Raymond James & Associates, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Attention: Tim Wranovix

and

RBC Capital Markets, LLC  
100 2nd Avenue South, Suite 800  
St. Petersburg, FL 33701  
Attention: Helen Feinberg

[Signature Page to Disclosure Letter]

**RAYMOND JAMES & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Tim Wranovix  
Director

**EXHIBIT "E"**

**FORM OF**

**PRELIMINARY OFFICIAL STATEMENT**

**[ATTACHED]**



NEW ISSUE – Book-Entry Only

RATING: Moody's "[Aaa/VMIG 1]"  
SEE "RATING" herein.

*In the opinion of Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, Bond Counsel, under existing statutes, regulations, rulings and court decisions and subject to the conditions described herein under "TAX MATTERS," interest on the Bonds is (a) excludable from gross income of the owners thereof for federal income tax purposes except as otherwise described herein under the caption "TAX MATTERS," and (b) not an item of tax preference for purposes of the federal alternative minimum tax. Such interest also may be subject to other federal income tax consequences referred to herein under "TAX MATTERS." See "TAX MATTERS" herein for a general discussion of Bond Counsel's opinion and other tax considerations.*

**\$14,000,000\***

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

**Dated: Date of Delivery**

**Initial Interest Rate: \_\_\_\_\_%**

**Initial Offering Price: 100%\***

**Mandatory Tender in connection with Conversion Date:**

**no earlier than: December 1, 2025\***

**Initial Mandatory Tender Date: December 1, 2026\***

**Maturity Date: December 1, 2056\***

**CUSIP: \_\_\_\_\_†**

The Housing Finance Authority of Broward County, Florida (the "Issuer") is issuing its Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Bonds") pursuant to a Trust Indenture dated as of November 1, 2023 (the "Indenture"), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The Bonds shall bear interest on the outstanding principal amount thereof at the Initial Interest Rate set forth above (the "Initial Interest Rate") from their date of issuance to but not including the Initial Mandatory Tender Date set forth above (the "Initial Mandatory Tender Date"), payable on each June 1 and December 1, commencing June 1, 2024\*. See "THE BONDS" herein.

The Bonds are being issued to finance a loan (the "Loan") to The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"), to enable the Borrower to pay a portion of the cost of acquiring a leasehold interest in, rehabilitating and equipping a 56-unit multifamily rental housing project located in the Deerfield Beach, Broward County, Florida (the "State"), and known as The Palms of Deerfield Townhomes (the "Project"). The Loan will be made to the Borrower pursuant to a Loan Agreement, dated as of November 1, 2023 (the "Loan Agreement"), between the Issuer and the Borrower, under which the Borrower has agreed to provide, as described herein, payments to the Issuer in amounts sufficient to pay the principal of and interest on the Bonds when due. The Loan will be evidenced by a Promissory Note in the principal amount of \$14,000,000\* (the "Note") from the Borrower to the Issuer and endorsed to the Trustee.

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture, on the Initial Mandatory Tender Date. All Bondholders must tender their Bonds for purchase on the Initial Mandatory Tender Date. The Bonds may be remarketed and a new interest rate for the Bonds may be determined on the Initial Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

The Bonds are subject to mandatory tender prior to the Initial Mandatory Tender Date as set forth herein. See "THE BONDS" herein.

Simultaneously with the issuance of the Bonds, the Issuer is issuing its [Tax-Exempt Seller Note Caption] in the principal amount of \$5,000,000\* (the "[Series 2023 Note]"), the proceeds of which will be used to make a loan to the Borrower to finance a portion of the cost of acquiring a leasehold interest in, rehabilitating and equipping the Project. The Series 2023 Note is not being offered pursuant to this Official Statement. Closing on the Bonds is contingent on the closing of the Series 2023 Note.

At all times the Bonds will be secured by Eligible Investments or other Eligible Funds sufficient, along with earnings thereon (without the need for reinvestment), to pay all of the interest on the Bonds when due and to pay the principal of the Bonds at the earlier of the Initial Mandatory Tender Date or any preceding Mandatory Tender Date, as further described herein. See "SECURITY AND SOURCES OF PAYMENT FOR THE BONDS" herein.

**THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.**

The Bonds are offered for delivery when, as and if issued and received by Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the "Underwriter") and subject to the approval of legality by Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, Bond Counsel, of certain other conditions. Certain legal matters will be passed upon for the Underwriter by its counsel, Tiber Hudson LLC, Washington, D.C., and for the Borrower by its counsels, Shutts & Bowen LLP, Miami, Florida, and Bilzin Sumberg Baena Price & Axelrod LLP, Miami, Florida. It is expected that the Bonds will be available in book-entry form through the facilities of DTC in New York, New York on or about November \_\_, 2023.

*This cover page contains limited information for ease of reference only. It is not a summary of the Bonds or the security therefor. The entire Official Statement, including the Appendices, must be read to obtain information essential to make an informed investment decision.*

**RAYMOND JAMES**

**RBC CAPITAL MARKETS**

Date: November \_\_, 2023

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† CUSIP® is a registered trademark of the American Bankers Association. The CUSIP number listed above is being provided solely for the convenience of Bondholders only, and the Issuer does not make any representation with respect to such number or undertake any responsibility for its accuracy. The CUSIP number is subject to being changed after the issuance of the Bonds.

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. The Bonds may not be sold, nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

No broker, dealer, salesman or other person has been authorized by the Issuer, to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale prior to the registration or qualification under the securities laws of any such jurisdiction. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made under the Indenture shall, under any circumstances, create any implication that there has been no change in the affairs of the Issuer since the date hereof.

All quotations from and summaries and explanations of provisions of laws and documents herein do not purport to be complete and reference is made to such laws and documents for full and complete statements of their provisions. This Official Statement is not to be construed as a contract or agreement between the Issuer and the purchasers or owners of any of the Bonds. All statements made in this Official Statement involving estimates or matters of opinion, whether or not expressly so stated, are intended merely as estimates or opinions and not as representations of fact. The cover page hereof, inside front cover, and the appendices attached hereto are part of this Official Statement. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale of the Bonds shall under any circumstances create any implication that there has been no change in the affairs of the Issuer since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF THE BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

The Underwriter has reviewed the information in this Official Statement pursuant to its responsibilities to investors under federal securities laws, but the Underwriter does not guarantee the accuracy or completeness of such information.

No registration statement relating to the Bonds has been filed with the Securities and Exchange Commission (the "Commission") or with any state securities agency. The Bonds have not been approved or disapproved by the Commission or any state securities agency, nor has the Commission or any state securities agency passed upon the accuracy or adequacy of this Official Statement. Any representation to the contrary is a criminal offense.

The order and placement of information in this Official Statement, including the Appendices, are not an indication of relevance, materiality or relative importance, and this Official Statement, including the Appendices, must be read in its entirety. The captions and headings in this Official Statement are for convenience only and in no way define, limit, or describe the scope and intent, or affect the meaning or construction, of any provision or section of this Official Statement.

CUSIP data herein are provided by S&P Global Ratings' CUSIP Service Bureau, which is managed on behalf of the American Bankers Association by S&P Global Market Intelligence LLC. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer and are included solely for the convenience of the holders of the Bonds. The Issuer is not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions.

The Bank of New York Mellon Trust Company, N.A., as Trustee, has not reviewed, provided or undertaken to determine the accuracy of any of the information contained in this Official Statement and makes no representation or warranty, express or implied, as to any matters contained in this Official Statement, including, but not limited to, (i) the accuracy or completeness of such information, (ii) the validity of the Bonds, or (iii) the tax-exempt status of the Bonds.

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## OFFICIAL STATEMENT

**\$14,000,000\***

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

### INTRODUCTION

This Official Statement (this “Official Statement”) has been prepared in connection with the issuance of the above-captioned Bonds (the “Bonds”) by 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 (the “State”). The Board of the Issuer has authorized the issuance of the Bonds by its duly adopted Resolution dated October 18, 2023 and a Resolution of the Broward County Board of County Commissioners adopted on November 14, 2023 (collectively, the “Resolution”). The Bonds are issued pursuant to a Trust Indenture dated as of November 1, 2023 (the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). Certain capitalized terms that are used in this Official Statement and not otherwise defined shall have the definitions ascribed to them in “APPENDIX A — DEFINITIONS OF CERTAIN TERMS” hereto.

The Bonds are to be issued pursuant to the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended (the “Act”), for the purpose of providing funds to make a loan (the “Loan”) to The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), to enable the Borrower to pay a portion of the cost of acquiring a leasehold interest in, rehabilitating and equipping a 56-unit multifamily rental housing project to be located in Deerfield Beach, Broward County, Florida, and to be known as The Palms of Deerfield Townhomes (the “Project”). See “PRIVATE PARTICIPANTS” and “THE PROJECT” herein.

The Loan will be made to the Borrower under a Loan Agreement dated as of November 1, 2023 (the “Loan Agreement”), by and between the Issuer and the Borrower. Pursuant to the Loan Agreement, the Borrower has agreed to make payments to the Issuer in amounts sufficient to pay the principal of and interest on the Bonds when due (the “Bond Service Charges”) to the extent that amounts otherwise available for such payment are insufficient therefor. The Loan will be evidenced by a promissory note in the principal amount of \$14,000,000\* (the “Note”) from the Borrower to the Issuer and endorsed to the Trustee.

The aggregate funds and Eligible Investments on deposit in the Project Fund (excluding the Subordinate Loan Account of the Project Fund) and the Collateral Fund will, at all times, equal the principal amount of Bonds Outstanding. Bond Service Charges will be paid from amounts on deposit in the Bond Fund, the Collateral Fund and the Project Fund (excluding the Subordinate Loan Account of the Project Fund), and investment earnings thereon. Amounts on deposit in the Collateral Fund, the Bond Fund and the Project Fund (excluding the Subordinate Loan Account of the Project Fund) will be invested in Eligible Investments. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

The Bonds shall bear interest on the outstanding principal amount thereof at a rate equal to the Initial Interest Rate set forth on the cover page hereof from the date of delivery to but not including the earlier of (i) the Conversion Date (as defined herein) and (ii) December 1, 2026\* (the “Initial Mandatory Tender Date”), payable on each June 1 and December 1, commencing June 1, 2024\* (each an “Interest Payment Date”).

The Bonds are subject to mandatory tender for purchase, subject to satisfaction of the applicable terms and conditions set forth in the Indenture on the Initial Mandatory Tender Date. All Bondholders must tender their Bonds for purchase on each Mandatory Tender Date, as set forth in the Indenture. A new interest rate for the Bonds may be determined on the Initial Remarketing Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory

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\* Preliminary; subject to change.

Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

Citibank, National Association (“Citi”), has entered into a Forward Commitment Agreement with the Borrower and the Mortgage Lender (as defined herein) dated as of November 1, 2023 (the “Citi Forward Commitment”), whereby Citi has committed, subject to the satisfaction on or before the Termination Date (as defined in the Citi Forward Commitment) of the Conditions to Conversion set forth in the Citi Forward Commitment, to facilitate the financing of the Project in the Permanent Phase.

Simultaneously with the issuance of the Bonds, the Issuer is issuing its [Tax-Exempt Seller Note Caption] in the principal amount of \$5,000,000\* (the “[Series 2023 Note]”), the proceeds of which will be used to make a loan to the Borrower to finance a portion of the cost of acquiring a leasehold interest in, rehabilitating and equipping the Project. The Series 2023 Note is not being offered pursuant to this Official Statement. Closing on the Bonds is contingent on the closing of the Series 2023 Note.

Brief descriptions of the Issuer, the Borrower, the Mortgage Lender, the Mortgage Loan, the Project, the Bonds, the security for the Bonds, the Indenture, the Loan Agreement and the Tax Regulatory Agreement are included in this Official Statement. The summaries herein do not purport to be complete and are qualified in their entireties by reference to such documents, agreements and programs as may be referred to herein, and the summaries herein of the Bonds are further qualified in their entireties by reference to the form of the Bonds included in the Indenture and the provisions with respect thereto included in the aforesaid documents.

## THE ISSUER

*The following information has been provided by the Issuer for use herein. While the information is believed to be reliable, none of the Trustee, the Underwriter, nor any of their respective counsel, members, officers or employees makes any representations as to the accuracy or sufficiency of such information.*

### General

The Issuer is a public body corporate and politic created under the laws of the State of Florida. It was created by Ordinance No. 79-41 enacted by the Broward County Board of County Commissioners on June 20, 1979, pursuant to the provisions of the Act. The Broward County Board of County Commissioners is the principal legislative and governing body of Broward County, Florida, as provided by the Florida Constitution and Chapter 125 of the Florida Statutes. The Issuer was created for the purpose of addressing a housing shortage in Broward County, Florida by stimulating the construction and rehabilitation of housing through the use of public financing. Pursuant to the Act, the Issuer has the power to issue revenue bonds for the purposes described in the Act including, but not limited to, the purchasing of or making of commitments to purchase mortgage loans to stimulate the construction and rehabilitation of housing in the Issuer’s area of operation.

The Issuer is authorized to finance and refinance multifamily rental housing projects, and since its inception, has issued approximately \$1,870,350,000 aggregate principal amount of revenue bonds for such purpose (the “Prior Bonds”). The Prior Bonds do not share in the security for the Bonds, and the Bonds will not be secured by the revenues related to the projects financed by such Prior Bonds or the security for the Prior Bonds in connection with such projects.

**THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF**

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\* Preliminary; subject to change.

**THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.**

**THE MORTGAGE LOAN, DEPOSITS INTO THE COLLATERAL FUND AND  
DISBURSEMENT OF BOND PROCEEDS**

Contemporaneously with the issuance of the Bonds, the Borrower will obtain a construction loan (the “Mortgage Loan”) from Citibank, National Association (the “Mortgage Lender”) and the Subordinate Loans (as defined herein). Over time, Eligible Funds, including proceeds of the Mortgage Loan, are expected to be delivered to the Trustee for deposit into the Collateral Fund established by the Trustee under the Indenture. Upon the deposit of Eligible Funds into the Collateral Fund, and subject to the other applicable provisions set forth in the Indenture and the Loan Agreement, the Trustee shall disburse a like amount of Bond proceeds from the Project Fund to or at the direction of the Mortgage Lender for purposes of paying costs of the Project, all in accordance with the Loan Agreement and the Indenture. The maximum aggregate amount of funds representing proceeds of the Mortgage Loan to be delivered to the Trustee for deposit into the Collateral Fund will be \$14,000,000\*.

Bond Service Charges shall be payable as they become due, (i) in the first instance from moneys on deposit in the Bond Fund (but not including the Negative Arbitrage Account thereof), (ii) in the second instance from moneys on deposit in the Negative Arbitrage Account, and (iii) thereafter, from moneys on deposit in the Collateral Fund or the Project Fund and transferred as necessary to the Bond Fund. The Indenture provides that the amount of funds disbursed from the Project Fund (excluding the Subordinate Loan Account of the Project Fund) on any given date for payment of Project Costs shall at all times equal the amount of Eligible Funds deposited into the Collateral Fund in connection with such disbursement. Accordingly, the aggregate amount in the Collateral Fund and the Project Fund (excluding the Subordinate Loan Account of the Project Fund) shall at all times equal 100% of the principal amount of the Bonds outstanding plus original issue premium, if any.

Notwithstanding any provision of the Loan Agreement or the Indenture to the contrary, the Trustee will not act upon the delivery of a certified copy of the request for disbursement of funds from the Project Fund (excluding the Subordinate Loan Account of the Project Fund), unless and until (i) an amount equal to or greater than the requested disbursement amount has been deposited into the Collateral Fund in accordance with the provisions of the Indenture and (ii) the Trustee has verified that the sum of the amount then held in the Collateral Fund and the amount then on deposit in the Project Fund (excluding the Subordinate Loan Account of the Project Fund), less the anticipated amount of the disbursement from the Project Fund (excluding the Subordinate Loan Account of the Project Fund), is at least equal to the then-outstanding principal amount of the Bonds. The Mortgage Lender will not deliver Eligible Funds to the Trustee for deposit into the Collateral Fund until the Trustee has first confirmed this calculation to the Mortgage Lender. Upon receipt of Eligible Funds, Trustee shall be unconditionally and irrevocably obligated to disburse Bond proceeds in the amount of such installment of Eligible Funds to pay for Costs of the Project as set forth in the Indenture.

Amounts on deposit in the Project Fund (excluding the Subordinate Loan Account of the Project Fund), the Bond Fund and the Collateral Fund will be invested on the Closing Date in Eligible Investments. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS — Investment of Bond Fund, Project Fund and Collateral Fund; Eligible Investments” herein.

**THE BONDS**

**Terms of Bonds Generally**

The Bonds shall be issued in Authorized Denominations and shall mature on December 1, 2056\* (the “Maturity Date”). The Bonds are dated as of the Closing Date and shall bear interest at the Initial Interest Rate from the Closing Date, to but not including the Initial Mandatory Tender Date, payable on each Interest Payment Date, commencing June 1, 2024\*, and on each Mandatory Tender Date.

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\* Preliminary; subject to change.

Interest on the Bonds shall be computed on the basis of a 360-day year of 12 months of 30 days each.

The principal of and interest on any of the Bonds shall be payable in lawful money of the United States of America. Except as described below under the subcaption "Book-Entry-Only System," (a) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the Designated Office of the Trustee or at the office, designated by the Trustee, of any paying agent and (b) interest on any Bond shall be paid on each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more predecessor bonds) is registered at the close of business of the Record Date applicable to that Interest Payment Date on the register at the address appearing therein.

### **Mandatory Tender**

All Outstanding Bonds shall be subject to mandatory tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date and shall be paid in full on the applicable Mandatory Tender Date.

The Mandatory Tender Dates shall consist of (i) the earliest of (A) the Initial Mandatory Tender Date, (B) the Conversion Date and (C) the Termination Date, and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower with the consent of the Investor Member, and with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to the Indenture.

While tendered Bonds are in the custody of the Trustee pending purchase pursuant to the Indenture, the tendering Holders thereof shall be deemed the owners thereof for all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

Notwithstanding anything in the Indenture to the contrary, any Bond tendered under this heading will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

The Trustee shall utilize the following sources of payments to pay the tender price of the Bonds not later than 2:30 p.m. Local Time on the Mandatory Tender Date in the following priority: (i) amounts representing proceeds of remarketed Bonds deposited into the Remarketing Proceeds Account, to pay the principal amount, plus accrued interest, of Bonds tendered for purchase; (ii) amounts on deposit in the Collateral Fund, to pay the principal amount of Bonds tendered for purchase; (iii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund to pay the accrued interest; if any, on Bonds tendered for purchase; (iv) available interest earnings on amounts on deposit in the Project Fund to pay the accrued interest, if any, on the Bonds tendered for purchase and (v) any other Eligible Funds available or made available for such purpose at the direction of the Borrower, with the consent of the Issuer.

Bonds shall be deemed to have been tendered for purposes of this heading whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee and, subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds and interest accrued thereon to the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

### **Mandatory Tender Notice**

Notice to Holders. Not less than thirty (30) days preceding a Mandatory Tender Date (or eight (8) days in connection with a Mandatory Tender Date that is the Conversion Date), the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Investor Member and the Remarketing Agent) by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

- (i) the Mandatory Tender Date and that (a) all Outstanding Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date, (b) all Outstanding Bonds must be tendered for purchase



no later than 12:00 noon Local Time on the Mandatory Tender Date and (c) Holders will not have the right to elect to retain their Bonds;

(ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase and the date of the required delivery;

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

(iv) any Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date.

Second Notice. In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the twentieth (20<sup>th</sup>) day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in the Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of the Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price applicable to the Bond.

Notice delivered as required under the Indenture with respect to a mandatory tender in connection with Conversion may be rescinded and annulled on or before the tender date set forth in such notice if Conversion does not occur by the Conversion Date. Neither failure to give or receive any notice described in this heading, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this heading.

### **Mandatory Redemption**

The Bonds are subject to mandatory redemption, in whole, on any Mandatory Tender Date, upon the occurrence of any of the following events: (i) the Borrower has not previously elected pursuant to the Indenture and the Loan Agreement to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Indenture have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. The Bonds shall be redeemed at a redemption price equal to 100% of the principal amount of such Bonds plus accrued interest to the applicable redemption date from funds on deposit in, or transferred from, the Bond Fund, the Collateral Fund, and the Project Fund.

### **Book-Entry Only System**

*The following information on the Book-Entry System applicable to all Bonds has been supplied by DTC and none of the Issuer, the Borrower or the Underwriter make any representation, warranties or guarantees with respect to its accuracy or completeness.*

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each issue of the Bonds, each in the aggregate principal amount of such issue, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934.

DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from Issuer or Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to

Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant’s interest in the Bonds, on DTC’s records, to the Trustee. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC’s records and followed by a book-entry credit of tendered Bonds to the Trustee’s DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC’s book-entry system has been obtained from sources that Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **General**

The Bonds will be secured by all right, title and interest of the Issuer in the Trust Estate, including, but not limited to (i) all right, title and interest of the Issuer in and to all Revenues, derived or to be derived by the Issuer or the Trustee for the account of the Issuer under the terms of the Indenture and the Loan Agreement (other than the Reserved Rights of the Issuer), together with all other Revenues received by the Trustee for the account of the Issuer arising out of or on account of the Trust Estate, (ii) all right, title and interest of the Issuer in and to the Note (other than the Reserved Rights of the Issuer) including all payments and proceeds with respect thereto or replacement thereof, (iii) all moneys (including Eligible Funds) which are at any time or from time to time on deposit in any fund or account created under the Indenture (excluding funds in the Costs of Issuance Fund (but only to the extent such moneys are not proceeds of the Bonds), the Expense Fund, the Mortgage Loan Prepayment Fund and the Rebate Fund), (iv) all right, title and interest of the Issuer in and to, and remedies under, the Loan Agreement; and (v) all funds, moneys and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security under the Indenture for the Bonds by the Issuer or by anyone on its behalf or with its written consent to the Trustee, which is authorized by the Indenture to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture (the foregoing collectively referred to as the “Trust Estate”).

THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE PLEDGED TO SUCH PURPOSES IN THE MANNER AND TO THE EXTENT PROVIDED IN THE INDENTURE AND NO OTHER REVENUES OR ASSETS OF THE ISSUER. THE BONDS, THE PRINCIPAL OF AND THE INTEREST THEREON DO NOT CONSTITUTE AN INDEBTEDNESS OR OBLIGATION OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUER HAS NO TAXING POWER.

## **Repayment of Loan**

The Loan Agreement and the Note obligate the Borrower to cause to be paid to the Trustee amounts which shall be sufficient to pay Bond Service Charges coming due on each Interest Payment Date. At all times the Eligible Funds required to be deposited into the Collateral Fund and amounts on deposit in the Bond Fund and the Project Fund (excluding the Subordinate Loan Account of the Project Fund), if any, along with interest earnings thereon (without the need for reinvestment), will be sufficient to pay such Bond Service Charges and such amounts will be a credit against the Borrower's payment obligations under the Loan Agreement and the Note.

## **Investment of Bond Fund, Project Fund and Collateral Fund; Eligible Investments**

On the Closing Date, all amounts on deposit in the Bond Fund and Collateral Fund will be invested in Eligible Investments. It is anticipated that all of the Bond proceeds in the Project Fund will be disbursed to pay Project Costs on and after the Closing Date and that Bond Service Charges will be paid from amounts on deposit in the Bond Fund and Collateral Fund and any investment earnings thereon.

## **Additional Bonds**

No additional Bonds on parity with the Bonds may be issued pursuant to the Indenture.

## **PRIVATE PARTICIPANTS**

*The following information concerning the private participants has been provided by representatives of the private participants and has not been independently confirmed or verified by either the Underwriter or the Issuer. No representation is made herein as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.*

## **The Borrower**

The Borrower is The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, a single-asset entity formed for the specific purpose of acquiring, owning, and operating the Project. The authorized member of the Borrower is SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Authorized Member"), which will own a 0.05% interest in the Borrower. DBFE Townhomes, LLC, a Florida limited liability company (the "Administrative Member") will own a 0.005% interest in the Borrower. HCP-ILP, LLC, a Nevada limited liability company (the "Investor Member"), will own a 99.99% interest in the Borrower.

## **The Investor Member**

Simultaneously with the issuance of the Bonds, the Borrower expects the Authorized Member and the Investor Member to enter into an Amended and Restated Operating Agreement pursuant to which the Investor Member will acquire a 99.99% ownership interest in the Borrower. The equity funding arrangements for the funding of the tax credit equity are expected to be in the total amount set forth under "THE PROJECT — Plan of Financing" herein paid in stages during and after construction of the Project. These funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the estimates set forth herein and neither the Issuer nor the Underwriter makes any representation as to the availability of such funds.

## **The Developer**

The developers are SHAG Palms of Deerfield Townhomes Developer, LLC, a Florida limited liability company ("SHAG Developer") and Deerfield Beach Family Empowerment, Inc., a Florida not-for-profit corporation ("DBFE Developer") (collectively, the "Developer"). The SHAG Developer was created in 2022. The SHAG Developer and its principals via an affiliate have developed approximately 4,000 units in two states. There is an identity of interest between the principals of the SHAG Developer and the Borrower.

The DBFE Developer was created in 2015 and has eight years of experience in affordable and public housing development. The DBFE Developer and its principals via an affiliate have developed approximately 250 units in one state. There is an identity of interest between the principals of the DBFE Developer and the Borrower. Both entities are controlled by Darren Smith and Timothy Henzy.

### **Limited Assets and Obligation of Borrower, Authorized Member and Investor Member**

The Borrower has no substantial assets other than the Project and does not intend to acquire any other substantial assets or to engage in any substantial business activities other than those related to the ownership of the Project. However, the Authorized Member, the Administrative Member, the Investor Member, and their affiliates are engaged in and will continue to engage in the acquisition, development, ownership and management of similar types of housing projects. They may be financially interested in, as officers, members, partners or otherwise, and devote substantial times to, business and activities that may be inconsistent or competitive with the interests of the Project.

The obligations and liabilities of the Borrower under the Loan Agreement and the Note are of a non-recourse nature and are limited to the Project and moneys derived from the operation of the Project. Neither the Borrower nor its members have any personal liability for payments on the Note to be applied to pay the principal of and interest on the Bonds. Furthermore, no representation is made that the Borrower has substantial funds available for the Project. Accordingly, neither the Borrower's financial statements nor those of its members are included in this Official Statement.

### **The Property Manager**

The Project will be managed by Housing Authority of the City of Deerfield Beach d/b/a Deerfield Beach Housing Authority, a Florida corporation (the "Property Manager"). The Property Manager currently manages 3 apartment complexes comprising a total of approximately 252 low-income housing tax credit units in the City of Deerfield Beach. The Property Manager commenced property management activities in 2008 and currently has a staff of approximately four corporate personnel associated with property management and seven onsite property management employees. The Property Manager is an affiliate of the Developer or the Borrower.

### **The General Contractor**

The general contractor for the Project will be Affordable Group Construction, LLC, a Florida limited liability company (the "General Contractor"). The General Contractor is an affiliate of the SHAG Developer and the Borrower. The qualified contractor of the General Contractor has served as the project manager with respect to the rehabilitation of approximately 777 multifamily rental units.

### **The Architect**

The architect for the Project is Gallo Herbert Architects, LLC, a Florida limited liability company (the "Architect"). The Architect has been a licensed architect for 28 years and has been the principal architect for approximately 50 multifamily developments comprising approximately 6,850 units throughout South Florida. The Architect is not an affiliate of the Developer or the Borrower.

## **THE PROJECT**

*The following information concerning the Project has been provided by representatives of the Borrower and has not been independently confirmed or verified by either the Underwriter or the Issuer. No representation is made herein as to the accuracy or adequacy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.*

The Project, known as Palms of Deerfield Townhomes, consists of 56 residential apartment units in 12 buildings located at 407-431 NW 1st Terrace, Deerfield Beach, FL 33441. Common amenities include a clubhouse/community center. There are 136 parking spaces for tenant use. Unit amenities include: washers and dryers, solid-surface countertops, stainless steel Energy Star-certified appliances, and luxury vinyl tile.

It is anticipated that rehabilitation will commence immediately upon the issuance of the Bonds and funding of the tax credit equity and will be completed in approximately 24 months.

The unit type, the unit mix and approximate square footage for the units of the Project will be as follows:

Unit Type	Average Square Feet	Number of Units
2 Bedroom/1.5 Bathroom	1,198	24
3 Bedroom/2.5 Bathroom	1,281	<u>32</u>
<b>TOTAL</b>		<b>56</b>

**Plan of Financing**

The overall estimated sources and uses of funds for the Project are projected to be approximately as follows:

**Sources of Funds\*:**

Bond Proceeds <sup>1</sup>	\$14,000,000
Tax Credit Equity	14,711,317
Taxable Seller Note	12,747,477
Tax-Exempt Seller Note	5,000,000
Interest Revenue	1,174,500
Deferred Development Fee	43,383
<b><u>Total Sources</u></b>	<b><u>\$47,676,677</u></b>

**Uses of Funds\*:**

Acquisition	\$22,400,000
Hard Costs	6,372,210
Other Costs	5,609,855
Reserves	284,801
Development Fee	5,929,809
Partial Repayment of Bond Principal	7,600,000
<b><u>Total Uses</u></b>	<b><u>\$48,196,675</u></b>

<sup>1</sup> Subject to the satisfaction of certain conditions, the Bonds may be subject to mandatory tender prior to the Initial Mandatory Tender Date in connection with the Conversion of the Project from the Construction Phase to the Permanent Phase. On such tender date, Bonds so tendered may be redeemed in part in an amount sufficient to reduce the outstanding principal balance thereof to \$6,400,000\* and shall be delivered in the form of a note (the “Governmental Lender Note”) to Citibank, National Association, a national banking association.

**The Mortgage Loan.** The Project will utilize a construction loan in the principal amount of up to \$14,000,000\* (the “Mortgage Loan”). The Mortgage Loan will be secured by a senior mortgage on the Project and the obligation to repay the Mortgage Loan will be evidenced by a promissory note (the “Mortgage Note”) from the Borrower to Citibank, National Association (the “Mortgage Lender”). The Mortgage Note will have a term of 24 months, with the right to two six-month extensions, and will bear interest at the one month term SOFR (floor of 0.50%) plus 300 bps, with no payments of principal during the term, and with all unpaid principal and interest due at maturity. The Mortgage Loan proceeds will be disbursed from time to time by the Mortgage Lender to the Trustee for deposit into the Collateral Fund to allow for a corresponding amount of Bond proceeds to be disbursed to the Project.

**The Low-Income Housing Tax Credit Proceeds.** Prior to the issuance of the Bonds, the Borrower committed to sell to the Investor Member a 99.99% ownership interest in the Borrower. Pursuant to the sale, the funding of the

\* Preliminary; subject to change.

federal Low-Income Housing Tax Credit (“LIHTC”) equity will total approximately \$14,711,317\* expected to be funded in connection with the issuance of the Bonds. The funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the projections set forth above and neither the Issuer nor the Underwriter makes any representation as to the availability of such funds.

**The Seller Loan.** The Project will also utilize a subordinate loan in the approximate principal amount of \$17,747,477\* (the “Seller Loan”). The obligation to repay the Seller Loan will be set forth in two promissory notes (the “Seller Loan Notes”) from the Borrower to The Palms of Deerfield Beach, LP (in this capacity, the “Seller Loan Lender”) and will be repayable on the terms and conditions set forth therein. The Seller Loan Notes will consist of a taxable seller note in the amount of \$12,747,477\* and a tax-exempt seller note in the amount of \$5,000,000\* (the “[Series 2023 Note]”) and will be secured by subordinate mortgages against the Project subordinate to the Mortgage Loan. The Seller Loan Notes will have terms of 5 years and will bear interest at a rate of 6.25%, compounding annually, with annual principal and interest not otherwise paid, due at maturity.

**Deferred Development Fee.** The Project will utilize deferred developer fee in the anticipated amount of \$43,383\* as a source of funding. The deferred developer fee will be repaid through surplus cash flow received from the operation of the Project.

The sources and uses of funds to be applied under the Indenture are projected to be approximately as follows:

<b>Sources of Funds*</b>	
Bond Proceeds <sup>1</sup>	\$14,000,000
Mortgage Loan	
<b>Total</b>	<b>\$</b>
 <b>Uses of Funds*</b>	
Project Fund	\$14,000,000
Collateral Fund	
<b>Total</b>	<b>\$</b>

<sup>1</sup> Subject to the satisfaction of certain conditions, the Bonds may be redeemed on the Initial Mandatory Tender Date with certain Eligible Funds, including the proceeds of a loan in the maximum principal amount of \$6,400,000\* from Citibank, National Association, a national banking association, in its capacity as the funding lender. All costs of issuing the Bonds, including the Underwriter’s fee, will be paid by the Borrower.

## **The HAP Contract**

As of the Closing Date, the Borrower will execute a Housing Assistance Payment Contract covering 45 of the 56 units in the Project, which contract will have a 20-year term in order to service debt during the term of the Mortgage Loan.

Funding under the HAP Contract is subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the United States Housing Act of 1937, as amended, and in the case of Section 8 contracts is administered by local public housing authorities. Renewals of Section 8 HAP contracts are governed by the Multifamily Housing Mortgage and Assistance Restructuring Act, as amended (“MAHRA”). The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income (“AMI”) for the area as determined by HUD), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the

\* Preliminary; subject to change.

“contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in MAHRA and the HAP Contract, are the “contract rents” for the Project. The HAP Contract will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of the HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under the HAP Contract or impose other sanctions. MAHRA requires that upon the request of the Borrower, HUD shall renew the HAP Contract under the Section 8 Program. However, because the HAP Contract is subject to receipt of annual appropriations by Congress, there is no assurance that the HAP Contract will be renewed or replaced upon its expiration. Funding for HAP contracts is appropriated by Congress on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues sufficient to pay the principal of and interest of the Mortgage Loan.

### **Project Regulation**

In order to obtain low-income housing tax credits, the Project will be operated as a qualified residential rental project with 100% of the residential units in the Project occupied by Lower-Income Persons (as defined in the Tax Regulatory Agreement) during the Qualified Project Period (as defined in the Tax Regulatory Agreement), in accordance with Section 142(d) of the Code. See “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE TAX REGULATORY AGREEMENT” herein.

In addition to the rental restrictions imposed upon the Project by the Tax Regulatory Agreement, the Project will be further encumbered by a tax credit restrictive covenant, to be executed by the Borrower in connection with the low-income housing tax credits (the “LIHTCs”) anticipated to be granted for the Project and in compliance with the requirements of Section 42 of the Code. Section 42 of the Code will restrict the income levels of 100% of the residential units in the Project (the “Tax Credit Units”). 42 of the Tax Credit Units shall be held available for rental to persons whose adjusted family income is equal to or less than 60% of the AMI adjusted for family size and 14 of the Tax Credit Units shall be held available for rental to persons whose adjusted family income is equal to or less than 50% of the AMI adjusted for family size and the rents which may be charged for occupancy of such units will be restricted to not more than 30% of the applicable AMI, adjusted for family size.

### **CERTAIN BONDHOLDERS’ RISKS**

*The purchase of the Bonds will involve a number of risks. The following is a summary, which does not purport to be comprehensive or definitive, of some of such risk factors.*

#### **General**

Payment of the Bond Service Charges, and the Borrower’s obligations with respect to the Bond Service Charges, will be secured by and payable from Bond proceeds held in the Project Fund (excluding the Subordinate Loan Account of the Project Fund), if any, and moneys deposited into the Collateral Fund and the Bond Fund, including the Negative Arbitrage Account held in the Bond Fund. Although the Borrower will execute the Note to evidence its obligation to repay the Loan, it is not expected that any revenues from the Project or other amounts, except moneys in the Bond Fund, Project Fund (excluding the Subordinate Loan Account of the Project Fund), if any, and Collateral Fund, will be available to satisfy that obligation. The Indenture requires the Trustee to verify, before any disbursement of funds from the Project Fund (excluding the Subordinate Loan Account of the Project Fund), that the sum of the funds on deposit in the Project Fund (excluding the Subordinate Loan Account of the Project Fund) and the Collateral Fund is at least equal to the then outstanding principal amount of the Bonds. It is expected that all of the Bond proceeds in the Project Fund will be disbursed to pay Project Costs on and after the Closing Date. At all times funds on deposit in the Collateral Fund and Negative Arbitrage Account of the Bond Fund, and the interest earnings thereon (without the need for reinvestment), will be sufficient to pay the debt service on the Bonds.



## **Limited Security for Bonds**

The Bonds are not secured by the Mortgage Loan. Investors should look exclusively to amounts on deposit in the Bond Fund, Project Fund (excluding the Subordinate Loan Account of the Project Fund), if any, and Collateral Fund under the Indenture and investment earnings on each as the source of payment of debt service on the Bonds.

## **Future Determination of Taxability of the Bonds**

Failure of the Borrower to have complied with and to continue to comply with certain covenants contained in the Loan Agreement and the Tax Regulatory Agreement could result in interest on the Bonds being taxable retroactive to the date of original issuance of the Bonds. The Bonds are not subject to redemption upon a determination of taxability and are not subject to payment of additional interest in such an event, and neither the Issuer nor the Borrower will be liable under the Bonds, the Indenture or the Loan Agreement for any such payment of additional interest on the Bonds.

## **Issuer Limited Liability**

The Bonds will not be insured or guaranteed by any governmental entity or by the Issuer or any member or program participant of the foregoing. The Bondholders will have no recourse to the Issuer in the event of an Event of Default on the Bonds. The Trust Estate for the Bonds will be the only source of payment on the Bonds.

## **Enforceability of Remedies upon an Event of Default**

The remedies available to the Trustee and the owners of the Bonds upon an Event of Default under the Indenture, the Loan Agreement, the Tax Regulatory Agreement or any other document described herein are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under such documents may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds is subject to limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by equitable remedies and proceedings generally.

## **Secondary Markets and Prices**

No representation is made concerning the existence of any secondary market for the Bonds. The Remarketing Agent will not be obligated to repurchase any of the Bonds, nor can any assurance be given that any secondary market will develop following the completion of the offering of the Bonds. Further, there can be no assurance that the initial offering prices for the Bonds will continue for any period of time. Furthermore, the Bonds should be purchased for their projected returns only and not for any resale potential, which may or may not exist.

## **Eligible Investments**

Proceeds of the Bonds deposited into the Project Fund and Eligible Funds received by the Trustee for deposit into the Collateral Fund are required to be invested in Eligible Investments. See “APPENDIX A — DEFINITIONS OF CERTAIN TERMS” hereto for the definition of Eligible Investments. There can be no assurance that there will not be a loss resulting from any investment held for the credit of the Project Fund or the Collateral Fund, and any failure to receive a return of the amounts so invested could affect the ability to pay the principal of and interest on the Bonds.

## **Rating Based on Eligible Investments**

The rating on the Bonds is based on the amounts in the Project Fund (excluding the Subordinate Loan Account of the Project Fund), Bond Fund and the Collateral Fund being invested in Eligible Investments. If one or more of such investments fail to meet the rating standards for Eligible Investments after their acquisition and prior to maturity, such a change may result in a downgrade or withdrawal of the rating on the Bonds.

## **Subordination to Mortgage Loan Documents**

The Indenture, the Loan Agreement, the Note, and the Tax Regulatory Agreement contain provisions regarding subordination of such documents to the Mortgage Loan Documents. No assurance can be given that such provisions will not impair the excludability of interest on the Bonds from gross income for federal income tax purposes.

## **Future Legislation; IRS Examination**

The Project, its operation and the treatment of interest on the Bonds are subject to various laws, rules and regulations adopted by the local, State and federal governments and their agencies. There can be no assurance that relevant local, State or federal laws, rules and regulations may not be amended or modified or interpreted in the future in a manner that could adversely affect the Bonds, the trust estate created under the Indenture, the Project, or the financial condition of or ability of the Borrower to comply with its obligations under the various transaction documents.

In recent years, the Internal Revenue Service (“IRS”) has increased the frequency and scope of its examination and other enforcement activity regarding tax exempt bonds. Currently, the primary penalty available to the IRS under the Code is a determination that interest on bonds is subject to federal income taxation. Such event could occur for a variety of reasons, including, without limitation, failure to comply with certain requirements imposed by the Code relating to investment restrictions, periodic payments of arbitrage profits to the United States of America, the timely and proper use of Bond proceeds and the facilities financed therewith and certain other matters. See “TAX MATTERS” herein. No assurance can be given that the IRS will not examine the Issuer, the Borrower, the Project or the Bonds. If the Bonds are examined, it may have an adverse impact on their price and marketability.

## **Potential Impact of Pandemics or Public Health Crises**

The spread of the strain of a virus and resulting disease could alter the behavior of businesses and people in a manner that could have negative effects on global, state and local economies. There can be no assurances that the spread of a pandemic would not materially impact both local and national economies and, accordingly, have a materially adverse impact on the Project’s operating and financial viability. The effects of a pandemic could include, among other things, an increase in the time necessary to complete the construction and/or rehabilitation of the Project, suspension or delay of site inspections and other on-site meetings, interruption in the engagement of material participants in the Project, increase in the time necessary to conduct lease-up at the Project, and increased delinquencies and/or vacancies, all of which could impact the Borrower’s ability to make payments on the loans and result in a default and acceleration thereof.

## **Risks of Casualty or Condemnation**

Ownership and operation of real estate, such as the Project, involves certain risks, including the possibility of casualty or condemnation by fire, flooding or other force majeure, whether resulting from human activity or natural disasters. If damage or destruction rendered the Project or any portion of the Project uninhabitable, the affected residence units or common areas would not be available during the period of restoration, which could adversely affect the ability of the Project to generate sufficient revenues to pay debt service on the Mortgage Loan.

*Natural Disaster Risk.* The ability of the Project to generate revenues to pay debt service could be adversely impacted by natural disasters, including extreme weather events associated with climate change such as floods, droughts, tornadoes, hurricanes and wildfires. No assurance can be given that such events will not occur while the Bonds are Outstanding. The occurrence of such extreme weather events could damage local infrastructure that provides essential services to the Project. The economic impact of such events could include loss of revenue, interruption of operations, and increased recovery costs.

*Insurance May Not Shift Such Risks.* Although the Borrower has attempted to mitigate the risk of loss from property damage, destruction or condemnation by purchasing commercial property and casualty insurance, there can be no assurance that such insurance will always be available in sufficient amounts, at a reasonable cost or available at all, or that insurers

will pay claims in a timely manner or at all. The Project may suffer losses for which insurance cannot be or has not been obtained. Moreover, the amounts of any such losses or the periods during which the Project cannot generate revenues may exceed the coverage of available insurance policies.

## Summary

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. In order for potential investors to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement and the Appendices hereto.

## TAX MATTERS

*Legal matters incident to the authorization, validity and issuance of the Bonds are subject to the unqualified approving opinion of Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, whose opinion will be available at the time of delivery of the Bonds. It is anticipated that the approving opinion will be in substantially the form attached to this Official Statement as Appendix F.*

The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which the Issuer and the Borrower must continue to meet after the issuance of the Bonds in order that interest on the Bonds not be included in gross income for federal income tax purposes. The Issuer or the Borrower's failure to meet these requirements may cause interest on the Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. The Issuer and the Borrower have covenanted in the Indenture, the Bond Loan Agreement and the Land Use Restriction Agreement to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds.

In the opinion of Bond Counsel, assuming continuing compliance by the Issuer and the Borrower with the tax covenants referred to above, under existing statutes, regulations, rulings and court decisions, interest on the Bonds is excluded from gross income for federal income tax purposes. Interest on the Bonds is not an item of tax preference for purposes of the federal alternative minimum tax.

Bond Counsel is further of the opinion that the Bonds and the interest thereon are exempt from all present intangible personal property taxes imposed pursuant to Chapter 199, Florida Statutes. Bond Counsel is further of the opinion that the Bonds and the interest thereon are exempt from taxation under the laws of the State of Florida, except as to estate taxes and taxes imposed by Chapter 220, Florida Statutes, on interest, income or profits on debt obligations owned by corporations as defined therein.

As to questions of fact material to the opinion of Bond Counsel, Bond Counsel will rely upon representations and covenants made on behalf of the Issuer and the Borrower in the Indenture, the Loan Agreement and the Land Use Restriction Agreement, certificates of appropriate officers and certificates of public officials (including certifications as to the use of proceeds of the Bonds and of the property refinanced thereby), without undertaking to verify the same by independent investigation.

Except as described above, Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on, or disposition of, the Bonds. Prospective purchasers of Bonds should be aware that the ownership of Bonds may result in other collateral federal tax consequences. For example, ownership of the Bonds may result in collateral tax consequences to various types of corporations relating to (1) denial of interest deduction to purchase or carry Bonds, (2) the branch profits tax and (3) the inclusion of interest on the Bonds in passive income for certain S corporations. In addition, the interest on the Bonds may be included in gross income by recipients of certain Social Security and Railroad Retirement benefits.

**PURCHASE, OWNERSHIP, SALE OR DISPOSITION OF THE BONDS AND THE RECEIPT OR ACCRUAL OF THE INTEREST THEREON MAY HAVE ADVERSE FEDERAL TAX CONSEQUENCES FOR CERTAIN INDIVIDUAL AND CORPORATE BONDHOLDERS, INCLUDING, BUT NOT LIMITED TO, THE CONSEQUENCES DESCRIBED ABOVE. PROSPECTIVE BONDHOLDERS SHOULD CONSULT WITH THEIR TAX SPECIALISTS FOR INFORMATION IN THAT REGARD.**

## **Other Tax Matters**

Interest on the Bonds may be subject to state or local income taxation under applicable state or local laws in other jurisdictions. Purchasers of the Bonds should consult their tax advisors as to the income tax status of interest on the Bonds in their particular state or local jurisdictions.

During recent years legislative proposals have been introduced in Congress, and in some cases enacted, that altered certain federal tax consequences resulting from the ownership of obligations that are similar to the Bonds. In some cases these proposals have contained provisions that altered these consequences on a retroactive basis. Such alteration of federal tax consequences may have affected the market value of obligations similar to the Bonds. From time to time, legislative proposals are pending which could have an effect on both the federal tax consequences resulting from ownership of the Bonds and their market value. For example, proposals have been discussed in connection with deficit spending reduction, job creation and other tax reform efforts, that could significantly reduce the benefit of, or otherwise effect the exclusion from gross income of, interest on obligations such as the Bonds. The further introduction or enactment of one or more of such proposals could affect the market price or marketability of the Bonds. No assurance can be given that additional legislative proposals will not be introduced or enacted that would or might apply to, or have an adverse effect upon, the Bonds.

## **UNDERWRITING**

Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the “Underwriter”) are offering the Bonds at the price set forth on the cover hereof. The initial offering price may be changed from time to time and concessions from the offering price may be allowed to dealers, banks and others. The Underwriter has agreed to purchase the Bonds at a price equal to the principal amount thereof. For its services as such, the Underwriter is to be paid a fee equal to \$\_\_\_\_, inclusive of certain fees and expenses, but not including the fees and expenses of its counsel. From its fees, the Underwriter will pay certain of its expenses relating to the offering. The Bond Purchase Agreement provides that the obligation of the Underwriter to purchase the Bonds is subject to certain terms and conditions and the approval of certain legal matters by counsel. The Borrower has agreed to indemnify the Underwriter and the Issuer as to certain matters in connection with the Bonds.

The Underwriter and its respective affiliates are full-service financial institutions engaged in various activities that may include securities trading, commercial and investment banking, municipal advisory, brokerage, and asset management. In the ordinary course of business, the Underwriter and its respective affiliates may actively trade debt and, if applicable, equity securities (or related derivative securities) and provide financial instruments (which may include bank loans, credit support or interest rate swaps). The Underwriter and its respective affiliates may engage in transactions for their own accounts involving the securities and instruments made the subject of this securities offering or other offering of the Issuer and/or Borrower. The Underwriter and its respective affiliates may make a market in credit default swaps with respect to municipal securities in the future. The Underwriter and its respective affiliates may also communicate independent investment recommendations, market color or trading ideas and publish independent research views in respect of this securities offering or other offerings of the Issuer and/or Borrower.

The Underwriter does not guarantee a secondary market for the Bonds and is not obligated to make any such market in the Bonds. No assurance can be made that such a market will develop or continue. Consequently, investors may not be able to resell Bonds should they need or wish to do so for emergency or other purposes.

In addition to serving as Underwriter, Raymond James & Associates, Inc. has been designated to serve as Remarketing Agent and will receive a fee for its remarketing services in connection with any remarketing of the Bonds on the Initial Mandatory Tender Date.

## **ESCROW VERIFICATION REPORT**

Robert Thomas CPA (the “Verifier”), concurrently with the issuance of the Bonds, will deliver to the Underwriter its verification report indicating that it has verified the arithmetical accuracy of certain computations provided by the Underwriter relating to the (a) computation of forecasted receipts of principal and interest on the obligations and certain cash deposited as security for the Bonds, and the forecasted payments of principal and interest

to pay the Bonds at their redemption, mandatory tender or maturity dates. All such computations have been based solely upon assumptions and information supplied by the Underwriter. The Verifier restricted its procedures to verifying the arithmetical accuracy of the computations described above and has not made any study or evaluation of the assumptions and information on which the computations are based, and the Verifier has not expressed any opinion on the data used, the reasonableness of the assumptions or the achievability of the forecasted outcomes.

### **REGISTERED INVESTMENT ADVISOR**

Raymond James & Associates, Inc. may also act as registered investment advisor to the Borrower in its capacity as bidding agent in conducting a competitive bid procurement for the purchase of open market securities to be held in the Project Fund. Raymond James & Associates, Inc. may receive compensation for bidding agent services contingent on the sale and delivery of the Bonds.

### **RATING**

Moody's Investors Service, Inc., a Delaware corporation (the "Rating Agency") has assigned to the Bonds the rating set forth on the cover page hereof. The rating reflects only the view of the Rating Agency at the time the rating was issued and an explanation of the significance of such rating may be obtained from the Rating Agency. The rating is not a recommendation to buy, sell or hold the Bonds. There is no assurance that any such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of such rating can be expected to have an adverse effect on the market price of the Bonds.

The Issuer has not assumed any responsibility either to notify the owners of any proposed change in, suspension or withdrawal of such rating subsequent to the date of this Official Statement, and the Borrower has such responsibility only in connection with the reporting of events as provided in the Continuing Disclosure Agreement. Neither of them has any responsibility to contest any such revision, suspension or withdrawal.

### **UNDERTAKING TO PROVIDE CONTINUING DISCLOSURE**

Prior to the issuance of the Bonds, the Borrower will execute and deliver a Continuing Disclosure Agreement pursuant to which the Borrower will agree to provide ongoing disclosure pursuant to the requirements of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"). Financial statements and other operating data will be provided at least annually to the Municipal Securities Rulemaking Board (the "MSRB") and notices of certain events will be issued pursuant to the Rule. Information will be filed with the MSRB through its Electronic Municipal Market Access ("EMMA") system, unless otherwise directed by the MSRB. A form of the Continuing Disclosure Agreement is attached hereto as APPENDIX E.

A failure by the Borrower to comply with the Continuing Disclosure Agreement will not constitute an Event of Default under the Loan Agreement. Nevertheless, such a failure must be reported in accordance with the Rule and must be considered by a broker or dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price and the ability of the Issuer to issue and sell bonds in the future.

The Borrower has not previously been subject to the continuing disclosure requirements of the Rule.

### **CERTAIN LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Bonds will be subject to an approving opinion of Nabors, Giblin & Nickerson, P.A., Tallahassee, Florida, as Bond Counsel. Certain legal matters will be passed upon for the Borrower by its counsels, Shutts & Bowen LLP, Miami, Florida, and Bilzin Sumberg Baena Price & Axelrod LLP, Miami, Florida, and for the Underwriter by their counsel, Tiber Hudson LLC, Washington, D.C. Payment of the fees of certain counsel to the transaction is contingent upon the issuance and delivery of the Bonds as described herein.

## ABSENCE OF LITIGATION

### The Issuer

To the actual knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or threatened against the Issuer in any way: (i) affecting the organization of the Issuer, or the legal or corporate existence of the Issuer, or the title of the members of the Issuer to their respective offices, or any powers of the Issuer under the laws of the State pursuant to which the Issuer was created; (ii) seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds or the collection of revenues from the Borrower derived from payments under the Loan Agreement, or the pledge thereof; (iii) contesting or affecting the validity or enforceability of the Bonds or the Issuer Documents; (iv) contesting the power of the Issuer to enter into, execute and deliver the Issuer Documents or to consummate the transactions contemplated by such documents and this Official Statement; (v) contesting in any way the completeness or accuracy of this Official Statement or any amendment or supplement hereto (nor to the actual knowledge of the Issuer, is there any basis therefor); or (vi) wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Issuer Documents, the financial position or condition of the Issuer or the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

### The Borrower

As of the date hereof, there is no action, suit, proceeding, inquiry or investigation of which the Borrower has been notified, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of this Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower's financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

## ADDITIONAL INFORMATION

The summaries and explanation of, or references to, the Act, the Indenture and the Bonds included in this Official Statement do not purport to be comprehensive or definitive. Such summaries, references and descriptions are qualified in their entirety by reference to each such document, copies of which are on file with the Trustee.

The information contained in this Official Statement is subject to change without notice and no implication shall be derived therefrom or from the sale of the Bonds that there has been no change in the affairs of the Issuer from the date hereof.

This Official Statement is submitted in connection with the offering of the Bonds and may not be reproduced or used, as a whole or in part, for any other purpose. Any statements in the Official Statement involving matters of opinion or estimate, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Issuer and the owners of any of the Bonds.

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IN WITNESS WHEREOF, the foregoing Official Statement has been executed by the undersigned as of the date first written above.

**BORROWER:**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith  
Manager

[Signatures continue on next page]

[Issuer Signature Page to Official Statement]

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

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

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



## APPENDIX A

### DEFINITIONS OF CERTAIN TERMS

Certain capitalized terms used in this Official Statement are defined below. The following is subject to all the terms and provisions of the Indenture, to which reference is hereby made and copies of which are available from the Issuer or the Trustee.

“*Act*” means the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended.

“*Administrative Member*” means DBFE Townhomes, LLC, a Florida limited liability company.

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

“*Agreement*” or “*Loan Agreement*” means the Loan Agreement dated as of the same date as the Indenture, between the Issuer and the Borrower and any and all Supplements thereto.

“*Authorized Denomination*” means \$5,000, or any integral multiple of \$1,000 in excess thereof.

“*Authorized Member*” means SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as in effect now and in the future, or any successor statute.

“*Bond Counsel*” means Nabors, Giblin & Nickerson, P.A. or other counsel selected by the Issuer and nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from the gross income of holders thereof for federal income tax purposes.

“*Bond Fund*” means the Bond Fund created in the Indenture.

“*Bond Purchase Agreement*” means the Bond Purchase Agreement, dated November \_\_, 2023, among the Issuer, the Borrower and Underwriter.

“*Bond Service Charges*” means, pursuant to the Loan Agreement, payments made by the Borrower to the Issuer in amount sufficient to pay the principal of and interest on the Bonds when due to the extent that amounts otherwise available for such payment are insufficient therefor.

“*Bond Year*” has the meaning as set forth in the Tax Certificate.

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

“*Bonds*” means the Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) of the Issuer issued, authenticated and delivered under the Indenture.

“*Book-Entry Form*” or “*Book-Entry System*” means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds may be transferred only through a book entry and (ii) physical bond

certificates in fully registered form are registered only in the name of a Securities Depository or its nominee as holder, with the physical bond certificates “immobilized” in the custody of the Securities Depository.

“**Borrower**” means The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, and its successors and assigns.

“**Borrower Documents**” means the Loan Agreement, the Note, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Borrower’s Tax Certificate dated the Closing Date and executed and delivered by the Borrower, the Arbitrage Rebate Agreement dated as of November 1, 2023, by and among the Issuer, the Borrower and the Trustee, the Operating Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement, the Guarantor Documents and any and all documents, agreements or instruments executed by the Borrower in connection with the Loan evidenced by the Loan Agreement, but excluding the Mortgage Loan Documents.

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

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

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

“**Cash Flow Projection**” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Underwriter, and the Rating Agency, establishing, to the satisfaction of the Underwriter, and the Rating Agency, the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges due on the Bonds, the Issuer Fees, and Trustee Fees and Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in the Indenture, (iii) the release of Eligible Funds from the Negative Arbitrage Account of the Bond Fund, as provided in the Indenture, and (iv) the sale or other disposition by the Trustee of Eligible Investments prior to maturity at a price below par as permitted under the Indenture.

“**Certificate of Occupancy**” means the temporary or final certificate of occupancy, as the case may be, issued by the City of Deerfield Beach for the multifamily units in the Project, or if certificates of occupancy are not required or provided for multifamily units, then evidence of all final inspection approvals needed to occupy the multifamily units.

“**Citi**” means Citibank, National Association, a national banking association, and its successors and assigns.

“**Citi Forward Commitment**” means the Forward Commitment Agreement among the Borrower, the Mortgage Lender and Citi, pursuant to which Citi has agreed to purchase the Governmental Lender Note on the

Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“**Citi Purchase Price**” means an amount equal to the \$6,400,000\* to be funded by Citi on the Conversion Date.

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

“**Closing Memorandum**” means the closing memorandum attached to the initial Requisition delivered on the Closing Date.

“**Code**” means the Internal Revenue Code of 1986, including applicable final temporary and proposed regulations and revenue rulings applicable thereto.

“**Collateral Fund**” means the Collateral Fund created in the Indenture.

“**Completion Certificate**” means a certificate submitted by the Borrower Representative to the Issuer and the Trustee as provided in the Loan Agreement, which shall be in form and substance acceptable to the Issuer and the Trustee.

“**Completion Date**” means the date upon which the Completion Certificate and the Certificate of Occupancy are delivered by the Borrower to the Issuer and the Trustee.

“**Conditions to Conversion**” shall have the meaning given to such term in the Citi Forward Commitment.

“**Confirmation of Rating**” means a written confirmation, obtained prior to the event or action under scrutiny, from the Rating Agency to the effect that, following the proposed action or event under scrutiny at the time such confirmation is sought, the rating of the Rating Agency with respect to all Bonds then Outstanding and then rated by the Rating Agency will not be downgraded, suspended, qualified or withdrawn as a result of such action or event.

“**Construction Draw Schedule**” means the schedule of the disbursement of the proceeds of the Bonds as provided in an exhibit attached to the Loan Agreement, as the same may be amended from time to time with the consent of the Issuer.

“**Construction Phase**” means the rehabilitation phase of the Loan, which time period shall commence on the Closing Date and remain in effect to, but not including, the Conversion Date.

“**Continuing Disclosure Agreement**” means the Continuing Disclosure Agreement dated as of November 1, 2023, among the Borrower, the Trustee and the Dissemination Agent, as the same may be amended, restated, supplemented or modified from time to time.

“**Conversion**” means the conversion of the Loan from the Construction Phase to the Permanent Phase on the Conversion Date pursuant to the provisions of the Citi Forward Commitment.

“**Conversion Date**” means the date Citi purchases the Governmental Lender Note upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by Citi in the Notice of Conversion; provided, however, the Conversion Date shall occur under the Indenture no earlier than December 1, 2025\*.

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

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\* Preliminary; subject to change.

**“Costs of Issuance”** means all fees, costs and expenses payable or reimbursable directly or indirectly by the Issuer or the Borrower and related to the authorization, issuance and sale of the Bonds.

**“Costs of Issuance Deposit”** means the deposit set forth in the Closing Memorandum.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund created pursuant to the Indenture.

**“County”** means Broward County, Florida.

**“Default”** means any Default under the Loan Agreement as specified in and defined by the Indenture.

**“Designated Office”** of the Trustee or the Underwriter means, respectively, the office of the Trustee or the Underwriter at the respective Notice Address set forth in the Indenture or at such other address as may be specified in writing by the Trustee or the Underwriter, as applicable, as provided in the Indenture.

**“Determination of Taxability”** means a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on any Bond is or was includable in the gross income of a Holder of the Bonds for Federal income tax purposes (other than an Holder who is a “substantial user” or “related person” to a “substantial user” within the meaning of Section 147(a) of the Code); provided, that no such decree, judgment, or action will be considered final for this purpose unless the Borrower has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Holder of a Bond, and until the conclusion of any appellate review, if sought.

**“Dissemination Agent”** means initially The Bank of New York Mellon Trust Company, N.A., or any dissemination agent subsequently appointed in accordance with the Continuing Disclosure Agreement.

**“Documents”** means and shall include (without limitation), with respect to the Bonds, the Indenture, the Loan Agreement, the Note, the Tax Regulatory Agreement, the Tax Certificate, the Guarantor Documents and any and all other documents which the Issuer, the Borrower or any other party or parties or their representatives, have executed and delivered, or may hereafter execute and deliver, to evidence or secure the Issuer’s Obligations or the Borrower’s Obligations, or any part thereof, or in connection therewith, and any and all Supplements thereto, but excluding the Mortgage Loan Documents [and the Subordinate Loan Documents].

**“Eligible Funds”** means, as of any date of determination, any of:

- (a) the proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase price thereof by the Underwriter);
- (b) moneys drawn on a letter of credit;
- (c) moneys received by the Trustee representing advances to the Borrower (or an Affiliate) of funds from other third parties representing loans of money earmarked for the Project including: proceeds of the Mortgage Loan;
- (d) remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase and or remarketing price thereof by the Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer, any Affiliate of either the Borrower or the Issuer);
- (e) any other amounts, including the proceeds of any refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 of

the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, *provided* that no Act of Bankruptcy has occurred during such period;

(g) proceeds of Citi Purchase Price received from Citi in connection with Citi's purchase of the Governmental Lender Note on the Conversion Date; and

(h) investment income derived from the investment of the money described in subsections (a) through (g) hereof.

**"Eligible Investments"** means, subject to the provisions of the Indenture, any of the following investments that mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of the Indenture, to the extent the same are at the time legal for investment of the Issuer's funds (written direction of the Issuer or the Borrower to invest funds shall be conclusive evidence that the directed investment is at the time a legal investment of the Issuer's funds):

(a) Governmental Obligations; and

(b) To the extent permitted in the Indenture, shares or units in any money market mutual fund which is then rated "Aaa-mf" by Moody's (or if no fund is available at that rating category, the highest rating category then available for that category of fund by Moody's, or if Moody's is not the Rating Agency or a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America.

**"Event of Default"** or **"Default"** means any of the events described as an Event of Default in the Indenture or the Loan Agreement.

**"Excess Earnings Account"** means the Excess Earnings Account of the Project Fund created in the Indenture.

**"Expense Fund"** means the Expense Fund created pursuant to the Indenture.

**"Extension Payment"** means the amount due, if any, in connection with the change or extension of the Mandatory Tender Date pursuant to the Indenture, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist of Eligible Funds.

**"Funding Loan Agreement"** means the Funding Loan Agreement attached as an exhibit to the Indenture, which Funding Loan Agreement shall be executed, delivered and become effective on the Conversion Date.

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

**"Governmental Lender Note"** means the Governmental Lender Note attached as an exhibit to the Funding Loan Agreement, which Governmental Lender Note shall be executed, delivered and become effective on the Conversion Date.

**“Governmental Obligations”** means (a) noncallable, non-redeemable 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 (b) 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 (a) or (b) 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 Requirements”** means all laws, ordinances, orders, rules or regulations of any Governmental Authority applicable to the Project, the Issuer, the Borrower or any of the Borrower’s assets or other properties, including without limitation, laws, ordinances, orders, rules and regulations relating to securities or other public disclosures, zoning, licenses, permits, subdivision, building, safety, health, and fire protection and all environmental laws

**“Guarantor”** and **“Guarantors”** means, individually and collectively, the Borrower, [the Authorized Member], \_\_\_\_\_, and \_\_\_\_\_, individually.

**“Guarantor Documents”** means, collectively, the Absolute and Unconditional Guaranty of Completion, the Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, the Absolute and Unconditional Guaranty of Operating Deficits and the Environmental Indemnity Agreement, each made by the Guarantors for the benefit of the Issuer and the Trustee.

**“Indenture”** means the Trust Indenture, dated as of November 1, 2023, by and between the Issuer and the Trustee, and any and all Supplements thereto.

**“Independent”** means any person not an employee or officer of the Borrower or its affiliates.

**“Initial Deposit”** means Eligible Funds in the amount of \$ \_\_\_\_\_.

**“Initial Interest Rate”** means \_\_\_\_\_%.

**“Initial Mandatory Tender Date”** means the earlier of (i) the Conversion Date, and (ii) December 1, 2026\*.

**“Initial Remarketing Date”** means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in the Indenture are satisfied.

**“Interest Payment Date”** means (a) June 1 and December 1 of each year beginning June 1, 2024\*, and (b) each Mandatory Tender Date.

**“Interest Period”** means, initially, the period from the Closing Date to but not including first Interest Payment Date, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

**“Interest Rate”** means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, as applicable, and thereafter the applicable Remarketing Rate; provided, however, commencing on the Conversion Date the Interest Rate shall be as set forth in the Funding Loan Agreement.

**“Investor Member”** means HCP-ILP, LLC, a Nevada limited liability company, in its capacity as investor member in Borrower, its permitted successors and assigns.

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\* Preliminary; subject to change.

“**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, and any successor to its powers and duties under the Act.

“**Issuer Closing Fee**” means the (i) Issuer’s one (1) time initial issuance fee in the amount equal to fifty basis points (0.50%) of the original aggregate principal amount of the Loan, as evidenced by the Note, for a total of \$70,000\*, (ii) Issuer’s indemnification fee of \$20,000, and (iii) Issuer’s counsel fee of \$5,000, all of which shall be payable to the Issuer by the Trustee on the Closing Date from amounts on deposit in the Costs of Issuance Fund pursuant to the Indenture.

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

“**Issuer Fee**” means, collectively, (i) the Issuer Closing Fee, (ii) the Ongoing Issuer Fee and (iii) Late Reporting Fees and/or Issuer’s Compliance Fees, as applicable, pursuant to the Tax Regulatory Agreement.

“**Issuer’s Obligations**” means the obligations of the Issuer under the Bonds, the Indenture, and the other Documents to (a) pay the principal of and interest on the Bonds (including supplemental interest), when and as the same shall become due and payable (whether at the stated maturity thereof, or by acceleration of maturity or after notice of prepayment or otherwise) and, (b) timely perform, observe and comply with all of the terms, covenants, conditions, stipulations, and agreements, express or implied, which the Issuer is required, by the Bonds, the Indenture, or any of the other Documents, to perform and observe.

“**Loan**” means the loan by the Issuer to the Borrower in the principal amount of \$14,000,000\* made by the Issuer to the Borrower evidenced by the Note, described in the Loan Agreement and made in connection with the issuance of the Bonds.

“**Loan Agreement**” means the Loan Agreement dated as of November 1, 2023, between the Issuer and the Borrower and any and all Supplements thereto.

“**Loan Payments**” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and the Loan Agreement.

“**Local Time**” means Eastern time (daylight or standard, as applicable) in the State.

“**Mandatory Tender Date**” means each date on which all Outstanding Bonds are subject to mandatory tender as set forth in the Indenture.

“**Maturity Date**” means December 1, 2056\*.

“**Maximum Interest Rate**” means the interest rate equal to the lesser of: (a) 12% per annum, or (b) the maximum interest rate per annum permitted by applicable law.

“**Moody’s**” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, acceptable to the Remarketing Agent, that assigns credit ratings.

“**Mortgage Lender**” means Citibank, National Association, and any successors or assigns.

“**Mortgage Loan**” means the mortgage loan to be made by the Mortgage Lender to the Borrower in the principal amount of \$14,000,000\* with respect to the Project, as described and provided for in the Mortgage Loan Documents.

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\* Preliminary; subject to change.

“**Mortgage Loan Documents**” means the Mortgage Loan Security Instrument, the mortgage note, and all other documents required by the Mortgage Lender in connection with the Mortgage Loan.

“**Mortgage Loan Prepayment Amount**” means an amount necessary to prepay in full the outstanding principal amount of the Mortgage Loan, together with accrued interest to, but not including, the Conversion Date, as set forth in a payoff statement submitted by the Mortgage Lender to the Trustee on or prior to the Conversion Date.

“**Mortgage Loan Prepayment Fund**” means the Mortgage Loan Prepayment Fund created under the Indenture.

“**Mortgage Loan Security Instrument**” means the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing which will secure the Mortgage Loan, as the same may be amended, supplemented or restated.

“**Negative Arbitrage Account**” means the Negative Arbitrage Account of the Bond Fund created under the Indenture.

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

“**Notice of Conversion**” means a written notice to be delivered not less than ten (10) days (or such shorter period as agreed to in writing by all the notice parties) prior to the Conversion Date by Citi to the Issuer, the Trustee, the Borrower and the Mortgage Lender (i) stating that the Conditions to Conversion have been satisfied on or before the Termination Date or, if any Condition to Conversion has not been satisfied on or before the Termination Date, stating that such Condition to Conversion has been waived in writing by Citi (if a waiver is permitted and is granted by Citi, in its sole and absolute discretion) on or before the Termination Date and (ii) confirming the Conversion Date.

“**Official Statement**” means the Official Statement dated November \_\_, 2023, relating to the Bonds.

“**Ongoing Issuer Fee**” means the annual program administration fee of the Issuer, payable in advance by the Borrower to the Trustee for deposit to the Expense Fund for payment to the Issuer in the amount of eighteen basis points (0.18%) per annum of the outstanding principal amount of the Loan (calculated on the Business Day prior to any principal reduction of the Loan). The first payment of the Ongoing Issuer Fee shall be payable to the Issuer on the Closing Date, from funds on deposit in the Costs of Issuance Fund, for the period beginning on the Closing Date and ending on November 31, 2024. Thereafter, the Ongoing Issuer Fee shall be payable in semi-annual installments on each June 1 and December 1, with the first semi-annual payment due and payable on June 1, 2024; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Issuer, the Trustee, Bond Counsel, the Issuer’s counsel, or the Trustee’s counsel to be paid by the Borrower pursuant to the Loan Agreement.

“**Operating Agreement**” means the Amended and Restated Operating Agreement of the Borrower, dated November \_\_, 2023, as it may be amended in accordance with the Borrower Documents and the Mortgage Loan Documents.

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

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

- (a) Bonds theretofore canceled by the Trustee or theretofore delivered to the Trustee for cancellation;
- (b) Bonds for the payment of which moneys or obligations shall have been theretofore deposited with the Trustee in accordance with the Indenture; or



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

**“Permanent Loan Amount”** has the meaning set forth in the Citi Forward Commitment.

**“Permanent Phase”** means the permanent phase of the Loan, which time period shall commence on the Conversion Date and remain in effect through the Maturity Date.

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

**“Project”** means the multifamily rental housing project located in Deerfield Beach, Florida, known as The Palms of Deerfield Townhomes, which, upon completion of rehabilitation, will contain approximately 56 affordable rental housing units and which may include such ancillary uses as parking, community space, and other functionally related and subordinate uses.

**“Project Fund”** means the Project Fund created under the Indenture.

**“Qualified Project Costs”** means any expenditures which (a) are incurred not more than 60 days prior to the date on which the Issuer first declared its “official intent” (within the meaning of Treasury Regulation Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding 20% of the aggregate principal amount of the Bonds); (b) are made exclusively to provide facilities and improvements that constitute part of a “qualified residential rental project” within the meaning of Section 142(d) of the Code; and (c) are properly chargeable to the Project’s capital account under general federal income tax principles or that would be so chargeable with a proper election or but for a proper election by the Borrower to deduct such expenditure. However, “Qualified Project Costs” do not include (i) issuance costs of the Bonds (within the meaning of Section 147(g) of the Code) or (ii) any fee, charge or profit payable to the Borrower or a “related person” (within the meaning of Section 144(a)(3) of the Code) of the Borrower. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to the commencement of rehabilitation of the Project, but does not include land acquisition, site preparation and similar costs incident to commencement of rehabilitation of the Project.

**“Rating Agency”** means any national rating agency then maintaining a rating on the Bonds, and initially means Moody’s.

**“Rating Category”** means one of the generic rating categories of the Rating Agency.

**“Rebate Amount”** means the amount, if any, which is to be paid to the United States of America pursuant to the Section 148(f) of the Code and the Indenture.

**“Rebate Analyst”** means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Trustee to calculate the Rebate Amount. The initial Rebate Analyst will be \_\_\_\_\_.

**“Rebate Fund”** means the Rebate Fund created under the Indenture.

**“Record Date”** means the 15th day of the month preceding any Interest Payment Date or 45 days prior to any Mandatory Tender Date.

**“Remarketing Agent”** means Raymond James & Associates, Inc. or any successor as Remarketing Agent designated in accordance with the Indenture.

**“Remarketing Agent's Fee”** means the fee of the Remarketing Agent for its remarketing services.

**“Remarketing Agreement”** means the Remarketing Agreement, dated as of November 1, 2023 by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Remarketing Date”** means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to the Indenture for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Remarketing Expenses”** means the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

**“Remarketing Notice Parties”** means the Borrower, the Investor Member, the Issuer, the Trustee, the Remarketing Agent, the Authorized Member and the Mortgage Lender.

**“Remarketing Period”** means the period beginning on a Remarketing Date and ending on the earlier of (i) the last day of the term for which Bonds are remarketed pursuant to the Indenture, (ii) the Conversion Date or (iii) the final Maturity Date of the Bonds.

**“Remarketing Proceeds Account”** means the Remarketing Proceeds Account of the Bond Fund created under the Indenture.

**“Remarketing Rate”** means the interest rate or rates established pursuant to the Indenture and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

**“Requisition”** means the written request to make a disbursement from (i) the Project Fund in substantially the form attached to the Indenture submitted in the manner provided pursuant to the Indenture, or (ii) the Costs of Issuance Fund in substantially the form attached to the Indenture submitted in the manner provided pursuant to the Indenture.

**“Reserved Rights of the Issuer”** shall mean (a) all rights which the Issuer and its officers, officials, directors, agents and employees may have under the Indenture, the Loan Agreement and the Tax Regulatory Agreement to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its officers, officials, directors, agents or employees; (b) the right of the Issuer to give and receive notices, reports, certifications, or other information under the Indenture, under the Loan Agreement and under the Tax Regulatory Agreement; (c) the right of the Issuer to receive its fees and expenses; (d) the Issuer's approval rights; (e) the rights of the Issuer with respect to inspections; (f) the rights of the Issuer with respect to publicity and signage; (g) the notification, indemnification and enforcement rights of the Issuer in the Loan Agreement; (h) the rights of the Issuer with respect to limited liability; (i) all rights of the Issuer to enforce the covenants and agreements and to take action for the breach of any representation or warranty of the Borrower pertaining in any manner or way, directly or indirectly, to the requirements of the Act or any requirements imposed by the Issuer with respect to the Project, or necessary to assure that interest on the Bonds is excluded from gross income for federal income tax purposes, as are set forth in any of the Documents, including any certificate or agreement executed by the Borrower; (j) all rights of the Issuer in connection with any amendment to or modification of any of the Indenture and the Loan Agreement, or the Tax Regulatory Agreement insofar as any such amendment or modification would affect the Reserved Rights of the Issuer; (k) all approval rights of the Issuer relating to rent increases as provided in the Tax Regulatory Agreement; and (l) all enforcement rights with respect to the foregoing. All of the foregoing rights of the Issuer under the Indenture, the Tax Regulatory Agreement and the Loan Agreement are reserved to the Issuer, as none of these rights under the Indenture, the Tax Regulatory Agreement or the Loan Agreement are being assigned by the Issuer to the Trustee, the Mortgage Lender or Citi.

**“Revenues”** means (a) the Loan Payments, (b) the Eligible Funds received by the Trustee for deposit into the Collateral Fund, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Special Funds, and (e) all income and profit from the investment of the foregoing moneys. The term **“Revenues”** does not include any money or investments in the Rebate Fund, the Costs of Issuance Fund (but only to the extent such moneys are not proceeds of the Bonds), the Expense Fund [or the Subordinate Loan Account of the Project Fund], amounts paid as fees, reimbursement for expenses or for indemnification of the Issuer and the Trustee, or amounts paid to or collected by the Issuer in connection with any Reserved Rights of the Issuer.

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

**“Seller Loans”** means subordinate loans in the aggregate principal amount of \$17,747,477\* to be made by the Seller Loan Lender.

**“Seller Loan Lender”** means The Palms of Deerfield Beach, LP, and its successors and/or assigns.

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

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

**“Subordinate Lender”** means The Palms of Deerfield Beach, LP.

**“Subordinate Loans”** means the loans made to Borrower by the Subordinate Lender in the aggregate principal amount of \$ \_\_\_\_\_\* pursuant to the Subordinate Loan Documents.

**“Subordinate Loan Documents”** means any loan agreement, financing agreement, security agreement and all other documents pursuant to which the Subordinate Loans are funded or secured.

**“Subordinate Loan Account”** shall mean the Subordinate Loan Account within the Project Fund established pursuant to the Indenture.

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

**“Tax Certificate”** means, collectively, (i) the Certificate as to Arbitrage and Certain Other Tax Matters dated the Closing Date and executed by the Issuer, and (ii) the Borrower’s Tax Certificate dated the Closing Date and executed and delivered by the Borrower, and (iii) the Arbitrage Rebate Agreement by and among the Issuer, the Borrower and the Trustee, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

**“Tax Regulatory Agreement”** means the Land Use Restriction Agreement dated as of the same date as the Indenture by and among the Issuer, the Trustee and the Borrower relating to the Bonds, and any and all modifications thereof, amendments and Supplements thereto and substitutions therefor.

**“Term of Agreement”** means the term of the Loan Agreement as specified in the Loan Agreement.

**“Termination Date”** means \_\_\_\_ 1, 20\_\_\*, subject to extension by Citi as provided in the Citi Forward Commitment.

**“Title Company”** means Old Republic National Title Insurance Company.

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\* Preliminary; subject to change.

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

**“Trustee”** means The Bank of New York Mellon Trust Company, N.A., a national banking association, organized and existing under the laws of the United States and authorized to conduct business in the State, and its successor or successors in the trust created by the Indenture.

**“Trustee’s Fee”** means the Trustee’s initial acceptance fee and expenses of \$2,500.00 plus fees, costs and expenses of its counsel in conjunction with the delivery of the Bonds and the ongoing compensation and expenses payable to the Trustee as follows:

(a) the annual administration fees of the Trustee, for the ordinary services of the Trustee rendered under the Indenture during each twelve-month period and shall be \$3,750.00 per annum, payable in advance in semiannual installments of \$1,875.00 on the Closing Date and each June 1 and December 1 thereafter; beginning June 1, 2024;

(b) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and/or reimbursement for extraordinary expenses incurred by it under the Indenture as and when the same become due, including reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings); provided, however, that the Trustee shall not be required to undertake any such extraordinary services unless provision for payment of extraordinary expenses satisfactory to the Trustee shall have been made; and

(c) for purposes of the Loan Agreement, indemnification of the Trustee by the Borrower; and

(d) when the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

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

**“Undelivered Bond”** means any Bond that is required under the Indenture to be delivered to the Remarketing Agent or the Trustee for purchase on a Mandatory Tender Date but that has not been received on the date such Bond is required to be so delivered.

**“Underwriter”** means, collectively, Raymond James & Associates, Inc. and RBC Capital Markets, LLC.

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## APPENDIX B

### SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE

*The following is a brief summary of certain provisions of the Indenture. The following summary does not purport to be complete or definitive and is subject to all the terms and provisions of the Indenture, to which reference is hereby made and copies of which are available from the Issuer or the Trustee.*

#### Creation of Funds

The following trust funds are created by the Issuer and ordered established with the Trustee, to be maintained in the custody of the Trustee each as a separate bank account, to be used for the purposes as provided in the Indenture:

(a) **Bond Fund.** The Bond Fund and within the Bond Fund, the “Negative Arbitrage Account” and the “Remarketing Proceeds Account”.

(b) **Project Fund.** The Project Fund and within the Project Fund an “Excess Earnings Account” [and a “Subordinate Loan Account”, which fund shall be administered in accordance with the Indenture. Moneys held in the Subordinate Loan Account of the Project Fund are not held for the benefit of the Owners and are not part of the Trust Estate].

(c) **Rebate Fund.** The Rebate Fund, which fund shall be administered in accordance with the provisions of the Indenture. Moneys held in the Rebate Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

(d) **Costs of Issuance Fund.** Moneys held in the Costs of Issuance Fund that are not proceeds of the Bonds are not held for the benefit of the Owners and are not part of the Trust Estate. Any moneys held in the Costs of Issuance Fund that are proceeds of the Bonds are held for the benefit of the Owners and are part of the Trust Estate.

(e) **Collateral Fund.** The Collateral Fund, which fund shall be administered in accordance with the Indenture. Moneys held in the Collateral Fund are held for the benefit of the Owners and are part of the Trust Estate.

(f) **Mortgage Loan Prepayment Fund.** The Mortgage Loan Prepayment Fund shall not be pledged to the payment of the Bonds and shall not be part of the Trust Estate.

(g) **Expense Fund.** The Expense Fund, which fund shall be administered in accordance with the provisions of the Indenture. Moneys held in the Expense Fund are not held for the benefit of the Owners and are not part of the Trust Estate.

The Trustee may create one or more accounts or subaccounts within any fund authorized by the Indenture for the purpose of accounting for funds deposited into or held in each fund or for carrying out any of the requirements of the Indenture. The Trustee may transfer funds between accounts and subaccounts within any fund.

In the event certain moneys are deposited with the Trustee prior to the Closing Date, whether or not pursuant to one or more letters of instruction from the provider or providers of such moneys, such moneys shall be held by the Trustee subject to the terms and conditions of the Indenture, in addition to the terms of any such letter(s) of instruction. For such purpose, the standards of care, any provisions governing the responsibilities and indemnification and other provisions relating to the Trustee contained in the Indenture and in the Loan Agreement (the “Effective Provisions”) shall be effective as of the first date of receipt by the Trustee of such moneys. The Effective Provisions shall be deemed incorporated into any such letter(s) of instructions.

### Deposits into and Use of Moneys in the Bond Fund

On the Closing Date, the Trustee shall deposit the Initial Deposit, if any, in the Negative Arbitrage Account of the Bond Fund; the Bond Fund and amounts on deposit in the Bond Fund are to be invested pursuant to the Indenture. Any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to the Indenture shall also be deposited into the Negative Arbitrage Account. The Trustee is authorized to release funds in the Negative Arbitrage Account to the Borrower upon receipt of updated Cash Flow Projections and a Rating Agency Confirmation.

On each Interest Payment Date, any available interest earnings in the Project Fund, up to an amount equal to the interest due on the Bonds on such Interest Payment Date, shall be transferred to the Bond Fund to make a payment of interest on the Bonds on such Interest Payment Date. Further, to the extent that available interest earnings on the Project Fund transferred to the Bond Fund in accordance with the preceding sentence are insufficient to make necessary interest payments on each Interest Payment Date, interest on the Bonds, when due and payable, shall be paid (a) in the first instance from money on deposit in the Bond Fund (excluding the Negative Arbitrage Account therein), (b) next from money on deposit in the Negative Arbitrage Account of the Bond Fund, (c) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (d) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Principal on the Bonds, when due and payable, shall be paid (a) in the first instance from the money on deposit in the Bond Fund, (b) next from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund and (c) thereafter, from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Except as provided in the Indenture, moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds when due.

### Rebate Fund; Rebate Amount

The Trustee shall deposit into the Rebate Fund amounts paid by the Borrower pursuant to the Tax Certificate.

(a) The determination of the Rebate Amount shall be made in accordance with the Tax Certificate and the Rebate Amount shall be paid at such times and in such installments as provided therein. As further provided in the Tax Certificate, the Borrower shall be responsible for calculating or causing to be calculated and paying the Rebate Amount.

(b) Neither the Issuer nor the Trustee shall be obligated to pay any portion of the Rebate Amount (except from funds on deposit in the Rebate Fund). In addition, neither the Issuer nor the Trustee shall have any responsibility with respect to the calculation of the Rebate Amount, provided that the rebate calculations are subject to the Issuer's approval.

(c) Any moneys held as part of the Rebate Fund and not immediately required to be paid to the United States pursuant to the Tax Certificate shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative, in Governmental Obligations or in any money market or short term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof, having maturities consonant with the need for moneys as reasonably estimated by the Borrower. In connection with the investment of moneys held as part of the Rebate Fund (as provided in the Indenture), interest and other income received on the investment of moneys held as part of the Rebate Fund shall be credited to the Rebate Fund.

(d) As provided in the Tax Certificate, the Borrower is required to (i) obtain a rebate calculation with respect to the Rebate Amount upon the redemption or final maturity of the Bonds and either (ii) (a) pay to the Trustee for deposit into the Rebate Fund an amount of money as determined by such calculation within thirty (30) days of such calculation or (b) provide the Trustee with written notice (signed by the Borrower Representative and the Rebate Analyst) that (1) no deposit is required or (2) the amount in

the Rebate Fund is in excess of the amount required to be on deposit as determined by the most recent rebate calculation, in which case the Trustee shall, with the prior written consent of the Issuer, pay such excess over to the Borrower. If the Trustee does not receive either of the items required in (ii)(a) or (ii)(b) above within 30 days after the completion of rehabilitation of the Project, the Trustee shall notify the Issuer; provided, however, that the Trustee shall not incur any liability if it should fail to provide such notice.

#### Costs of Issuance Fund

On the Closing Date, the Trustee shall deposit the Costs of Issuance Deposit in the Costs of Issuance Fund to pay the Costs of Issuance from amounts available therein, which Costs of Issuance shall not exceed the amounts set forth in a certificate of the Issuer. The Trustee shall disburse funds on deposit in the Costs of Issuance Fund upon receipt by the Trustee of Requisitions substantially in the form attached as an exhibit to the Indenture. Any funds remaining in the Costs of Issuance Fund more than one hundred eighty (180) days after the Closing Date, and not specifically committed to the payment of Costs of Issuance, shall be returned to the Borrower, to the extent such funds are not Bond proceeds or otherwise restricted funds. If such remaining funds are Bond proceeds or otherwise restricted, such funds shall be deposited by the Trustee into the Bond Fund.

#### Collateral Fund; Project Fund

The Subordinate Lender shall, from time to time, deposit or cause to be deposited with the Trustee proceeds of the Subordinate Loan into the Subordinate Loan Account of the Project Fund.

To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund [(other than from the Subordinate Loan Account of the Project Fund)] to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date. [Other than in connection with the disbursement of moneys from the Subordinate Loan Account of the Project Fund,] upon the receipt of requests for disbursement from the Project Fund pursuant to the Indenture and the receipt of Eligible Funds in amounts equal to or greater than such requests, the Trustee shall concurrently take the following steps:

- (i) deposit such Eligible Funds into the Collateral Fund; and
- (ii) disburse Bond proceeds from the Project Fund in an amount equal to the Eligible Funds received and deposited pursuant to subparagraph (i) above, in accordance with the Indenture: provided to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee shall not sell or otherwise terminate such Eligible Investments prior to their stated maturity date and instead the Trustee is instructed to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (a) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund, and (b) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund to be disbursed in accordance with this subparagraph (ii).

Each deposit into the Collateral Fund shall constitute an irrevocable deposit solely for the benefit of the Holders, subject to the provisions of the Indenture.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer or the Borrower, after the Project has been completed and a certificate of payment of all costs is filed as provided in the Indenture, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower.

When the aggregate principal amount on deposit in the Collateral Fund, together with the scheduled investment earnings thereon, equals the expected Bond Service Charges to be paid on the Bonds to and including the Initial Mandatory Tender Date, and the tender price on the Mandatory Tender Date, the excess amounts shall be

transferred upon receipt to the Project Fund and used to pay Project Costs in accordance with the Loan Agreement or to the Mortgage Loan Prepayment Fund, as directed by the Mortgage Lender.

The Borrower expects that the Project will proceed substantially in accordance with the Construction Draw Schedule. Each Requisition submitted to the Trustee shall evidence and request disbursements from the Project Fund and/or the Costs of Issuance Fund.

Notwithstanding any other provision of the Indenture to the contrary, after the Closing Date the Trustee shall not disburse moneys from the Project Fund [(other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund)], other than to pay Bond Service Charges on the Bonds, unless and until the Trustee receives satisfactory evidence that Eligible Funds in an amount equal to or greater than the requested disbursement amount (the "Collateral Deposit") has been deposited in the Collateral Fund. [Notwithstanding the immediately preceding sentence, after the Closing Date, the Trustee shall not be required to receive satisfactory evidence that the Collateral Deposit has been deposited in the Collateral Fund prior to disbursing any moneys from the Subordinate Loan Account of the Project Fund.] Prior to making any disbursement from the Project Fund, the Trustee shall verify that upon making the disbursement, the aggregate amount to be held in (i) the Collateral Fund and (ii) the Project Fund [(less amounts on deposit in the Subordinate Loan Account of the Project Fund)], together with projected investment earnings thereon, will be sufficient to pay Bond Service Charges on the outstanding Bonds as and when they become due. In the event that, following receipt of the Collateral Deposit, the Trustee determines that it cannot correspondingly disburse Bond proceeds to or at the direction of the Borrower, the Mortgage Lender or other collateral providers, if any, the Trustee shall immediately notify the Borrower and the Mortgage Lender, or other collateral providers, as applicable, of the reason for such determination and shall, immediately upon the request of the Borrower, the Mortgage Lender, or other collateral provider return the subject Collateral Deposit to the party that deposited such Collateral Deposit with the Trustee.

The proceeds of the Bonds shall be allocated exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1(a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 142(d) of the Code; and (ii) shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located, so that 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; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or Event of Default under the Indenture.

Upon the occurrence and continuance of an Event of Default under the Indenture because of which the principal amount for the Bonds has been declared to be due and immediately payable under the Indenture, any moneys remaining in the Project Fund [(other than proceeds of the Subordinate Loans in the Subordinate Loan Account)] shall be promptly transferred by the Trustee to the Bond Fund for payment of Bond Service Charges. [Upon the occurrence and continuance of an Event of Default under the Indenture because of which the principal amount for the Bonds has been declared to be due and immediately payable under the Indenture, any moneys remaining in the Subordinate Loan Account of the Project Fund shall be promptly transferred by the Trustee to the Subordinate Lender.]

[Notwithstanding anything to the contrary in the Indenture, no corresponding deposit to the Collateral Fund shall be required with respect to any disbursement of proceeds of the Subordinate Loans from the Subordinate Loan Account of the Project Fund.]

#### Procedure for Making Disbursements from Project Fund

Upon the deposit of Eligible Funds into the Collateral Fund, as provided in the Indenture, the Trustee shall disburse the Bond proceeds and/or the proceeds of the Subordinate Loans, as applicable, on deposit in the Project Fund on such date solely to pay the Costs of the Project and only upon the receipt by the Trustee of (1) Requisitions in substantially the form attached as an exhibit to the Indenture, and (2) certification by a Borrower Representative that such costs are qualified costs pursuant to Section 142 of the Code. The Trustee shall not disburse money from the



Project Fund [(other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund)], other than to pay interest and principal on the Bonds, unless and until Collateral Deposits or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund; provided, however, that the Trustee shall transfer funds from the Project Fund to the Collateral Fund upon receipt of an opinion of Bond Counsel to the effect that such transfer shall not cause the interest on any of the Bonds to be or become includible in the gross income of the owners thereof for federal income tax purposes. To the extent money on deposit in the Project Fund is invested in Eligible Investments and the Borrower has requested that the Trustee not sell or otherwise terminate such Eligible Investments prior to their stated maturity date, the Trustee is authorized by the Indenture to make the following allocations and exchanges in accordance with the Indenture, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Costs of the Project: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund and (ii) transfer to the Project Fund a like amount of Eligible Funds on deposit in the Collateral Fund.

Each Requisition submitted to the Trustee shall evidence and request disbursements from the (i) Project Fund, and/or (ii) the Costs of Issuance Fund.

The Trustee shall not disburse money from the Project Fund [(other than the disbursement of moneys from the Subordinate Loan Account of the Project Fund in accordance with the Loan Agreement and the Indenture)], other than to pay interest and principal on the Bonds as otherwise permitted under the Indenture, unless and until Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited into the Collateral Fund in accordance with the Indenture. [Notwithstanding the immediately preceding sentence, no corresponding deposit to the Collateral Fund shall be required with respect to any disbursement of proceeds of the Subordinate Loan from the Subordinate Loan Account of the Project Fund.] In accordance with the Loan Agreement, and prior to making any disbursement from the Project Fund (except to make necessary interest and principal payments on the Bonds as otherwise permitted under the Indenture), the Trustee shall determine that the aggregate account balance in (a) the Collateral Fund (b) the Project Fund [(less the requested disbursement amount and less amounts on deposit in the Subordinate Loan Account of the Project Fund)], and (c) the Bond Fund is at least equal to the then-Outstanding principal amount of the Bonds.

Money in the Project Fund shall be disbursed in accordance with the provisions of the Loan Agreement and the Indenture. To the extent moneys are not otherwise provided to the Trustee to make the necessary interest and principal payments on each Interest Payment Date, including moneys deposited into the Bond Fund or the Collateral Fund, the Trustee shall, without further written direction, transfer from the Project Fund [(other than from moneys on deposit in the Subordinate Loan Account of the Project Fund)] to the Bond Fund sufficient Eligible Funds to make such necessary interest and principal payments on each Interest Payment Date.

Notwithstanding anything contained in the Indenture or any of the Borrower Documents to the contrary: (a) with respect to Eligible Funds funded by the Mortgage Lender for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund [(other than from moneys on deposit in the Subordinate Loan Account of the Project Fund)] to either the Mortgage Lender, the Borrower or the Title Company pursuant to a Requisition as directed by the Mortgage Lender; and (b) with respect to Eligible Funds funded by other collateral providers (if any) for deposit into the Collateral Fund, the Trustee shall be irrevocably and unconditionally obligated to disburse an equal amount of funds from the Project Fund [(other than from moneys on deposit in the Subordinate Loan Account of the Project Fund)] to either the Borrower or the Title Company as directed by the collateral provider pursuant to a Requisition. Such disbursements shall be made pursuant to a Requisition and shall not be made more frequently than once per month, unless approved by the Issuer, in its sole discretion.

Subject to the Trustee's obligation to return the Eligible Funds to the Mortgage Lender or other collateral providers (if any) as set forth above, the Trustee and the Issuer shall not, in any event, be responsible or liable to any person (other than the Borrower, but only in the case of the Trustee, and only in the event of a failure by the Trustee to make disbursements following request for disbursements in accordance with the Documents, when such failure is within the Trustee's sole control, and after receipt of written notice of such failure and a 3-day opportunity to cure such failure) for the disbursement of, or failure to disburse, moneys from the Project Fund or any part thereof, and no

contractor, subcontractor or material or equipment supplier or their respective successors and assigns shall have any right or claim against the Trustee or the Issuer under the Indenture.

Notwithstanding anything contained in the Indenture or any of the Borrower Documents to the contrary, if for any reason the Trustee is not able to disburse a corresponding amount of Bond proceeds from the Project Fund to or at the direction of the Mortgage Lender or other collateral providers, as applicable, immediately following receipt of Eligible Funds from the Mortgage Lender or other collateral providers, as applicable, for deposit into the Collateral Fund, the Trustee shall promptly wire transfer such funds back to the Mortgage Lender or other collateral providers, as applicable, and not deposit same into the Collateral Fund.

Notwithstanding anything in the Indenture, the Loan Agreement or any of the other Documents to the contrary, (i) moneys held in the Subordinate Loan Account of the Project Fund are not held for the benefit of the Owners and are not part of the Trust Estate, and (ii) moneys disbursed by the Trustee from the Subordinate Loan Account of the Project Fund shall be used only for the purposes set forth in the Subordinate Loan Documents.

#### Investment of Bond Fund, Project Fund and Collateral Fund

Money in all funds or accounts including the Bond Fund, Project Fund [(excluding monies held in the Subordinate Loan Account of the Project Fund)], and Collateral Fund shall be invested and reinvested by the Trustee, and at all times held in Eligible Investments at the written direction of the Borrower. In the absence of written direction of the Borrower, any moneys held under the Indenture shall be invested in: (i) the following money market funds in the following order, so long as such funds invest solely in direct obligations issued by the U.S. Treasury or repurchase agreements backed by those obligations: [BlackRock Treasury Trust Fund (CUSIP 09248U544)] and \_\_\_\_; and (ii) if none of such funds are available, then in the absence of investment directions from the Borrower shall be held uninvested. If none of the money market funds identified in (i) of the preceding sentence are available, the Trustee will notify the Borrower accordingly.

At no time shall the Borrower direct that (a) any funds constituting gross proceeds of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code or (b) any funds be held other than in Eligible Investments.

Investments of money in the Bond Fund, Project Fund, and the Collateral Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay any amounts due on the Bonds as they become due on each Interest Payment Date or at stated maturity or on a Mandatory Tender Date. In addition, investments of money in the Project Fund shall be allocated and exchanged in accordance with the Indenture at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund.

The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable under the Indenture to and at times required for the purposes of paying any amounts due on the Bonds, and shall do so without necessity for any order on behalf of the Issuer or the Borrower and without restriction by reason of any order. An investment made from money credited to an applicable fund or account shall constitute part of that respective fund or account. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Project Fund and the Collateral Fund shall be credited to and become part of the Bond Fund. Notwithstanding anything in the Indenture to the contrary, earnings received by the Trustee with respect to Governmental Obligations purchased for the purpose of paying Bond Service Charges shall be held uninvested.

Any investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association which is an affiliate or subsidiary of the Trustee; provided that all such investments must be Eligible Investments.

The Trustee shall not be liable for losses on investments made in compliance with the provisions of the Indenture.

If the Trustee is required to sell or otherwise dispose of any Eligible Investments prior to maturity at a price below par in connection with a mandatory tender prior to the Initial Mandatory Tender Date, the Borrower shall, at the Borrower's expense, deliver to the Trustee (i) a Cash Flow Projection and (ii) Eligible Funds in the amount set forth in such Cash Flow Projection, if any.

Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, each of the Issuer and the Borrower agrees that confirmations of Eligible Investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month. The Trustee may conclusively rely upon the Borrower's and Issuer's written instructions as to both the suitability and legality of the directed investments.

#### Investment of Rebate Fund

Any moneys held as part of the Rebate Fund, and not immediately required for the purposes of the Rebate Fund, shall be invested or reinvested by the Trustee, at the written direction of the Borrower Representative, in Governmental Obligations or in any money market or short-term investment fund investing in or consisting solely of and secured by Governmental Obligations, including any such fund maintained by the Trustee or an affiliate thereof having maturities consonant with the need for funds as estimated by the Borrower. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein.

#### Discharge of Lien

If and when the Bonds secured by the Indenture shall become due and payable in accordance with their terms as provided in the Indenture, or otherwise, and the whole amount of the principal and the interest so due and payable upon all of the Bonds, together with all other amounts payable under the Indenture by the Issuer and all fees and expenses of the Trustee and the Issuer, shall be paid, or provision shall have been made for the payment of the same, then the right, title and interest of the Trustee in and to the Trust Estate and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, upon written request of the Issuer and subject to the provisions of the Indenture, the Trustee shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, any surplus in the Bond Fund and all balances remaining in any other fund created under the Indenture and shall assign and transfer to the Issuer all other property then held by the Trustee under the Indenture and shall execute such documents as may be reasonably required by the Issuer.

If and when the Trustee shall hold sufficient moneys under the Indenture, as verified to the Trustee in writing by an independent public accounting firm of national reputation or other firm similarly experienced in performing such computations, to provide for payment of the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all the Bonds, together with all other amounts (exclusive of amounts in the Rebate Fund or the Expense Fund) payable or which may thereafter become payable under the Indenture by the Issuer, notwithstanding that all the Bonds have not yet become due and payable and that consequently the right, title and interest of the Trustee in and to the Trust Estate shall not have ceased, terminated and become void pursuant to the foregoing provisions of this heading, the Trustee, on demand of the Issuer but subject to the provisions of the Indenture, shall turn over to the Borrower, so long as there shall have occurred no Event of Default which is uncured and continuing, or to such person, body or authority as may be entitled to receive the same, any surplus in the Bond Fund in excess of the amount sufficient to pay the whole amount of the principal and interest due and payable and thereafter to become due and payable upon all Bonds together with all other amounts payable or which may thereafter become payable under the Indenture by the Issuer.

All Outstanding Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed above if (a) there shall have been deposited with the Trustee (as verified to the Trustee in writing by an independent public accounting firm of national reputation or other firm similarly experienced in performing such computations) either (i) moneys in an amount which shall be sufficient, or (ii) Governmental Obligations which are not subject to redemption prior to maturity, the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be

sufficient, to pay when due the principal and interest due and to become due on such Bonds on the maturity date thereof, and (b) the Issuer shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, a notice to the Holders of such Bonds and the Rating Agency that the deposit required by subclause (a) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this heading and stating such maturity upon which moneys are to be available for the payment of the principal of and interest on such Bonds.

Neither the securities nor moneys deposited with the Trustee pursuant to this heading nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of and interest on such Bonds; provided that any cash received from such principal or interest payments on such securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested, as directed by the Borrower, in Governmental Obligations (including any short-term investment fund rated Aaa or VMIG-1 by the Rating Agency and secured by and investing solely in Governmental Obligations) maturing at times and in amounts sufficient to pay when due the principal and interest to become due on such Bonds on and prior to such maturity dates thereof, as the case may be, and interest earned from such reinvestment shall be paid over to the Borrower, as received by the Trustee, free and clear of any trust, lien or pledge.

The release of the obligations of the Issuer under this heading shall be without prejudice to the right of the Trustee provided in the Indenture to be paid reasonable compensation for all services rendered by it under the Indenture and all its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees, incurred on behalf of the Trustee in connection with the trust created by the Indenture and the performance of its powers and duties under the Indenture, and shall not affect the obligations of the Borrower to make the payments required by the Loan Agreement or the Note.

#### Events of Default and Acceleration

If any of the following events occur, it is defined as and declared to be and to constitute an “Event of Default” under the Indenture:

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

If any Loan payment required under the Loan Agreement to avoid a default under (a) or (b) of this section shall not have been received at the close of business on the last Business Day preceding the day on which payment must be made to avoid a default under such (a) or (b), the Trustee shall use its best efforts to give telephonic notice of such default to the Borrower and the Investor Member, which telephonic notice shall be confirmed by written notice to the Borrower. If any other default shall occur under the provisions of this section, the Trustee shall, within five (5) days after having actual knowledge of such default, use its best efforts to give written notice of such default to the Issuer, the Borrower, the Investor Member and the Holders of the Bonds. A default or an Event of Default specified in (a) through (d) above shall occur even though the Trustee fails to give the notice required by this paragraph, the

giving of such notice being intended solely to aid in the enforcement of the rights of Bondholders and not in limitation of such rights.

If an Event of Default specified in (a) or (b) of this section shall occur and be continuing, the Trustee shall declare the principal of all Bonds then Outstanding to be immediately due and payable by notice in writing to that effect delivered to the Issuer, the Investor Member and the Borrower, and upon such declaration such principal, together with interest accrued thereon, shall become immediately due and payable at the place of payment provided therein, anything in the Indenture or in the Bonds to the contrary notwithstanding.

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

The Investor Member shall be entitled to cure any Event of Default under the Indenture within the time frame provided to the Borrower. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Member 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.

#### Remedies in Addition to Acceleration

Upon the occurrence of, and during the continuance of, any Event of Default, then and in every such case the Trustee in its discretion may, and upon the written request of the Holders of not less than 51% in principal amount of the Bonds then Outstanding and receipt of satisfactory indemnity shall (in addition to its right or duty to accelerate as provided in the Indenture):

- (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondholders, and require the Issuer or the Borrower to carry out any agreements with or for the benefit of the Bondholders and to perform its or their duties under the Act and the Documents;
- (b) bring suit upon the Bonds; or
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders.

#### Termination of Proceedings

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

#### Right of Bondholders to Direct Proceedings

No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Indenture, or any other remedy under the Indenture or on the Bonds, unless such Holder previously shall have given to the Trustee written notice of an Event of Default as provided in the Indenture and unless also the Holders of not less than 51% in principal amount of the Bonds then outstanding shall have made written request of the Trustee to do so, after the right to exercise such powers or rights of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted by the Indenture, or to institute such action, suit or proceeding in its or their name; nor unless there also shall have been offered to the Trustee security and satisfactory indemnity against the costs, expenses

and liabilities to be incurred therein or thereby, and the Trustee shall not have complied with such request within a reasonable time; and such notification, request and offer of indemnity are declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the trusts of the Indenture or for any other remedy under the Indenture; it being understood and intended that no one or more Holders of the Bonds secured by the Indenture shall have any right in any manner whatever by its or their action to affect, disturb or prejudice the security of the Indenture, or to enforce any right under the Indenture or under the Bonds, except in the manner provided in the Indenture and for the equal benefit of all Holders of Outstanding Bonds. For purposes of the foregoing sentence, the Trustee shall be deemed to have failed to act within a reasonable time if it fails to take action within sixty (60) days after receipt of notice and compliance with the foregoing terms and conditions, whereupon, the Holders of 51% aggregate principal amount of the Bonds may take such action in the place of the Trustee. Nothing contained in the Indenture shall, however, affect or impair the right of any Holder of Bonds to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest, on each of the Bonds issued under the Indenture to the respective Holders of the Bonds at the time, place, from the source and in the manner in the Indenture and in such Bonds expressed.

#### Remedies Vested in Trustee

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

#### Application of Moneys

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the accrued fees, expenses and advances incurred or made by the Trustee, and then to the accrued fees and expenses and advances made by the Issuer, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which have matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default, which moneys shall continue to be held for such payments) shall be applied as follows:

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

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

Second — To the payment to the persons entitled thereto of the unpaid principal, on any of the Bonds, which shall have become due (other than Bonds which have matured or otherwise become payable prior to such Event of Default and moneys for the payment of which are held in the Bond Fund or otherwise held by the Trustee), and if the amount available shall not be sufficient to pay in full the amount of principal, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto, without any discrimination or privilege;

Third — To the payment to the persons entitled thereto of all other of the Issuer's Obligations and the Borrower's Obligations, and, if the amount available shall not be sufficient to pay such Obligations in full, then to the payment ratably, according to the amounts then due, to the persons entitled thereto without discrimination or privilege; and

Fourth — The remainder, if any, shall be paid over to the Borrower, its successors or assigns, or whomever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto without any discrimination or privilege. Any remaining funds shall be applied in accordance with the paragraphs designated “Third” and “Fourth” of subsection (a) above.

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

#### Amendments to Indenture and Loan Agreement Not Requiring Consent of Bondholders

The Issuer and the Trustee may, from time to time and at any time, without the consent of Bondholders, enter into agreements supplemental to the Indenture and the Loan Agreement as follows:

- (i) to specify and determine any matters and things relative to Bonds which shall not materially adversely affect the interest of the Bondholders;
- (ii) to cure any formal defect, omission or ambiguity in the Indenture or the Loan Agreement if such action does not materially adversely affect the rights of the Bondholders;
- (iii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Indenture as theretofore in effect;
- (iv) to add to the covenants and agreements of the Issuer in the Indenture or the Loan Agreement other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture or the Loan Agreement as theretofore in effect;
- (v) to add to the limitations and restrictions in the Indenture or the Loan Agreement, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture or the Loan Agreement as theretofore in effect;
- (vi) to confirm, as further assurance, any pledge under and the subjection to any claim, lien or pledge created, or to be created by, the Indenture, of the Revenues or of any other moneys, securities or funds; or
- (vii) to modify, amend or supplement the Indenture or the Loan Agreement in any respect which, in the judgment of the Trustee, is not materially adverse to the interests of the owners of the Bonds.

Before the Issuer shall enter into any agreement supplemental to the Indenture pursuant to this section, there shall have been filed with the Trustee an opinion of Bond Counsel stating that (1) such supplemental indenture is authorized or permitted by the Indenture and complies with its terms, and that upon adoption it will be valid and

binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

The Trustee shall send written notice to the Borrower, the Investor Member and the Rating Agency of any amendment to the Indenture or the Loan Agreement and, if requested, copies of any such amendments.

#### Amendments to Indenture Requiring Consent of Bondholders

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

If at any time the Issuer and the Trustee shall determine to enter into any supplemental indenture for any of the purposes of this section, the Trustee shall cause written notice of the proposed supplemental indenture to be given to all Holders of the Bonds; provided, however, that failure to give such notice or any defect therein, shall not affect the validity of any proceedings pursuant to the Indenture. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that a copy thereof is on file at the Trust Office for inspection by all Bondholders.

Within one hundred twenty (120) days after the date of giving such notice, the Issuer and the Trustee may enter into such supplemental indenture in substantially the form described in such notice only if there shall have first been filed with the Issuer (i) the written consents of Holders of not less than 66 2/3% in aggregate principal amount of the Bonds then outstanding (or 100% if required under the Indenture) and (ii) an opinion of counsel stating that (1) such supplemental indenture is authorized or permitted by the Indenture and complies with its terms, and that upon adoption it will be valid and binding upon the Issuer in accordance with its terms and (2) the effectiveness of the supplemental indenture will not adversely affect the exclusion of interest on the Bonds from gross income for federal income taxes.

If the Holders of not less than the percentage of Bonds required by this section shall have consented to and approved the supplemental indenture as provided in the Indenture, no Holder of any Bond shall have any right to object to such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety thereof, or to enjoin or restrain the Issuer or the Trustee from entering into the same or from taking any action pursuant to the provisions thereof.

Upon the effectiveness of any supplemental indenture entered into pursuant to the provisions of this section, the Indenture shall be, and be deemed to be, modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Issuer, the Trustee and all Holders of Bonds then outstanding shall thereafter be determined, exercised and enforced under the Indenture subject in all respects to such modifications and amendments.

The Trustee shall send written notice to the Rating Agency of any amendment to the Indenture.



### Supplemental Indentures Part of Indenture

Any supplemental indenture entered into in accordance with the provisions of the Indenture shall thereafter form a part of the Indenture and all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be and shall be deemed to be a part of the terms and conditions of the Indenture for any and all such purposes.

### Amendments to Documents Requiring Consent of Bondholders

Except as provided in the Indenture, the Issuer and the Trustee shall not consent to any amendment, change or modification of the Documents without the giving of written notice and the written approval or consent of the Holders of the Bonds at the time Outstanding given and procured as provided in the Indenture; provided, however, no such separate approval or consent shall be required in connection with the issuance of refunding bonds if any required consent of the required number of Holders to the issuance thereof shall have been previously obtained. If at any time the Issuer and the Borrower shall request in writing the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change, or modification to be given in the same manner as provided by the Indenture with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the Trust Office for inspection by all Bondholders.

### Conversion Date

On the Conversion Date and upon the execution and delivery of the Funding Loan Agreement, the Governmental Lender Note and the Project Loan Agreement, the Indenture, the Loan Agreement and the Bonds shall be deemed amended, restated and superseded in full by the terms thereof. The requirements of the Indenture shall not apply to such amendment and restatement.

### Severability

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

### Mortgage Loan Documents Independent

Enforcement of the covenants in the Indenture will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Borrower, the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Mortgage Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project.

Failure of the Issuer or the Borrower to comply with any of the covenants set forth in the Indenture or any of the Borrower Documents will not serve as a basis for default on the Mortgage Loan, the underlying mortgage, or any of the other Mortgage Loan Documents.

Notwithstanding anything in the Indenture, the Loan Agreement, the Note or the Bond Purchase Agreement to the contrary, (i) the Mortgaged Property (as defined in the Mortgage Loan Security Instrument) shall not include any portion of the Trust Estate and the Mortgage Lender shall not have any claim to or lien upon the Trust Estate under the Indenture and funds held by the Trustee under the Indenture and pledged to secure the repayment of the Bonds, except for Eligible Funds that may be returned to the party that deposited said funds with the Trustee as may be required under the Indenture and (ii) the Trust Estate shall not include any portion of the Mortgaged Property (as defined in the Mortgage Loan Security Instrument).

## APPENDIX C

### **SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

*The following is a summary of certain provisions of the Loan Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Loan Agreement, a copy of which is on file with the Trustee.*

#### Loan of Proceeds

The Issuer agrees, upon the terms and conditions of the Loan Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. Such proceeds shall be disbursed to or on behalf of the Borrower as provided in the Loan Agreement.

#### Disbursements from the Project Fund

In the Indenture, the Issuer has authorized and directed the Trustee to make disbursements from the Project Fund to pay Costs of the Project upon satisfaction of the requirements of the Indenture. The Trustee is directed in the Indenture to make disbursements from the Project Fund as provided in the Indenture, and pursuant to the receipt of a Requisition in substantially the form attached to the Indenture as an exhibit.

The Borrower's right to request disbursements from the Project Fund is limited to the principal amount of the Loan and conditioned upon the deposit of Eligible Funds into the Collateral Fund as set forth in the Indenture.

#### Borrower Required to Pay in the Event Project Fund Is Insufficient

In the event the moneys in the Project Fund are not sufficient to pay the Costs of the Project in full, the Borrower agrees to complete the Project and to pay that portion of the Costs of the Project in excess of the moneys available therefore in the Project Fund. 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 Costs of the Project will be sufficient to pay all of the Costs of the Project. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower shall pay any portion of the Costs of the Project pursuant to the provisions of this section, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds, nor shall the Borrower be entitled to any diminution of the amounts payable under the Loan Agreement.

#### Mortgage Loan to Borrower

Contemporaneously with the issuance of the Bonds, it is expected that the Borrower shall proceed with obtaining the Mortgage Loan from the Mortgage Lender. In particular, the Borrower will promptly take all necessary actions on its part to close the Mortgage Loan.

The Mortgage Lender will, from time to time, deliver Eligible Funds to the Trustee for deposit into the Collateral Fund to enable the Trustee to disburse an equal amount of Bond proceeds from the Project Fund as approved by the Mortgage Lender in connection with a completed and fully executed Requisition, in substantially the form attached to the Indenture as an exhibit.

#### Borrower's Obligations Upon Tender of Bonds

If any tendered Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Collateral Fund, the Negative Arbitrage Account of the Bond Fund, or the Project Fund as provided in the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to the Indenture.

### Option to Terminate

The Borrower shall have the option to cancel or terminate the Loan Agreement at any time when (a) the Indenture shall have been released in accordance with its provisions, and (b) sufficient money or security acceptable to the Issuer and the Trustee are on deposit with the Trustee or the Issuer, or both, to meet all Loan Payments due or to become due through the date on which the last of the Bonds is then scheduled to be retired or redeemed and (c) the Mortgage Loan shall be repaid in full. Such option shall be exercised by the Borrower, with approval of the Investor Member, giving the Issuer and the Trustee five (5) days' notice in writing of such cancellation or termination and such cancellation or termination shall become effective at the end of such notice period. The provisions of this section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

### Defaults Defined

The following shall be "Defaults" under the Loan Agreement and the term "Default" shall mean, whenever it is used in the Loan Agreement, any one or more of the following events:

- (a) Failure by the Borrower to pay any amount required to be paid under the Loan Agreement.
- (b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Loan Agreement other than as referred to in subsection (a) of this section or failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed in the Borrower's Tax Certificate, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, will have been given to the Borrower and the Investor Member by the Issuer or the Trustee; provided, with respect to any such failure covered by this subsection (b), no event of default will be deemed to have occurred so long as a course of action adequate to remedy such failure will have been commenced within such 60-day period and will thereafter be diligently prosecuted to completion and the failure will be remedied thereby.
- (c) The dissolution or liquidation of the Borrower, or the voluntary initiation by the Borrower of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Borrower of any such proceeding which shall remain undismissed for ninety (90) days, or failure by the Borrower to promptly have discharged any execution, garnishment or attachment of such consequence as would impair the ability of the Borrower to carry on its operations at the Project, or assignment by the Borrower for the benefit of creditors, or the entry by the Borrower into an agreement of composition with its creditors or the failure generally by the Borrower to pay its debts as they become due.
- (d) The occurrence of an Event of Default under the Indenture (other than under clause (d) under the heading "APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE TRUST INDENTURE — Events of Default and Acceleration").

The provisions of subsection (b) of this section are subject to the following limitation: if by reason of force majeure it is impossible for the Borrower in whole or in part, despite its best efforts, to carry out any of its agreements contained in the Loan Agreement (other than its obligations contained in the Loan Agreement), the Borrower shall not be deemed in Default during the continuance of such inability. Such force majeure event does not affect any obligations of the Borrower other than the timing of performance of such obligations. The term "force majeure" as used in the Loan Agreement shall mean, without limitation, the following: acts of God; strikes or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or of any of their departments, agencies or officials, or of any civil or military authority; insurrections; riots; terrorism; landslides; earthquakes; fires; storms; droughts; floods; explosions; and events not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement. The settlement of strikes and other industrial disturbances shall be entirely within the discretion of the Borrower and the Borrower shall not be required to settle strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the judgment of the Borrower unfavorable to the Borrower.

### Remedies on Default

Whenever any Default referred to under the section “Defaults Defined” above shall have happened and be continuing beyond the expiration of any applicable cure period, the Trustee, or the Issuer (in the event the Trustee fails to act), may take one or any combination of the following remedial steps:

(a) If the Trustee has declared the Bonds immediately due and payable pursuant to the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Indenture) or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable; and

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under the Loan Agreement, the Note, the Tax Regulatory Agreement or any other Document in the event of default thereunder.

Any amounts collected pursuant to action taken under this section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture.

### No Remedy Exclusive

Except as otherwise indicated in the Indenture, no remedy conferred upon or reserved to the Issuer or the Trustee by the Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Loan Agreement, the Tax Regulatory Agreement or the Note, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in the Loan Agreement, it shall not be necessary to give any notice, other than such notice as may be required in the Loan Agreement. Such rights and remedies as are given the Issuer under the Loan Agreement shall also extend to the Trustee, and the Trustee and the Holders of the Bonds, subject to the provisions of the Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements contained in the Loan Agreement.

### No Additional Waiver Implied by One Waiver

In the event any agreement contained in the Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Loan Agreement.

### Mortgage Loan Documents Independent

Failure of the Issuer or the Borrower to comply with any of the covenants set forth in the Loan Agreement, the Indenture or the other Borrower Documents will not serve as a basis for default on the Mortgage Loan, the underlying Mortgage, or any of the other Mortgage Loan Documents.

To the extent not otherwise set forth above in this section, the provisions of the Indenture are incorporated in the Loan Agreement by reference to the same extent as if set forth in the Loan Agreement in full.

## APPENDIX D

### **SUMMARY OF CERTAIN PROVISIONS OF THE TAX REGULATORY AGREEMENT**

*The following is a brief summary of the Land Use Restriction Agreement (the "Tax Regulatory Agreement"). The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Tax Regulatory Agreement, a copy of which is on file with the Trustee.*

The Issuer, the Trustee and the Borrower will enter into a Land Use Restriction Agreement (the "Tax Regulatory Agreement") in order to set forth certain terms and conditions relating to the acquisition of a leasehold interest in and operation of the Project. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture and the Tax Regulatory Agreement.

#### Residential Rental Property

The Borrower represents, covenants, warrants and agrees in the Tax Regulatory Agreement that:

(a) The Borrower will acquire a leasehold interest in, 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 Internal Revenue Code of 1986, as amended, and except as otherwise provided in the Tax Regulatory Agreement or required by the context hereof, including 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 (the "Code"), (2) the Borrower 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 rehabilitated 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 Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations) (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 rehabilitated (except as to number of bedrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range or microwave oven, refrigerator and sink, all of which are separate and distinct from the other units.

(c) None of the units in the Project will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.

(d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Borrower will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to (1) Lower-Income Persons or (2) Eligible Persons. Lower-Income Persons and Eligible Persons who are residents of the Project will have equal access to and enjoyment of all common facilities of the Project at all times. Except as permitted by law or regulation, the Borrower will not discriminate against children of any age when renting the units in the Project.

(e) The Land primarily consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Project primarily comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities financed with proceeds of the 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 Borrower or an Affiliated Party of the Borrower shall not occupy any of the units in the Project; provided, however, that the Borrower or an Affiliated Party of the Borrower may occupy a unit in a building or structure in the Project that contains five or more units if the Borrower or an Affiliated Party of the Borrower 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 Borrower 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 Borrower does not submit the above-described certificate as required in this section, Issuer shall utilize information provided to it by or on behalf of the Borrower 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 shall remain in effect during the term of the Tax Regulatory Agreement (as defined in the section captioned "Term" below).

#### Lower-Income Persons and Eligible Persons

The Borrower represents, warrants and covenants in the Tax Regulatory Agreement 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 in the Tax Regulatory Agreement as the "Lower-Income Requirement."

During the Transition Period, the failure to satisfy the set-aside requirements in this paragraph (a) for Lower-Income Persons will not cause the Project to fail to qualify as a "qualified residential rental project" within the meaning of Section 142 of the Code. However, failure on the part of the Owner to have satisfied the set-aside requirements described in this paragraph (a) as of the end of such Transition Period shall cause the Project to not qualify as a "qualified residential rental project."

(b) At all times during the term of the Tax Regulatory Agreement (as defined in the section captioned "Term" below), at least sixty percent (60%) of the completed units in the Project shall be rented to or be available for rent by Eligible Persons.

(c) For purposes of paragraphs (a) and (b) of this section, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person (or Eligible Person). However, a Lower-Income Person whose income as of the most recent Income Certification (as described in the Tax Regulatory Agreement) exceeds one hundred forty percent (140%) of the Applicable Income Limit shall not continue to be treated as a Lower-Income Person if after delivery of such Income Certification, but before the delivery of the next Income Certification, any residential unit in the Project of comparable or smaller size is occupied by a new resident who is not a Lower-Income Person. In addition, a unit that was occupied by a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person (or Eligible Person) only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person (or Eligible Person).

#### Fair Housing Laws

The Borrower 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. All advertising and promotional material used in connection with the Project shall contain the phrase "Equal Housing Opportunity."

#### Sale, Assignment, Conveyance or other Disposition of Project or Interest in Borrower

Except with respect to transfer of interests within the Borrower, as permitted under the terms and conditions of the Borrower's Amended and Restated Operating Agreement, dated as of November \_\_, 2023 (as may be further amended, the "Operating Agreement"), the Borrower 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 the Tax Regulatory 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) upon receipt by the Issuer of a fee from the Borrower upon transfer of ownership in excess of fifty percent (50%) interest in the Project or the Borrower (which fee shall be refunded by the Issuer to the Borrower in the event the Issuer does not approve the transfer of the Project to the proposed purchaser or assignee thereof, or in the event such transfer is not consummated) in the amount of (a) ten percent (10%) of the amount of the Bonds outstanding on the date of the written transfer request if up to ten percent (10%) of the units in the Project are rented; (b) two percent (2%) of the amount of the Bonds outstanding on the date of the written transfer if eleven percent (11%) to sixty percent (60%) of the units in the Project are rented; (c) one percent (1%) of the amount of the Bonds outstanding on the date of the written transfer if over sixty percent (60%) of the units in the Project are rented; or (d) one-half percent (.05%) of the amount of the Bonds outstanding on the date of the written transfer after one (1) year from the date of completion of rehabilitation of the Project, regardless of occupancy (the "Transfer Fee"). Provided that the above conditions have been satisfied, the Issuer will provide to the Borrower and the purchaser or transferee on request its written consent to any transfer in accordance with this section an estoppel certificate. It is expressly stipulated and agreed in the Tax Regulatory Agreement that any sale, transfer or other disposition of the Project in violation of this section shall be null, void and without effect, shall cause a reversion of title to the Borrower, and shall be ineffective to relieve the Borrower of its obligations under the Tax Regulatory Agreement. Nothing contained in this section shall affect any provision of the Mortgage or any other document or instrument to which the Borrower is a party which requires the Borrower to obtain the consent of the holder of the Note or any other person as a precondition to sale, transfer or other disposition of the Project. The Transfer Fee will apply if a material portion of the Project financed with proceeds from the Loan is sold during the term of the Tax Regulatory Agreement and such material portion of such Project consisted of personal property or equipment, the proceeds from the sale thereof may be used by the Borrower 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 Borrower 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 the Tax Regulatory Agreement. Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this section; 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 Borrower or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Except as permitted under the terms and conditions of the Operating Agreement, the Borrower shall not sell or otherwise transfer the Project in whole, nor shall there be substituted a new authorized member of the Borrower or a change in the controlling ownership of the authorized member of the Borrower, or other merger, transfer or consolidation of the Borrower, unless (a) the Borrower 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 Borrower shall not be in default under the Tax Regulatory Agreement, (d) it is reasonably expected that continued operation of the Project will comply with the requirements of the Tax Regulatory Agreement, (e) the subsequent purchaser or assignee shall execute any document reasonably requested by the Issuer with respect to assuming the obligations of the Borrower under the Tax Regulatory 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 the Tax Regulatory Agreement, the Loan Agreement and the other Loan Documents, (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 the Tax Regulatory Agreement, the Loan Agreement and other Loan Documents relating to the Bonds 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 expressly stipulated and agreed in the Tax Regulatory Agreement that any sale, transfer or other disposition of the Project in violation of this section shall be ineffective to relieve the Borrower of its obligations under the Tax Regulatory Agreement or the Loan Agreement. In the event that the purchaser or assignee shall assume the obligations of the Borrower under the Loan, the Loan Agreement and the Tax Regulatory Agreement, the Borrower shall be released from its obligations thereunder, other than its obligations under the Tax Regulatory Agreement and under the Loan Agreement arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Mortgage, without complying with this section; 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 Borrower 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 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by the Tax Regulatory Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by the Tax Regulatory Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the



Project which is made expressly subject and subordinate hereto and, to the extent still outstanding, to the Mortgage, or (v) subject to the provisions of the Mortgage, any transfer of membership interests in the Borrower or in the entities which are members in the Borrower.

#### Covenants to Run with the Land

The Tax Regulatory Agreement and the covenants, reservations and restrictions set forth therein shall be deemed covenants running with the Land and, except as provided in the section captioned “Term” below, shall pass to and be binding upon the Borrower’s assigns and successors and all subsequent owners of the leasehold interest in the Land or the Project or any interest therein; provided, however, that upon the termination of the Tax Regulatory Agreement in accordance with the terms thereof said covenants, reservations and restrictions shall expire. Except as provided in the section captioned “Term” below, each and every contract, deed or other instrument executed after the execution of the Tax Regulatory Agreement 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.

#### Term

The Tax Regulatory Agreement shall remain in full force and effect until the expiration of the Qualified Project Period; provided, however, that the Tax Regulatory Agreement shall automatically terminate in the event of involuntary noncompliance with the provisions of the Tax Regulatory 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 of the Regulatory Agreement, 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 thereof 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 Borrower or an Affiliated Party to the Borrower, obtains an ownership interest in the Project for federal tax purposes.

Upon the termination of the Qualified Project Period, and the satisfaction by the Borrower of all obligations under the Tax Regulatory Agreement, the Issuer, the Trustee and the Borrower shall, upon the written request of the Borrower, and at Borrower’s sole expense, execute and record a Notice of Termination of Land Use Restriction Agreement, the form of which is attached as an exhibit to the Tax Regulatory Agreement (the “Notice of Termination”). Pursuant to Resolution No. 2023-\_\_\_\_, adopted by the Issuer on October 18, 2023, the Chair and Vice Chair of the Issuer have each been authorized to execute and deliver the Notice of Termination.

#### Correction of Noncompliance

The failure of the Borrower to comply with any of the provisions of the Tax Regulatory Agreement shall not be deemed a default under the Tax Regulatory Agreement unless such failure has not been corrected within a period of 60 days following the date that the Borrower, or with respect to the requirements of the sections captioned “Residential Rental Property” or “Lower-Income Persons and Eligible Persons” above, any of the parties to the Tax Regulatory Agreement, 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 the sections captioned “Residential Rental Property” or “Lower-Income Persons and Eligible Persons” above, the Borrower 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 Borrower and the Issuer of such failure by telephonic and written communication. Notwithstanding anything to the contrary in the Tax Regulatory Agreement, the Investor Member shall have the right, but not the obligation, to cure a default under the Tax Regulatory Agreement within the applicable cure period.

### Modification of Tax Covenants

Notwithstanding the provisions of the section captioned “Amendments” below, 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 Borrower 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 in the Tax Regulatory Agreement, and the Borrower’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 the Tax Regulatory Agreement shall be amended and modified in accordance with such requirements. The parties to the Tax Regulatory Agreement have agreed 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.

### Remedies; Enforceability

The benefits of the Tax Regulatory Agreement shall inure to, and may be enforced by, respectively, the Issuer and the Trustee and its successors, the holder of the Bonds and their successors and assigns to the extent permitted by the Indenture, and solely as to the sections captioned “Residential Rental Property,” “Lower-Income Persons and Eligible Persons” and “Fair Housing Laws” above, the Lower-Income Persons and Eligible Persons and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to the section captioned “Lower-Income Persons and Eligible Persons” above for the period set forth in the section captioned “Term” above, whether or not the Loan may be paid in full, and whether or not the Bonds are outstanding. If a material violation of any of the provisions of the Tax Regulatory Agreement occurs and is not cured within the period provided by the section captioned “Correction of Noncompliance” above, 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 under the Tax Regulatory Agreement, it being recognized that the beneficiaries of the Borrower’s obligations thereunder cannot be adequately compensated by monetary damages in the event of the Borrower’s default. The remedies of the beneficiaries of the Tax Regulatory Agreement other than the Issuer and the Trustee shall be limited to those described in the preceding sentence. In addition to such other remedies as may be provided for therein, if a violation of any of the provisions of the Tax Regulatory Agreement occurs which is not corrected during the period provided in the section captioned “Correction of Noncompliance” above, the Issuer shall have the right (but not the obligation), and is specifically authorized by the Borrower, to terminate the manager and appoint a new manager of the Project to operate the Project in accordance with the Tax Regulatory Agreement and the Loan Agreement and take all actions necessary, in the reasonable judgment of the Issuer, to cure any default by the Borrower thereunder, and such new manager assuming such management thereunder shall be paid by or on behalf of the Borrower, 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 the section captioned “Term” above, the provisions of the Tax Regulatory Agreement are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Borrower 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 of the Tax Regulatory Agreement as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions of the Tax Regulatory Agreement or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. All rights and remedies provided in the Tax Regulatory Agreement are cumulative, non-exclusive and in addition to any and all rights and remedies that the parties and beneficiaries thereof may otherwise have.

The Borrower agrees that the appointment of a new manager may be necessary to serve the public purpose for which the Bonds were issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds following a violation of the provisions of the Tax Regulatory Agreement which is not cured within the period provided in the section captioned “Correction of Noncompliance” above. The Borrower expressly consents to, and agrees not to contest, the appointment of a new manager to operate the Project following a violation by the Borrower of the provisions of the Tax Regulatory Agreement which is not cured as provided in the section captioned Correction of Noncompliance above and waives any and all defenses and objections that might otherwise be raised to any such appointment of a new manager in accordance with the terms of the Tax Regulatory Agreement. The Borrower further agrees that the Issuer shall have the right to require the Borrower to remove any manager or managing agent whose actions or inactions present a material risk of a breach of the agreements of the Borrower in the Tax Regulatory Agreement, including, without limitation, a material risk of an adverse impact on the excludability

from gross income for federal income tax purposes of interest on the Bonds and which action or inaction is not being corrected as provided in the section captioned "Correction of Noncompliance" above, upon such manager or managing agent being given thirty (30) days' written notice of any violation thereof, and such right shall be expressly acknowledged in any contract between the Borrower and any such manager or managing agent.

#### Amendments

The Borrower shall not assign its interest under the Tax Regulatory Agreement, except by writing and in accordance with the provisions of the section captioned "Sale, Assignment, Conveyance or other Disposition of Project or Interest in Borrower" above.

The Tax Regulatory Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties thereto (or their successors in title), and duly recorded in the official public records for Broward County, Florida. Anything to the contrary notwithstanding, the parties agreed to amend the Tax Regulatory 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 Borrower has agreed to, from time to time, 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 the Tax Regulatory 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.

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## APPENDIX E

### FORM OF CONTINUING DISCLOSURE AGREEMENT

**\$14,000,000\***

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

This Continuing Disclosure Agreement, dated as of November 1, 2023 (this “Continuing Disclosure Agreement”), is executed and delivered by The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the “Borrower”), and The Bank of New York Mellon Trust Company, N.A., as dissemination agent (the “Dissemination Agent”), in connection with the above-captioned bonds (the “Bonds”). The Bonds are being issued pursuant to a Trust Indenture, dated as of November 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”). Pursuant to the Indenture and the Loan Agreement, dated as of November 1, 2023, between the Issuer and the Borrower (the “Loan Agreement”), the Dissemination Agent and the Borrower covenant and agree as follows:

**Section 1. Purpose of this Continuing Disclosure Agreement.** This Continuing Disclosure Agreement is being executed and delivered by the Borrower and the Dissemination Agent for the benefit of the holders of the Bonds and in order to assist the Participating Underwriter in complying with the Rule. The Borrower and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Continuing Disclosure Agreement, and has no liability to any person, including any holder of the Bonds or Beneficial Owner, with respect to any such reports, notices or disclosures.

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“*Annual Report*” shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Continuing Disclosure Agreement.

“*Audited Financial Statements*” means, in the case of the Borrower, the annual audited financial statements prepared in accordance with generally accepted accounting principles, if any.

“*Beneficial Owner*” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“*Disclosure Representative*” shall mean the administrator of the Project or his or her designee, or such other person as the Borrower shall designate in writing to the Dissemination Agent from time to time.

“*Dissemination Agent*” shall mean The Bank of New York Mellon Trust Company, N.A., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

“*Listed Events*” shall mean any of the events listed in Section 5(a) of this Continuing Disclosure Agreement.

“*MSRB*” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934. All documents provided to the MSRB shall be in an electronic format and accompanied by identifying information, as prescribed by the MSRB. Initially, all document submissions to the MSRB

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\* Preliminary; subject to change.

pursuant to this Continuing Disclosure Agreement shall use the MSRB's Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org).

*"Participating Underwriter"* means, collectively, Raymond James & Associates, Inc., and RBC Capital Markets, LLC, and their successors and assigns.

*"Rule"* means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

### **Section 3. Provision of Annual Reports.**

(a) The Borrower will, or will cause the Dissemination Agent to, not later than 180 days following the end of the Borrower's fiscal year, commencing with the fiscal year ending on December 31, 2024, provide to the MSRB an Annual Report which is consistent with the requirements described below. No later than 15 Business Days prior to said date, the Borrower will provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package and may cross reference other information, provided that the audited financial statements for the prior calendar year of the Borrower may be submitted separately from the balance of the Annual Report.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent will contact the Disclosure Representative to determine if the Borrower is in compliance with subsection (a).

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent will send in a timely manner a notice to the MSRB in substantially the form attached as Exhibit B to this Continuing Disclosure Agreement.

(d) The Dissemination Agent will file a report with the Borrower and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Continuing Disclosure Agreement, stating the date it was provided.

**Section 4. Content of Annual Reports.** The Borrower's Annual Report will contain or incorporate by reference the financial information with respect to the Project, provided at least annually, of the type included in Exhibit A hereto, which Annual Report may, but is not required to, include Audited Financial Statements. If the Borrower's Audited Financial Statements are not available by the time the Annual Report is required to be filed, the Annual Report will contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the Audited Financial Statements will be filed in the same manner as the Annual Report when and if they become available.

Any or all of the items described in Exhibit A may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an "Obligated Person" (as defined by the Rule), which have been filed with the MSRB. The Borrower will clearly identify each such other document so incorporated by reference.

Each annual report submitted hereunder shall be in readable portable document format ("PDF") or other acceptable electronic form.

### **Section 5. Reporting of Listed Events.**

(a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events (each, a "Listed Event"):

- (i) Principal and interest payment delinquencies;

- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) Modifications to rights of holders of the Bonds, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (xiv) Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material;
- (xv) Incurrence of a financial obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Borrower, any of which affect security holders, if material;
- (xvi) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the Borrower or obligated person, any of which reflect financial difficulties; and
- (xvii) The Project's being placed in service for purposes of qualifying the property for low income housing tax credits. Notice of the Project's being placed in service from the Borrower to the Dissemination Agent shall be in the form attached as Exhibit D hereto or such other form as may be approved by the Dissemination Agent. Notice of the Project being placed in service from the Dissemination Agent to the Municipal Securities Rulemaking Board shall be in the form attached as Exhibit C hereto or such other form as may be approved by the Dissemination Agent.

For purposes of clauses (xv) and (xvi) of this Section 5(a), “financial obligation” is as contemplated by Exchange Act Release No. 34-83885; File No. S7-01-17 (the “Adopting Release”).

(b) The Dissemination Agent shall, within three (3) Business Days of obtaining actual knowledge of the occurrence of any potential Listed Event, pursuant to subsection (c) of this Section 5 or otherwise, provide the Disclosure Representative with notice (by facsimile transmission confirmed by telephone or by email). While the Dissemination Agent is also the Trustee, the Dissemination Agent shall be deemed to have actual knowledge of those items listed in clauses (i), (iii) (solely with respect to funds held by the Trustee), (iv), (v), (vii), (viii), (ix), (x) and (xiv) above without the Dissemination Agent having received notice of such event. While the Dissemination Agent is not also the Trustee, the Dissemination Agent shall not be deemed to have actual knowledge of any items listed in clauses (i) - (xiv) above without the Dissemination Agent having received written notice of such event. For purposes of providing notice to the Disclosure Representative, the Dissemination Agent shall assume that the unscheduled draws described in clauses (iii) and (iv) reflect financial difficulty.

(c) Whenever the Borrower obtains knowledge of the occurrence of a potential Listed Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of such event, determine if such event is in fact a Listed Event that is required by the Rule to be disclosed and provide the Dissemination Agent with notice and instructions pursuant to subsections (d) below.

(d) If the Borrower has determined that a Listed Event is required to be disclosed then the Borrower shall prepare a written notice describing the Listed Event and provide the same to the Dissemination Agent along with instructions to file the same pursuant to subsection (e) below.

(e) If the Dissemination Agent has been provided with a written notice describing a Listed Event pursuant to subsection (c) of this Section 5 or otherwise, and is instructed by the Borrower to report the occurrence of such Listed Event, the Dissemination Agent shall, within two (2) Business Days of its receipt of such written notice and in any event no more than ten (10) Business Days after the occurrence of the Listed Event, file the notice with the MSRB and send a copy to the Borrower.

**Section 6. Amendment; Waiver.** Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Continuing Disclosure Agreement (and the Dissemination Agent will agree to any amendment so requested by the Borrower unless such amendment adversely affects its rights, duties, protections, immunities, indemnities or standard of care, as determined by the Dissemination Agent) and any provision of this Continuing Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions described under paragraph (a) under “Provision of Annual Reports,” “Contents of Annual Reports” or paragraph (a) under “Reporting of Listed Events,” it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of an “Obligated Person” (as defined in the Rule) with respect to the Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Continuing Disclosure Agreement, the Borrower will describe such amendment in the next Annual Report and will include, as applicable, a narrative

explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information being presented by the Borrower. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change will be given in the same manner as for a Listed Event under Section 5(f) hereof and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7. Default.** In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Continuing Disclosure Agreement, and such failure to comply continues beyond a period of thirty (30) days following written notice to the Borrower, the Borrower or any Holder or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking, or specific performance by court order, to cause the Borrower or the Dissemination Agent, as the case may be, to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement will not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Continuing Disclosure Agreement will be an action to compel performance.

**Section 8. Beneficiaries.** This Continuing Disclosure Agreement will inure solely to the benefit of the Borrower, the Dissemination Agent, the Participating Underwriter and Holders from time to time of the Bonds and will create no rights in any other person or entity.

**Section 9. Provision of Quarterly Statements.** The Dissemination Agent shall, at the request of the Holders of the Bonds, furnish to the Holders of the Bonds, quarterly statements of the activity and assets held in each of the funds and accounts maintained by the Dissemination Agent in its capacity as Trustee under the Indenture. The Dissemination Agent shall satisfy this obligation by providing such quarterly statements via EMMA and/or an online system accessible to the Borrower and the Holders of the Bonds on each March 31st, June 30th, September 30th and December 31st. The Dissemination Agent shall furnish such quarterly statements at the sole cost of the Borrower.

**Section 10. Additional Information.** Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Borrower shall have no obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**Section 11. Duties, Immunities and Liabilities of Dissemination Agent.**

(a) Provided the Trustee is acting as Dissemination Agent, Article X of the Indenture is hereby made applicable to this Continuing Disclosure Agreement as if this Continuing Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Trustee and Dissemination Agent shall be entitled to the protections, limitations from liability and indemnities afforded the Trustee thereunder. The Dissemination Agent shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement. The Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Borrower has provided such information to the Dissemination Agent as required by this Continuing Disclosure Agreement. The Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Dissemination Agent shall have no duty or obligation to review or verify any information, disclosures or notices provided to it by the Borrower and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Holders of the Bonds or any other party. The Dissemination Agent shall have no responsibility for the Borrower's failure to report to the Dissemination Agent a Listed Event or a duty to determine the materiality thereof. The Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Borrower has complied with this Continuing Disclosure Agreement. The Dissemination Agent may conclusively rely upon Certifications of the Borrower at all times.



The obligations of the Borrower under this Section 11 shall survive resignation or removal of the Dissemination Agent and defeasance, redemption or payment of the Bonds.

(b) The Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The reasonable fees and expenses of such counsel shall be payable by the Borrower.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Continuing Disclosure Agreement shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB.

**Section 12. Notices.** All notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been duly given or made when delivered personally or by mail (including electronic mail) to the party to which such notice, request, demand or other communication is required or permitted to be given or made under this Continuing Disclosure Agreement and addressed as set forth below or telecopied to the telecopier number of the recipient, with confirmation of transmission, indicated below:

*If to the Borrower:* The Palms of Deerfield Townhomes, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444

and

The Palms of Deerfield Townhomes, LLC  
c/o Deerfield Beach Family Empowerment, Inc.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, FL 33441

*With copies to:* Shutts & Bowen LLP  
200 S. Biscayne Boulevard, Suite 4100  
Miami, FL 33131

*If to the Dissemination Agent:* The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256  
Attention: Broward HFA Relationship Manager

*If to the Trustee:* The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, FL 32256  
Attention: Broward HFA Relationship Manager

**Section 13. Governing Law.** This Continuing Disclosure Agreement shall be governed by the laws of the State of Florida.

**Section 14. Termination of this Continuing Disclosure Agreement.** The Borrower or the Dissemination Agent may terminate this Continuing Disclosure Agreement by giving written notice to the other party at least 30 days prior to such termination. The Dissemination Agent shall be fully discharged at the time any such termination is effective. The Borrower's and the Dissemination Agent's obligations under this Continuing Disclosure Agreement shall terminate upon the legal defeasance, prior redemption, tender, conversion or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Borrower shall give notice of such termination in a filing with the MSRB.

**Section 15. Counterparts.** This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Continuing Disclosure Agreement to be executed by their duly authorized representatives as of the date set forth above.

**BORROWER:**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith  
Manager

[Signatures continue on following page]

[Dissemination Agent's Signature Page to Continuing Disclosure Agreement]

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

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**ANNUAL REPORT**

**\$14,000,000\***  
**Housing Finance Authority of Broward County, Florida**  
**Multifamily Housing Revenue Bonds, Series 2023**  
**(The Palms of Deerfield Townhomes)**

CUSIP: \_\_\_\_\_

Annual report for the period ending December 31, \_\_\_\_\_

**THE PROJECT**

Name of the Project:	The Palms of Deerfield Townhomes
Address:	407-431 NW 1st Terrace, Deerfield Beach, FL [zip code]
Number of Units:	56

**INFORMATION ON THE BONDS**

Original principal amount of bonds:	
Outstanding principal amount of bonds:	

**OPERATING HISTORY OF THE PROJECT**

The following table sets forth a summary of the operating results of the Project for fiscal year ended December 31, 20\_\_, as derived from the Borrower's audited financial statements [or unaudited financial statements].

<b>Financial Results for Fiscal Year Ending December 31, _____</b>	
Revenues	
Operating Expenses <sup>1</sup>	
Net Operating Income	
Debt Service on the Bonds	
Net Income (Loss)	
Debt Service Coverage Ratio	

<sup>1</sup> Excludes depreciation and other non-cash expenses, includes management fee.

<b>Occupancy Results for Fiscal Year Ending December 31, _____</b>	
Physical Occupancy	%
Economic Occupancy <sup>1</sup>	%

<sup>1</sup> The physical occupancy rate is the proportion of units that are occupied or leased by tenants. The economic occupancy rate is the proportion of the gross potential rent that is actually collected. As such, the economic occupancy takes into consideration items such as model units, employee units, discounted units, rent incentives, loss to lease and bad debt expense.

\* Preliminary; subject to change.

## AUDITED FINANCIAL STATEMENTS

\_\_\_\_ Attached

\_\_\_\_ Audited financial statements of the Borrower for the period ending December 31, 20\_\_ are not yet completed; therefore, no audited financial statements of the Borrower are being filed herewith. Unaudited financial statements for such period are attached in lieu of audited financial statements. Audited financial statements will be filed when available.

\_\_\_\_ No audited financial statements of the Borrower were prepared for the period ending December 31, 20\_\_; therefore, no audited financial statements of the Borrower are being filed herewith. Unaudited financial statements for such period are attached in lieu of audited financial statements.

**EXHIBIT B**

**NOTICE OF FAILURE TO  
FILE ANNUAL DISCLOSURE REPORT**

Name of Issuer: Housing Finance Authority of Broward County, Florida  
Name of Issue: Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes)  
Name of Borrower: The Palms of Deerfield Townhomes, LLC  
CUSIP: \_\_\_\_\_  
Date of Issuance: November \_\_, 2023

NOTICE IS HEREBY GIVEN that the above-referenced borrower (the “Borrower”) has not provided an Annual Report with respect to the above-named Bonds as required by its Continuing Disclosure Agreement. The undersigned has been informed by the Borrower that it anticipates that Annual Report will be filed by \_\_\_\_\_.

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

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

By: \_\_\_\_\_  
Authorized Officer

cc: Borrower

**EXHIBIT C**

**NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF  
PROJECT PLACED IN SERVICE**

Name of Issuer: Housing Finance Authority of Broward County, Florida  
Name of Bond Issue: Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes)  
Name of Borrower: The Palms of Deerfield Townhomes, LLC  
Name of Project: The Palms of Deerfield Townhomes  
Address of Project: 407-431 NW 1st Terrace, Deerfield Beach, FL [zip code]  
Date of Issuance: November \_\_, 2023

NOTICE IS HEREBY GIVEN as per the requirements of the Continuing Disclosure Agreement, dated as of November 1, 2023, between the above-referenced borrower (the “Borrower”) and The Bank of New York Mellon Trust Company, N.A., as Dissemination Agent, that the Borrower has certified that the above-referenced project (the “Project”) is complete and placed in service by the Borrower as evidenced by a certificate from the Borrower confirming that the Project is placed in service for purposes of Section 42 of the Code.

Dated:

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

By: \_\_\_\_\_  
Authorized Officer

cc: Borrower



**EXHIBIT D**

**FORM OF NOTICE OF PLACED IN SERVICE**

**\$14,000,000**

**Housing Finance Authority of Broward County, Florida  
Multifamily Housing Revenue Bonds, Series 2023  
(The Palms of Deerfield Townhomes)**

The undersigned hereby provides notice to The Bank of New York Mellon Trust Company, N.A., as dissemination agent (the “Dissemination Agent”) that the multifamily rental housing facility known as The Palms of Deerfield Townhomes (the “Project”) has been placed in service in accordance with the Trust Indenture, dated as of November 1, 2023, between Housing Finance Authority of Broward County, Florida (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the “Trustee”), pursuant to which the above-captioned bonds were issued, as further evidenced by the attached Certificate of Completion.

**BORROWER:**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**  
a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith  
Manager

**ATTACHMENT**

**Certificate of Completion**

**APPENDIX F**

**FORM OF BOND COUNSEL OPINION**

November \_\_, 2023

Housing Finance Authority of Broward County, Florida  
Fort Lauderdale, Florida

Ladies and Gentlemen:

In our capacity as Bond Counsel, we have examined a record of proceedings relating to the issuance by the Housing Finance Authority of Broward County, Florida (the "Issuer") of its \$14,000,000\* Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) (the "Bonds").

The Bonds are issued under and pursuant to the Laws of the State of Florida, including the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes, as amended, the Florida Housing Finance Authority Law, Chapter 159, Part IV, Florida Statutes, and other applicable provisions of law (the "Act"), pursuant to a Resolution adopted by the Issuer on October 18, 2023 (the "Resolution"), and pursuant to a Trust Indenture, dated as of November 1, 2023 (the "Indenture") between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

The Bonds are being issued for the principal purpose of acquiring, rehabilitating and equipping a 56-unit multifamily residential housing project known as The Palms of Deerfield Townhomes, and located in Broward County, Florida, as more particularly described in the Indenture.

The Bonds are payable from and secured solely by a pledge of and lien upon the Trust Estate (as defined in the Indenture), including loan repayments made by The Palms of Deerfield Townhomes, LLC (the "Borrower") to the Issuer pursuant to that certain Loan Agreement, dated as of November 1, 2023, by and between the Issuer and the Borrower (the "Loan Agreement"). Pursuant to the Loan Agreement, the Borrower (i) agrees to make loan payments sufficient to pay, among other obligations, the principal of and interest on the Bonds, when due, and to make any required deposits into certain funds established by the Indenture and (ii) expressly assumes the performance of all of the Issuer's obligations to repay the Bonds under the Indenture. In order to comply with certain requirements of the Internal Revenue Code of 1986, as amended (the "Code"), the Borrower, the Issuer and the Trustee will enter into a Land Use Restriction Agreement, dated as of November 1, 2023 (the "Tax Regulatory Agreement").

None of the Issuer, the State of Florida (the "State") nor any political subdivision or agency of the State shall in any event be liable for the payment of the principal of, premium, if any, or interest on the Bonds or for the performance of any pledge, obligation or agreement undertaken by the Issuer, except to the extent of the Trust Estate created under the Indenture. No owner of the Bonds has the right to compel any exercise of the taxing power of the State or any political subdivision or agency thereof to pay the Bonds or the interest thereon, and the Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation. The Issuer has no taxing power.

The Bonds are dated and shall bear interest from their date of delivery, except as otherwise provided in the Indenture. The Bonds will mature on the dates and in the principal amounts, and will bear interest at the rates per annum, as provided in the Indenture. The Bonds are subject to prepayment prior to maturity in accordance with the terms of the Indenture. The Bonds are issued initially in the form of fully registered Bonds in Authorized Denominations of \$5,000, or any integral multiples of \$1,000 in excess thereof.

Reference is made to the opinion of even date of Shutts & Bowen, LLP, Miami, Florida, and Bilzin Sumberg Baena Price & Axelrod LLP, Miami, Florida, counsels to the Borrower, with respect to various matters, including, (i) the power of the Borrower to enter into and perform its obligations under the Loan Agreement, the Tax Regulatory

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\* Preliminary; subject to change.

Agreement and the Note (as defined in the Indenture), and (ii) the authorization, execution and delivery of the Note, the Tax Regulatory Agreement and the Loan Agreement, by the Borrower. In rendering the opinions set forth herein we have relied on said opinion.

As to questions of fact material to our opinion we have relied upon representations of the Issuer, the Borrower and the certified proceedings and other certifications of appropriate officials of the Issuer and the Borrower furnished to us (including certifications as to the use of the proceeds of the Bonds), without undertaking to verify the same by independent investigation. We have not undertaken an independent audit, examination, investigation or inspection of such matters and have relied solely on the facts, estimates and circumstances described in such proceedings and certifications. We have assumed the genuineness of signatures on all documents and instruments, the authenticity of documents submitted as originals and the conformity to originals of documents submitted as copies.

Based on the foregoing, under existing law, we are of the opinion that:

1. The Issuer is a public body corporate and politic, a public instrumentality and a local agency organized and existing under the laws of the State, including, particularly, the Act, and has full power and authority to enter into, execute and deliver the Indenture and the Loan Agreement, to sell and deliver the Bonds, and to perform its obligations under the terms and conditions of the Indenture and the Loan Agreement.

2. The Resolution has been duly adopted by the Issuer, and no further action of the Issuer is required for its continued validity.

3. The Indenture and the Loan Agreement have each been duly authorized and approved by the Issuer, have each been duly executed and delivered by the Issuer, and, assuming the due authorization, execution and delivery of such documents by the other parties thereto, constitute legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms.

4. The Bonds have been duly authorized by the Issuer, duly executed by authorized representatives of the Issuer and validly delivered by the Issuer and constitute the legal, valid and binding limited obligations of the Issuer enforceable in accordance with their respective terms, and are entitled to the benefit and security of the Trust Estate created under the Indenture.

5. The Bonds and interest thereon are exempt from taxation under the laws of the State of Florida, except as to estate taxes and taxes imposed by Chapter 220, Florida Statutes, on interest, income or profits on debt obligations owned by corporations, as defined in said Chapter 220.

6. Under existing statutes, regulations, rulings and court decisions, the interest on the Bonds is excluded from gross income for federal income tax purposes, except that such exclusion shall not apply to interest on the Bonds for any period which such Bonds are held by a person who is a "substantial user" of the project or a "related person" within the meaning of Section 147(a) of the Code. Such interest is not an item of tax preference for purposes of the federal alternative minimum tax. The opinions set forth in this paragraph are subject to the condition that the Issuer and the Borrower comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be (or continues to be) excluded from gross income for federal income tax purposes. Failure to comply with certain of such requirements could cause the interest on the Bonds to be so included in gross income retroactive to the date of issuance of the Bonds. The Issuer and the Borrower have covenanted to comply with all such requirements. Ownership of the Bonds may result in collateral federal tax consequences to certain taxpayers, and we express no opinion regarding such collateral federal tax consequences.

Except as may expressly be set forth in an opinion delivered by us to the purchaser of the Bonds on the date hereof (upon which only the purchaser may rely), we have not been engaged or undertaken to review the compliance with federal or state law with respect to the sale or distribution of the Bonds, and we express no opinion relating thereto.

The opinions expressed in paragraphs 3 and 4 hereof are qualified to the extent that the enforceability of the Bonds, the Loan Agreement and the Indenture, respectively, may be limited by any applicable bankruptcy, insolvency,

moratorium, reorganization, or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

The opinions set forth herein are expressly limited to, and we opine only with respect to, the laws of the State of Florida and the United States of America. The only opinions rendered hereby shall be those expressly stated as such herein, and no opinion shall be implied or inferred as a result of anything contained herein or omitted herefrom.

This opinion is given as of the date hereof and we assume no obligation to update, revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

We have examined the form of the Bonds and, in our opinion, the form of the Bonds is regular and proper.

Respectfully submitted,

**EXHIBIT "F"**

**FORM OF**

**TRUSTEE FEE AGREEMENT**

**[ATTACHED]**

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 NOVEMBER 1, 2023

PROVIDING FOR

A FEE SCHEDULE FOR SERVICES RENDERED BY THE TRUSTEE FOR

[\$14,000,000]

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2023  
(THE PALMS OF DEERFIELD TOWNHOMES)

and

[\$5,000,000]

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
SUBORDINATE MULTIFAMILY HOUSING REVENUE NOTE, SERIES 2023  
(THE PALMS OF DEERFIELD TOWNHOMES)

## **TRUSTEE FEE AGREEMENT**

This TRUSTEE FEE AGREEMENT (the "Agreement") dated as of November 1, 2023, by and between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Issuer"), a public body corporate and politic created under the laws of the State of Florida, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, having a corporate trust office in Jacksonville, Florida and duly qualified to exercise trust powers under the laws of the State of Florida, as trustee or fiscal agent (the "Trustee").

### **WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Issuer and the Trustee agree as follows:

### **ARTICLE I PREAMBLE**

1.1 The Trustee submitted certain proposals to serve as trustee or in a similar capacity for all financings of the Issuer during calendar year 2023, including the Issuer's \$[14,000,000] Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes) and its \$[5,000,000] Housing Finance Authority of Broward County, Florida Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes), and upon Conversion, the Housing Finance Authority of Broward County, Florida Multifamily Housing Revenue Note, Series [2023] (The Palms of Deerfield Townhomes) (collectively, the "Bonds"). All capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Indenture (as hereinafter defined).

1.2 Said proposals contain a description of the types of services to be provided, a schedule of fees for the various services to be provided and a brief discussion of the Trustee's corporate qualifications and capabilities.

1.3 The Trustee is willing to provide the services described in its proposals and in the loan documents pertaining to the Bonds at the rates set forth in said proposals, and the Issuer is willing to accept the services of the Trustee set forth in the Trustee's proposals at the rates provided therein. The Issuer and the Trustee desire to enter into this Agreement to establish the terms of said proposals for the services of the Trustee with respect to the Bonds.

### **ARTICLE II SCOPE OF SERVICES AND FEES**

The Trustee hereby accepts all of the duties, responsibilities and obligations imposed on it as "Trustee" under the terms of the Trust Indenture dated as of November 1, 2023, between the Issuer and the Trustee (the "Indenture"), and as "Fiscal Agent" under the terms of the Funding Loan Agreement to be entered into among Citibank, N.A., the Issuer and the Trustee upon Conversion (the "Funding Loan Agreement"), and hereby confirms the accuracy of all of the representations and warranties, if any, of the Trustee contained in the Indenture and the Funding Loan Agreement. The terms of this Agreement attached hereto as Exhibit "A" are accepted and adopted by reference



by the parties to this Agreement. Such terms include the services to be provided by the Trustee and the fees and costs to be charged by the Trustee for such services. The fees and charges set forth in Exhibit "A" include all expenses incurred by the Trustee in connection with the execution, delivery, closing and administration of the Bonds. Exhibit "A" comprises one (1) page.

**ARTICLE III  
OTHER PROVISIONS**

This Agreement shall continue in full force and effect and be binding on both the Issuer and the Trustee for so long as the Indenture and/or the Funding Loan Agreement are in effect.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO  
TRUSTEE FEE AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement as of the date first above written.

**ISSUER:**

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

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

**COUNTERPART SIGNATURE PAGE TO  
TRUSTEE FEE AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement as of the date first above written.

**TRUSTEE:**

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

By: \_\_\_\_\_  
Shanna Cooke, Vice President Corporate Trust

## **EXHIBIT “A”**

### **Services to be provided by Trustee:**

The Trustee shall provide all services required of the Trustee as set forth in (i) the Indenture, (ii) the Funding Loan Agreement, and (iii) all other documents executed in connection with the Bonds to which the Trustee is a party.

### **Fees and Expenses of Trustee:**

The fees and expenses of the Trustee shall be all such fees and expenses of the Trustee set forth in the Indenture, the Funding Loan Agreement and all other documents executed in connection with the Bonds, and shall be paid by the Borrower (as defined in the Indenture and the Funding Loan Agreement) at the times and in the manner set forth in the Indenture, the Loan Agreement (as defined in the Indenture), the Funding Loan Agreement, and the Borrower Loan Agreement (as defined in the Funding Loan Agreement).

**EXHIBIT "G"**

**FORM OF**

**COLLATERAL FUNDS AGREEMENT**

**[ATTACHED]**

## COLLATERAL FUNDS AGREEMENT

**THIS COLLATERAL FUNDS AGREEMENT** (this “Agreement”) is made as of November [ ], 2023 (the “Effective Date”), by and among **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company (the “Borrower”), **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 (the “Issuer”), **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 and authorized to conduct business in the State of Florida, with its designated corporate office located in Jacksonville, Florida (the “Trustee”), and **CITIBANK, N.A.**, a national banking association, and its successors, participants, and assigns (in such capacity, the “Construction Lender”). All of the foregoing parties are each referred to as a “Party” and collectively referred to herein as the “Parties”.

### RECITALS

A. Borrower has a leasehold interest in land located at 425 NW 1st Terrace, Deerfield Beach, FL 33441, as further described on Exhibit A of the Construction Loan Security Instrument (defined below) (the “Property”) and pursuant to that certain Amended and Restated Ground Lease, dated as of November [ ] 2023, with Deerfield Beach Housing Authority, a public housing authority, as landlord, and Borrower, as tenant. Borrower proposes to renovate a fifty-six (56)-unit multifamily rental housing development on the Property known as “The Palms of Deerfield Townhomes” (the “Project”), all in accordance with the plans and specifications and the construction contract approved by the Parties.

B. In order to finance the costs of ground leasing, rehabilitation and equipping the Project and certain other costs related solely thereto:

(i) Pursuant to the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended, the Issuer has issued its Multifamily Housing Revenue Bonds, Series 2023 (The Palms of Deerfield Homes), in the principal amount of Fourteen Million and No/100 Dollars (\$[14,000,000]) (the “Bonds”) pursuant to a Trust Indenture, dated as of November [ ], 2023 (as amended, restated, supplemented or otherwise modified, the “Indenture”), by and between the Issuer and the Trustee. On or about the date of this Agreement, the Bonds will be sold to one or more third party investors. Subject to the terms and conditions of the Indenture and that certain Loan Agreement, dated as of November [ ], 2023, by and between the Issuer and the Borrower (as amended, restated, supplemented or otherwise modified, the “Bond Loan Agreement”), the Bond proceeds will be used to make a loan (the “Bond Loan”) to Borrower to assist in financing the ground leasing, rehabilitation and equipping of the Project. The sale proceeds of the Bonds (the “Bond Proceeds”) will be deposited with and held by the Trustee in the Project Fund (as defined in the Indenture). As used herein, the term “Bond Documents” means, collectively, the Indenture, the Bond Loan Agreement and any and all other agreements, documents and/or instruments which evidence, secure, guaranty or otherwise govern any or all of the Bonds, as amended, restated, supplemented or otherwise modified. For purposes of this Agreement, the term “Bond Loan” means the disbursement of Bond Proceeds to or for the Borrower’s account pursuant to the Bond Loan Agreement.

(ii) The Bonds are tax-exempt obligations of the Issuer and will result in an automatic allocation of federal low-income housing tax credits for the Project (the “Tax Credits”). Borrower has syndicated the federal low-income housing tax credits allocated to the Project and has issued a 99.99% membership interest in Borrower to Hunt Capital Partners, LLC, a Delaware limited liability company (in such capacity, the “Investor Member”), for a total capital contribution by Investor Member of approximately \$[ ] (the “Tax Credit Proceeds”). The Tax Credit Proceeds are to be made available to Borrower in accordance with the terms and conditions of that certain [Amended and Restated Operating Agreement of Borrower] (including the documents executed and delivered in connection therewith) dated as of November [ ], 2023, (as the same may from time to time be amended, restated, supplemented or otherwise modified, the “Operating Agreement”), by and among the Investor Member, SHAG Palms of Deerfield Townhomes, LLC, a Florida limited liability company, as Authorized Member, and DBFE Townhomes, LLC, a Florida limited liability company, as Administrative Member. Investor Member has agreed to fund the Tax Credit Proceeds subject to the terms of, and in the amounts and at times set forth in, the Operating Agreement, which provides, in part, that approximately \$[ ] of the Tax Credit Proceeds (the “Initial Capital Contribution”) shall be paid by Investor Member to Borrower concurrently with the closing of the Bonds and the “Construction Loan” (as hereinafter defined).

(iii) Upon achievement of the Conditions to Conversion as defined and set forth in that certain Forward Commitment Agreement (the “Forward Commitment Agreement”) by and among Citibank, N.A., a national banking association, as permanent lender (in such capacity, “Permanent Lender”), Borrower and Construction Lender, Permanent Lender, has agreed to purchase the Governmental Note (as hereinafter defined) with the proceeds of a certain funding loan in a principal amount up to [Six Million Four-Hundred Thousand and No/100 Dollars (\$6,400,000) (the “Funding Loan”)] to Issuer on the Conversion Date (as such term is defined in the Indenture).

(iv) Upon the closing and funding of the Funding Loan, (i) the Bonds will be subject to mandatory tender in accordance with the Indenture, (ii) the purchase price of the Bonds will be paid with amounts on deposit under the Indenture, (iii) a portion of the principal amount of the Bonds will be cancelled such that the principal amount outstanding equals the principal balance of Funding Loan, (iv) the Bonds will be removed from the Book-Entry System (as defined in the Indenture) and converted to a physical Governmental Note (the “Governmental Note”) to be executed as of the Conversion Date by the Issuer, in its capacity as Governmental Lender, which will be purchased by the Permanent Lender. Prior to closing of the Funding Loan, repayment of the Bonds is secured by cash proceeds on deposit with the Trustee in the Collateral Fund (as defined in the Indenture and referred to herein as the “Collateral Fund”).

(v) Because the Funding Loan will not close until after completion of the rehabilitation of the Project and satisfaction of certain conditions required by the Permanent Lender as set forth in the Forward Commitment Agreement (the “Conversion Conditions”) and because not all of the Capital Contributions will be available, as needed, to fund Project costs during construction, the Borrower has requested that the Construction Lender make a taxable construction loan in the principal amount of up to \$[14,000,000] (the “Construction Loan”). The proceeds of the Construction Loan are to be disbursed to or for the account of Borrower in accordance with the terms and conditions of that certain Construction Loan Agreement executed

by Borrower and Construction Lender and dated as of November [ ], 2023 (as the same may from time to time be amended, supplemented, restated or otherwise modified, the “Construction Loan Agreement”). Borrower’s obligations under the Construction Loan are evidenced by a certain Multifamily Construction Note executed by Borrower payable to the order of the Construction Lender and dated of even date herewith (as the same may from time to time be amended, supplemented, restated or otherwise modified, the “Construction Loan Note”) and such obligations are secured by a first-priority Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Florida) from Borrower to Construction Lender encumbering the Project (as the same may from time to time be amended, supplemented, restated or otherwise modified, the “Construction Loan Security Instrument”) and such other documents as Construction Lender deems necessary to secure the Construction Loan. The Construction Loan Agreement, the Construction Loan Note, the Construction Loan Security Instrument, and all other documents evidencing or securing the Construction Loan, as the same may from time to time be amended, supplemented, restated or otherwise modified, are collectively referred to herein as the “Construction Loan Documents.”

(vi) Upon approval of draw requests in accordance with this Agreement and the Construction Loan Documents, Construction Lender shall transfer or cause to be transferred the applicable portion of Construction Loan proceeds to Trustee to be deposited by Trustee into the Collateral Fund. Upon the Trustee’s receipt of Construction Loan proceeds and subject to the terms and conditions of the Indenture and the Bond Loan Agreement, the Trustee will promptly release a like amount of funds on deposit in the Project Fund to the Borrower to fund Project costs approved by the Construction Lender.

(vii) Following completion of the rehabilitation of the Project and upon satisfaction of the Conversion Conditions, the Permanent Lender will close and fund the Funding Loan, subject to the terms and conditions of the Forward Commitment Agreement and all other agreements, documents and instruments which evidence, secure, guaranty or otherwise govern the Funding Loan (collectively, as amended, restated, supplemented or otherwise modified, the “Funding Loan Documents”). The proceeds of the Funding Loan will be fully advanced, in a single disbursement, to the Trustee, for the Borrower’s account. Upon the Trustee’s receipt of the Funding Loan proceeds, the Trustee will use the Funding Loan proceeds, the Collateral Fund and/or Capital Contributions to repay the Construction Loan in full.

C. Issuer, Trustee, Construction Lender and Borrower desire to set forth the manner and method of disbursing proceeds on deposit in the Collateral Fund and the Project Fund, as the case may be.

D. The Issuer (with respect to the Bond Loan) and the Construction Lender (with respect to the Construction Loan) are sometimes hereinafter collectively referred to as the “Creditors” and individually as “Creditor”; the Bond Loan and the Construction Loan are sometimes hereinafter collectively referred to as the “Loans” and individually as a “Loan”; the Bond Documents and the Construction Loan Documents are sometimes hereinafter collectively referred to as the “Loan Documents.”



## AGREEMENTS

In receipt of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals set forth above are incorporated by reference, and each Party represents that, with respect to the recitals relating to the loan to be provided to or by that Party, the recitals are true and accurate in every material respect.

2. Representations. Each Party represents that, with respect to itself (but not the other Parties):

(a) It is duly organized, validly existing, and in good standing under the laws of the applicable state of formation.

(b) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of such Party enforceable in accordance with its terms and conditions.

(c) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will: (1) violate any applicable law to which it is subject or any provision of its organizational or governing documents; or (2) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which it a party or by which it is bound or to which any of its assets is subject, except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation, or failure to give notice would not have a material adverse effect on the business, financial condition, operations, or results of operations of such Party or on the ability of the parties hereto to consummate the transactions contemplated by this Agreement.

3. Loan Administration / Approval of Plans and Related Construction Items.

(a) Subject to Section 7 below, each Creditor and its successors and assigns shall have the sole right to administer and monitor its Loan and its Loan Documents in accordance with its agreements with Borrower.

(b) The Construction Lender acknowledges that it has received, reviewed, and approved each of the following items:

(i) The plans and specifications, as amended through the date of this Agreement and prepared by Gallo Herbert Architects, LLC, a Florida limited liability company (the "Architect"), a list of which is attached as Exhibit D (the "Plans and Specifications")<sup>1</sup>;

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<sup>1</sup> Plans and Specs to be provided.

(ii) the construction contract, dated as of July 28, 2023, between Borrower and Affordable Group Construction LLC (the “General Contractor”) (the “Construction Contract”); and

(iii) The projected draw schedule (the “Draw Schedule”) attached as **Exhibit A** and the Project construction budget (the “Budget”) attached as **Exhibit B**.

(iv) Except as otherwise expressly provided herein, none of the Plans and Specifications, the Construction Contract, the Draw Schedule or the Budget shall be amended without the prior written consent of the Construction Lender if and to the extent required by the Construction Loan Documents.

4. Disbursement of Proceeds.

(a) Total Construction Costs and Sources of Funds. The Parties acknowledge that the total construction costs of the Project, including site rehabilitation, the Construction Contract, and the construction contingency, is approximately \$[ ] (the “Total Construction Cost”), as more particularly set forth in the draw schedule attached hereto as **Exhibit A** (the “Draw Schedule”) and the budget attached hereto as **Exhibit B** (the “Budget”). The Total Construction Cost shall be funded at the times and in the approximate amounts set forth in the Draw Schedule and consistent with the Budget, as modified from time to time with the prior written consent of the Creditors, if and to the extent such consent may be required under the Loan Documents, and which consent, if required, shall not be unreasonably withheld, delayed or conditioned. Disbursements of the Loans and Tax Credit Proceeds shall be made in accordance with the Draw Schedule, the Budget and the Loan Documents, except as the Loan Documents may be superseded or modified by the terms of this Agreement. To the extent Borrower requests in writing an amendment of the Draw Schedule to adjust the schedule or amount of disbursements and the Construction Lender fails to provide its written request for additional documentation pertaining to, or written approval or disapproval of the amendment of the Draw Schedule within ten (10) business days of such request, approval therefor shall be deemed to not be given.

(b) Specific Uses of Loans.

(i) The proceeds of the Bond Loan shall be used to finance the Project in accordance with the Bond Documents. It is understood and agreed by the Parties that an aggregate of [Fourteen Million and No/100 Dollars (\$14,000,000)] of the proceeds of the Bond Loan shall be deposited by Trustee in the Project Fund in accordance with the terms of the Bond Documents. Upon the Trustee’s receipt of Construction Loan proceeds for deposit into the Collateral Fund, as set forth below, and subject to the terms and conditions of the Bond Documents, the Trustee will release a like amount of funds on deposit in the Project Fund to the Borrower, to be used by Borrower to fund Project costs approved by the Construction Lender.

(ii) The proceeds of the Construction Loan shall be used to finance the Project in accordance with the terms and conditions of the Construction Loan Documents. In particular, it is understood and agreed by the Parties that the proceeds of the Construction Loan, as advanced by the Construction Lender in accordance with the terms and conditions of the Construction Loan Documents, shall be deposited by the Construction Lender with Trustee in the

Collateral Fund and that Trustee shall thereafter release to the Borrower a like amount of funds on deposit in the Project Fund in accordance with the terms of the Bond Documents, which funds are to be used by Borrower to fund Project costs pursuant to Draw Requests approved in accordance with the terms and conditions of the Construction Loan Documents and the Bond Documents.

(c) Funding by Investor Member. Borrower shall cause Investor Member to contribute Tax Credit Proceeds in such amounts and at such times as shall be required under the Operating Agreement. All capital contributions of Tax Credit Proceeds by Investor Member may be disbursed to Construction Lender for deposit into the “Deposit Account” (as defined in the Deposit Account Control Agreement (as defined in the Construction Loan Agreement)) and disbursed in accordance with the terms and conditions of the Construction Loan Agreement.

(d) Construction Monitoring Meetings. The Construction Lender’s inspector or other representative shall be entitled, but not obligated, to attend regularly scheduled monthly construction monitoring request meetings (a “Construction Monitoring Meeting”), the purposes of which shall be (i) to review and agree on the percentage of construction work completed and in place and the amount of stored and insured materials on- site and off-site, (ii) to inspect such construction work, and (iii) to review, verify, and agree on the amounts of the Construction Loan and Tax Credit Proceeds to be advanced to Borrower or for Borrower’s account. Additional personnel on behalf of the Construction Lender shall be entitled, but not obligated, to attend the Construction Monitoring Meetings. At least five (5) business days in advance of each Construction Monitoring Meeting, Borrower shall provide written notice to the Construction Lender of the time and date of such Construction Monitoring Meeting, and each such notice shall include a draft of the Draw Request to be discussed at the Construction Monitoring Meeting. Promptly following each Construction Monitoring Meeting, Borrower shall submit a Draw Request to each applicable Creditor in accordance with the requirements of each Creditor’s respective Loan Documents.

(e) Construction Monitoring. The Construction Lender will monitor the construction of the Project in accordance with the terms and conditions of the Construction Loan Documents. In particular, the Construction Lender shall be entitled, in accordance the Construction Loan Documents, to:

- (i) review the Construction Contract, the Plans and Specifications;
- (ii) review the Draw Schedule and any proposed changes thereto; and
- (iii) review the monthly Draw Requests.

(f) Manner of Disbursement of Loans.

(i) Borrower shall submit each request for a disbursement of Bond Loan proceeds, Construction Loan proceeds and/or Tax Credit Proceeds, together with all supporting invoices and other documentation (each a “Draw Request”), to the applicable Creditor in accordance with the terms of the Draw Schedule and such Creditor’s Loan Documents. Concurrently with the submission of a Draw Request to the applicable Creditor, Borrower shall provide a copy to the Issuer for their concurrent review.

(1) Each Draw Request for draws on the Construction Loan shall be in the form attached hereto as **Exhibit C** (which is the same form attached to the Construction Loan Agreement as Schedule 2). If a Draw Request is approved by Construction Lender, Construction Lender will within three (3) business days wire the applicable Construction Loan proceeds to Trustee. If the applicable Construction Loan proceeds are wired to Trustee for deposit into the Collateral Fund, following receipt by Trustee of the “Written Requisition” (which is the form attached to the Indenture as Appendix B), Trustee shall pursuant to the terms of the Bond Documents disburse a like amount of funds on deposit in the Project Fund, which funds will be utilized by Borrower for the purposes set forth in the Draw Request approved by the Construction Lender.<sup>2</sup>

(ii) The Construction Lender shall promptly determine for itself whether all conditions precedent to any disbursement pursuant to a Draw Request, as set forth under its Loan Documents, have been satisfied, and whether the requested disbursement shall be made. Subject to any retainage requirements contained in its Loan Documents, upon determining that all applicable conditions precedent have been satisfied, the Construction Lender shall then disburse the amount of the approved Draw Request, as applicable, in the manner provided in its Loan Documents.

(iii) Construction Lender shall not have any obligation to fund and/or approve the funding of (A) more than its share of any Draw Request; or (B) any Draw Request if any other Creditor disapproves of the Draw Request or any portion thereof, or refuses to fund and/or approve the funding of its share of the current Draw Request, has disapproved or refused to fund and/or approve the funding of its share of any prior Draw Request, has indicated its intention to refuse to fund or disapprove its share of any future Draw Request, or appears unable to approve any future Draw Request, as determined by Construction Lender.

5. Borrower’s Deposit Account. Notwithstanding any provision in the Construction Loan Documents or the Bond Documents to the contrary and until such time as the Construction Loan has been paid in full, the Parties acknowledge and agree that the determination as to whether Borrower is obligated to make deposits to the Borrower’s Deposit Account shall be made by the Construction Lender in accordance with the terms and conditions of the Construction Loan Agreement.

6. Addresses for Notice. Any notices to any Creditor, Trustee, or Borrower under this Agreement shall be in writing and shall be deemed to be delivered when hand delivered (receipt acknowledged), the next business day when delivered by overnight courier, the third business day when delivered by certified mail, postage prepaid, return receipt requested (or when delivery is refused) as follows, unless an address is changed by written notice hereunder:

If to the Issuer: [Housing Finance Authority of Broward County, Florida  
110 N.E. 3rd Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director]

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<sup>2</sup> NOTE - Citi to confirm timing.

With a copy to: [Broward County Attorney's Office  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Attention: Annika Ashton, Esq.]

If to Trustee: [The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Broward HFA Relationship Manager]

With a copy to: [Akerman, LLP  
50 North Laura Street, Suite 3100  
Jacksonville, Florida 32202  
Attention: Peter Dane, Esq.]

If to Construction Lender: Citibank, N.A.  
388 Greenwich Street, Trading 4th Floor  
New York, New York 10013  
Attention: Transaction Management Group  
Re: The Palms of Deerfield Townhomes Deal ID No. [ ]  
Facsimile: (212) 723-8209

With copies to: Citibank, N.A.  
325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Re: The Palms of Deerfield Townhomes Deal ID No. [ ]  
Facsimile: (805) 557-0924

With copies to: [Citibank, N.A.  
One Sansome Street, 27th Floor  
San Francisco, California 94104  
Attention: Account Specialist  
Re: The Palms of Deerfield Townhomes Deal ID No. [ ]  
Facsimile: (415) 445-9965]

If to Borrower: The Palms of Deerfield Townhomes, LLC  
c/o SHAG Palms of Deerfield Townhomes, LLC &  
Deerfield Beach Family Empowerment, Inc.  
1100 NW 4th Avenue  
Delray Beach, Florida 33444  
Attention: Darren Smith

With copies to: Shutts & Bowen LLP  
200 S. Biscayne Blvd. Ste. 4100

Miami, FL 33131  
Attention: Robert Cheng, Esq.

7. Conflicts with Other Agreements. If there is any conflict or inconsistency between the provisions of this Agreement and the provisions contained in any other existing agreement relating to the Project among any of the Parties, or between any of the Creditors and Borrower, the provisions of this Agreement shall prevail. Notwithstanding the previous sentence or anything else in this Agreement, if there is any conflict or inconsistency between the provisions of this Agreement, on the one hand, and the Indenture or Bond Loan Agreement, on the other hand, the provisions of the Indenture or Bond Loan Agreement shall prevail.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without choice of law provisions thereof.

9. Captions. Section headings are inserted in the Agreement for convenience and reference only and shall be disregarded in interpreting any of its provisions.

10. Counterparts. This Agreement may be executed in any number of counterparts and by different Parties in separate counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which taken together shall constitute one instrument.

11. Illegality. If any provision or remedy set forth in this Agreement for any reason is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision or remedy of this Agreement, which shall be construed as if the invalid, illegal, or unenforceable provision or remedy had never been set forth in this Agreement, but only to the extent of the invalidity, illegality, or unenforceability.

12. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a “person” or “persons” shall be deemed to include individuals and entities.

13. No Third-Party Beneficiary. No person not a Party hereto shall have any rights hereunder.

14. Servicing, Administration and Monitoring of Agreements. Except as otherwise expressly provided herein, including, without limitation, Section 7 above, the Construction Lender shall have the sole and exclusive right to service, administer and monitor the Construction Loan in accordance with its customary credit and servicing standards and the Construction Loan Documents with the Borrower.

15. Termination. This Agreement shall terminate automatically upon the closing and funding of the Funding Loan and repayment of the Construction Loan in full; provided that Construction Lender has no further obligation or commitment to make any advance under the Construction Loan.

[Execution Occurs on Following Page]

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment, as of the day and year first written above.

**BORROWER:**

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC,**

a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes, LLC,  
a Florida limited liability company, its  
Authorized Member

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

Name:

Title:

[Signatures Continue on Following Page]



[Signatures Continued from Previous Page]

**ISSUER:**

**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

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

Name:

Title:

[Signatures Continue on Following Page]

[Signatures Continued from Previous Page]

**TRUSTEE:**

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.,**  
a national banking association

By: \_\_\_\_\_(SEAL)

Name:

Title:

[Signatures Continue on Following Page]

[Signatures Continued from Previous Page]

**CONSTRUCTION LENDER:**

**CITIBANK, N.A.,**  
a national banking association

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

Name:

Title:

Deal ID No.

[Signatures Continue on Following Page]

EXHIBIT A

DRAW SCHEDULE

[attached]

EXHIBIT B

BUDGET

See attached

EXHIBIT C

FORM OF DRAW REQUEST

[BORROWER'S LETTERHEAD]

TO: Citibank, N.A. ("Lender")  
DATE  
PROJECT NAME: The Palms of Deerfield Townhomes  
LOCATION 425 NW 1st Terrace, Deerfield Beach, FL 33441  
BORROWER The Palms of Deerfield Townhomes, LLC

FOR PERIOD ENDING \_\_\_\_\_

In accordance with the Construction Loan Agreement in the amount of \$[14,000,000], dated as of November [ ], 2023, between Borrower and Lender:

- A. Borrower requests that \$\_\_\_\_\_ be advanced from Loan proceeds. The proceeds should be credited as set forth in Borrower Detail Form. In particular, the proceeds shall be disbursed to [Trustee][Borrower] for deposit in the [Collateral Fund] [Borrower's Checking Account].
  
- B. [Borrower requests Lender's consent to withdraw funds from the Borrower's Deposit Account held as [Borrower's Deposit, Up-Front Equity or Deferred Equity] in the amount of \$\_\_\_\_\_].
  - 1. CURRENT DRAW REQUEST FOR HARD COSTS \$\_\_\_\_\_
  - 2. CURRENT DRAW REQUEST FOR SOFT COSTS \$\_\_\_\_\_
  - 3. TOTAL DRAW REQUEST \$\_\_\_\_\_

AUTHORIZED PERSON/SIGNER:

\_\_\_\_\_

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

EXHIBIT D  
PLANS AND SPECIFICATIONS

[attached]

**EXHIBIT "H"**

**FORM OF**

**SUBORDINATE LOAN AGREEMENT**

**[ATTACHED]**



**SUBORDINATE LOAN AGREEMENT**

**BY AND BETWEEN**

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

**as Issuer**

**AND**

**THE PALMS OF DEERFIELD TOWNHOMES, LLC,**

**as Borrower**

**Relating to:**

**[\$5,000,000]**

**Housing Finance Authority of Broward County, Florida  
Subordinate Multifamily Mortgage Revenue Note, Series 2023  
(The Palms of Deerfield Townhomes)**

**Dated as of November 1, 2023**

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Except for certain reserved rights, the interest of the Housing Finance Authority of Broward County, Florida in this Subordinate Loan Agreement has been pledged and assigned to The Palms of Deerfield Beach, LP, pursuant to an Assignment of Subordinate Mortgage and Subordinate Loan Documents, dated as of November 1, 2023.

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## **SUBORDINATE LOAN AGREEMENT**

THIS SUBORDINATE LOAN AGREEMENT (this "Loan Agreement" or "Agreement") is made and entered into as of the 1st day of November, 2023, between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Issuer"), a public body corporate and politic, duly created and existing under and by virtue of the laws of the State of Florida (the "State"), and THE PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company (the "Borrower").

### **RECITALS:**

WHEREAS, the Legislature of the State has enacted the Florida Housing Finance Authority Law, Sections 159.601 et seq., Florida Statutes, as amended, and the Florida Industrial Development Financing Act, Section 159.25 et seq., Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic, to be known as a housing finance authority of the county for which it was created, for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority; and

WHEREAS, pursuant to the Act, the Board of County Commissioners of Broward County, Florida (the "County"), enacted Ordinance No. 79-41 on June 20, 1979 (the "Ordinance"), creating the Housing Finance Authority of Broward County, Florida to carry out and exercise all powers and public and governmental functions set forth in and contemplated by the Act; and

WHEREAS, the Act authorizes the Issuer: (a) to make loans to any person, or to purchase loans, including federally insured mortgage loans, in order to provide financing for residential rental developments located within the Issuer's area of operations, which are to be occupied by persons of low, moderate, or middle income; (b) to issue its revenue bonds pursuant to the Act, for the purpose of obtaining money to make or to purchase such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) to pledge all or any part of the revenues, and receipts to be received by the Issuer from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Borrower has requested that the Issuer issue and deliver its Subordinate Multifamily Mortgage Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the "Note") in the original principal amount of \$[5,000,000], directly to The Palms of Deerfield Beach, LP, a Florida limited partnership (the "Lender") in order to provide purchase money financing for the Borrower for a portion of the costs of the acquisition of the Borrower's leasehold interest in an existing 56-unit multifamily rental housing development located at [407 – 431] NW 1<sup>st</sup> Terrace, Deerfield Beach, Florida (the "Project"), which the Borrower intends to rehabilitate; and

WHEREAS, pursuant to the Assignment of Subordinate Mortgage and Subordinate Loan Documents (as defined below), the Issuer will assign to the Lender all its interest in and to this Loan Agreement (except for the Unassigned Rights of the Issuer (as herein defined)); and

WHEREAS, the Borrower will execute and deliver to the Issuer a Borrower Subordinate Promissory Note, dated November \_\_, 2023 (the "Borrower Subordinate Promissory Note"), the form of which is attached hereto as Exhibit C, and has further agreed to secure its obligations under this Loan Agreement and the Borrower Subordinate Promissory Note by a Subordinate Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents of even date herewith from the Borrower to the Lender (the "Subordinate Mortgage") pursuant to which the Borrower will grant a subordinate leasehold mortgage lien on the Project, which Subordinate Mortgage will be assigned by the Issuer to the Lender pursuant to the Assignment of Subordinate Mortgage and Loan Documents; and

NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, the parties agree as follows:

**ARTICLE I.  
DEFINITIONS AND INTERPRETATION**

Section 1.01 Definitions. Unless the context otherwise requires, defined terms in the Recitals and elsewhere herein, and in any agreement supplemental hereto, shall have the meanings herein specified below, such definitions to be equally applicable to both the singular and plural forms of any of the terms defined:

"Assignment of Subordinate Mortgage and Subordinate Loan Documents" means the Assignment of Subordinate Mortgage and Subordinate Loan Documents, dated as of November 1, 2023 from the Issuer to the Lender assigning the Issuer's right, title and interest in the Subordinate Mortgage, the Borrower Subordinate Promissory Note and this Loan Agreement, except for the Unassigned Rights of the Issuer, to the Lender.

"Authorized Borrower Representative" means any person at the time designated to act on behalf of the Borrower by written certificate furnished to the Issuer and the Lender, containing the specimen signature of such person and signed on behalf of the Borrower. Such certificate may designate an alternate or alternates.

"Authorizing Resolution" means, collectively, the resolution of (a) the Issuer adopted by the Board on October 18, 2023, and (b) the County adopted by the County Board on November 24, 2023, authorizing the issuance and sale of the Note, as the same may be amended, modified or supplemented by any amendments or modifications thereof.

"Available Cash Flow" means Cash Flow remaining after payment of amounts payable pursuant to Section \_\_\_ of the Operating Agreement.

"Board" means the governing body of the Issuer.

"Bond Year" means any twelve-month period ending on the anniversary of the Closing Date; except as provided in the Tax Certificate.

"Borrower" means The Palms of Deerfield Townhomes, LLC, a Florida limited liability company, its successors and assigns.

"Borrower Loan" means the loan made to the Borrower by the Issuer pursuant to this Loan Agreement.

"Borrower Loan Documents" means this Loan Agreement, the Borrower Subordinate Promissory Note, the Subordinate Mortgage, and the Regulatory Agreement.

"Cash Flow" has the meaning provided in the Operating Agreement.

"Certificate" means a certification in writing required or permitted of Borrower by the provisions of this Loan Agreement or the other Subordinate Loan Documents, signed and delivered to the Lender or other proper person or persons. If and to the extent required by the provisions hereof, each Certificate shall include the statements provided for in Section 1.02.

"Closing Date" means November \_\_, 2023, the date of issuance and initial delivery to the Lender of the Note as provided in Section 3.01 hereof.

"Code" means the Internal Revenue Code of 1986, as amended and Treasury Regulations promulgated thereunder.

"Computation Date" means the end of the fifth Bond Year, every fifth anniversary thereafter, and the date on which all principal of and interest on the Note are finally paid.

"County" means Broward County, Florida.

"County Board" means the Board of County Commissioners of the County.

"Default" means default in the performance or observance of any of the covenants, agreements or conditions on the part of the Borrower contained in the Note, this Loan Agreement or any of the other Subordinate Loan Documents, exclusive of any notice or period of grace required for a default to constitute an "Event of Default" as hereinafter provided.

"Determination of Taxability" means the issuance of a statutory notice of deficiency by the Internal Revenue Service, or a ruling of the National Office or any District Office of the Internal Revenue Service, or a final decision by any court of competent jurisdiction, to the effect that interest on the Note is includable in the gross income of the recipient (other than a person who is a "substantial user" of the Project Facilities or a "related person" under Section 147 of the Code), and regulations thereunder, provided that the period, if any, for contest or appeal of such action, ruling or decision has expired without any such contest or appeal having been properly instituted or, if instituted, such contest or appeal has been unsuccessfully concluded.

"Event of Default" means an Event of Default described in Section 8.01 hereof, which has not been cured.

"Guarantor" means, collectively, the Borrower, \_\_\_\_\_ and \_\_\_\_\_, as guarantors pursuant to the Guaranty of Recourse Obligations.

“Guaranty of Recourse Obligations” means that certain Continuing, Absolute and Unconditional Guaranty of Recourse Obligations dated as of the Closing Date by the Guarantor for the benefit of the Issuer in connection with the payment of the Issuer Fee.

"Holder" or "Noteholder" or "Owner" means the person or persons in whose name the Note shall be registered.

"Indenture" means that certain Trust Indenture, dated as of November 1, 2023, by and between the Issuer and the Trustee pursuant to which the Senior Bonds are being issued simultaneously with the issuance of the Note.

"Independent", when used with reference to an attorney, engineer, architect, certified public accountant, or other professional person, means a person who (i) is in fact independent, (ii) does not have any material financial interest in the Borrower or the transaction to which his Certificate or opinion relates (other than the payment to be received for professional services rendered), and (iii) is not connected with the Issuer or the Borrower as an officer, director or employee.

"Independent Counsel" means an Independent attorney duly admitted to practice law before the highest court of any state.

"Investor Member" means HCP-ILP, LLC, a Nevada limited liability company, in its capacity as investor member in the Borrower, and its permitted successors and assigns.

"Issuer Documents" means this Loan Agreement, the Regulatory Agreement and the Assignment of Subordinate Mortgage and Subordinate Loan Documents.

"Issuer Fee" means, collectively, the Issuer Closing Fee and the Ongoing Issuer Fee.

"Issuer Closing Fee" means the Issuer's one (1) time initial issuance fee in the amount equal to fifty basis points (0.50%) of the original principal amount of the Loan, as evidenced by the Note, for a total of \$25,000, which shall be payable by the Borrower to the Issuer on the Closing Date pursuant to Section 5.02 of this Loan Agreement from money contributed by or on behalf of the Borrower and deposited with the Trustee for payment to the Issuer pursuant to the Indenture.

"Land" means the Land described in Exhibit A to the Subordinate Mortgage, as amended from time to time, constituting the site on which the Project Buildings are located.

"Lender" means The Palms of Deerfield Beach, LP, a Florida limited partnership, and its successors or permitted assigns.

"Loan" means the loan from the Issuer to the Borrower made pursuant to this Loan Agreement.

"Loan Agreement" means this Subordinate Loan Agreement, dated as of November 1, 2023, between the Issuer and the Borrower, as amended or supplemented from time to time.



"Loan Repayments" means the payments made or to be made by the Borrower pursuant to Section 5.01.

"Maturity Date" means the earlier of (i) December 1, 20\_\_, or (ii) an acceleration of the payment, in full, of the then-outstanding principal of the Note plus the unpaid interest thereon pursuant to the terms of this Loan Agreement, the Note, the Subordinate Mortgage, or any other document relating to the Loan.

"Mortgaged Property" means the Mortgaged Property as defined in the Subordinate Mortgage.

"Note" means the Issuer's Subordinate Multifamily Mortgage Revenue Note, Series 2023 (The Palms of Deerfield Townhomes), in the original principal amount of \$[5,000,000].

"Ongoing Issuer Fee" means the annual program administration fee of the Issuer, payable in advance by the Borrower to the Trustee for payment to the Issuer in the amount of eighteen basis points (0.18%) per annum of the outstanding principal amount of the Loan (calculated on the Business Day prior to any principal reduction of the Loan). The first payment of the Ongoing Issuer Fee shall be payable on the Closing Date, from funds on deposit in the Costs of Issuance Fund created pursuant to Section 4.01 of the Indenture, for the period beginning on the Closing Date and ending on November 31, 2024. Thereafter, the Ongoing Issuer Fee shall be payable in semi-annual installments on each June 1 and December 1, with the first semi-annual payment due and payable on June 1, 2024; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Issuer, the Trustee, Bond Counsel, the Issuer's counsel, or the Trustee's counsel to be paid by the Borrower pursuant to this Loan Agreement.

"Operating Agreement" means that certain Amended and Restated Operating Agreement of the Borrower, dated as of November \_\_, 2023, as the same may be amended from time to time.

"Opinion of Counsel" means a written opinion of counsel (who need not be Independent Counsel unless so specified) appointed by the Borrower and the Issuer. If and to the extent required by the provisions of Section 1.02 hereof, each Opinion of Counsel shall include the statements provided for in said Section 1.02.

"Outstanding" when used as of any particular time with reference to the Note, means the then outstanding principal balance of the Note theretofore executed and delivered under the Authorizing Resolution, but excepting any Note in lieu of or in substitution for which another Note shall have been executed and delivered pursuant to the terms of the Authorizing Resolution.

"Permitted Lender" means an "accredited investor" or "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933.

"Person" means any natural person, corporation, joint venture, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity, as in the context may be appropriate.

"Project" means the Project described in Section 1.03 hereof

"Project Buildings" means the buildings located at [407 – 431] NW 1<sup>st</sup> Terrace, Deerfield Beach, Broward County, Florida, which will be acquired and owned by the Borrower.

"Project Facilities" means the Project Buildings and the Land.

"Rebate Amount" means, with respect to a Rebate Payment Date, the amount which would be required to be paid as rebate with respect to the Note under Section 148(f) on the Code if the Note were finally paid on the related Computation Date.

"Rebate Analyst" means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Issuer, to make the rebate computations required under this Loan Agreement.

"Rebate Payment Date" means each date on which any Rebate Amount then due is paid to the United States of America pursuant to Section 148(f) of the Code.

"Redeem" or "redemption" means and includes "prepay" or "prepayment" as the case may be.

"Regulatory Agreement" means the Land Use Restriction Agreement, dated as of November 1, 2023, among the Issuer, the Borrower and the Trustee, as trustee under the Indenture, as amended or supplemented from time to time.

["Sale or Refinancing Transaction Proceeds" means amounts payable on the Note pursuant to Section \_\_ of the Operating Agreement.]

"Senior Loan Documents" means all instruments and documents evidencing or securing the Senior Loan.

"Senior Bonds" means the Issuer's \$[14,000,000] Multifamily Mortgage Revenue Bonds, Series 2023 (The Palms of Deerfield Townhomes).

"Senior Loan" means the loan of the proceeds of the Senior Bonds to the Borrower.

"Subordinate Loan Documents" means the Issuer Documents and the Borrower Loan Documents.

"Subordinate Mortgage" means the Subordinate Mortgage, Security Agreement, Fixture Financing Agreement and Assignment of Leases and Rents, dated as of November 1, 2023, from the Borrower to the Issuer, as amended or supplemented from time to time.

"Tax Certificate" means the Borrower's Tax Certificate, dated November \_\_, 2023.

"Unassigned Rights of the Issuer" means (a) the right of the Issuer to give and receive notices, reports or other information, including but not limited to the right to receive the reports

and other information described in Section 4 of the Regulatory Agreement; (b) the right of the Issuer to receive its fees and expenses (including the Issuer's Compliance Fee as defined in the Regulatory Agreement) pursuant to this Loan Agreement and the Regulatory Agreement; (c) all rights of the Issuer to enforce the Regulatory Agreement; and (d) all enforcement remedies with respect to the foregoing. All of these Unassigned Rights of the Issuer are reserved to the Issuer and are not being assigned by the Issuer to the Lender pursuant to the Assignment of Subordinate Mortgage and Loan Documents.

Section 1.02 Characteristics of Certificate or Opinion. Every Certificate or opinion with respect to compliance with a condition or covenant provided for in this Loan Agreement or the other Subordinate Loan Documents shall include: (a) a statement that the person or persons making such Certificate or opinion have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Certificate or opinion are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such Certificate made or given by an officer of the Borrower or the Issuer may be based, insofar as it relates to legal matters, upon an opinion of counsel, unless such an officer knows that the opinion with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or, in the exercise of reasonable care, should have known that the same were erroneous. Any such opinion made or given by counsel may be based (insofar as it relates to factual matters or information which is in the possession of the Issuer or the Borrower) upon the certificate or opinion of or representations by an officer of the Borrower or the Issuer, unless such counsel knows that the Certificate or opinion or representations with respect to the matters upon which the opinion may be based as aforesaid are erroneous, or, in the exercise of reasonable care, should have known that the same were erroneous.

Section 1.03 Description of Project. The term "Project" refers to the acquisition, rehabilitation and equipping of the existing 56-unit multifamily rental housing facilities located at [407 – 431] NW 1<sup>st</sup> Terrace, Deerfield Beach, Florida, which will be owned by the Borrower.

Section 1.04 Additional Provisions as to Interpretation. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Loan Agreement; and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not any particular Article, Section or subdivision hereof.

Any terms defined in any other Borrower Loan Documents or Issuer Documents but not defined herein shall have the same meaning herein unless the context hereof clearly requires otherwise.

## **ARTICLE II. REPRESENTATIONS**

Section 2.01 Representations by the Issuer. The Issuer makes the following representations as the basis for its undertakings herein:

(a) The Issuer is a public body corporate and politic, duly created and existing by virtue of the laws of the State and is authorized to issue the Note to finance the Project pursuant to the Act.

(b) In authorizing the Project, the Issuer's purpose is to promote the public welfare by continuing to provide residential housing within the meaning of the Act and assisting persons within the State to obtain decent, safe and sanitary housing at rentals they can afford; and facilitating the development of rental housing opportunities for residents of the Issuer.

(c) A public hearing on the proposal to finance the Project was called and held on June 7, 2023, at which time all persons who appeared were given an opportunity to express their views with respect to the proposal to undertake and finance the Project.

(d) The Issuer has duly authorized the execution and delivery of the Issuer Documents.

(e) The issuance and sale of the Note and the execution, delivery and performance of the Issuer Documents by the Issuer have been duly authorized by resolutions of the Board, including the Authorizing Resolution, duly adopted at a meeting of the members of the Issuer by a vote of the requisite majority of its members.

(f) To the actual knowledge of the Issuer officials, there is no litigation pending or, without inquiry, threatened questioning the authority of the Issuer to issue the Note, the authority of the Issuer to execute and deliver the Issuer Documents, the tax-exempt status of interest on the Note, or the authority of any member of the Issuer or other officer or employee of the Issuer to hold office or take part in any of the transactions contemplated hereby.

Section 2.02 Representations, Warranties and Covenants of the Borrower. The Borrower represents, warrants and covenants as follows:

(a) The Borrower is a limited liability company duly created under the laws of the State of Florida, is in good standing and duly authorized to conduct its business in the State of Florida and in all other states where its activities require such authorization, has power to enter into the Borrower Loan Documents and to use the Project for the purpose set forth in this Agreement and by proper limited liability company action has authorized the execution and delivery of the Borrower Loan Documents.

(b) The execution and delivery of the Borrower Loan Documents, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Borrower's operating agreement and other organizational documents, any restriction or any agreement or instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge or

encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(c) The design and plan of the Project comprise a housing development as contemplated by the Act, specifically a development designed to be affordable by persons and families with adjusted gross income not in excess of the limits set forth in the Act; and subject to the other provisions of this Agreement, it is presently intended and reasonably expected that the equipment purchased from the proceeds of the Note will be permanently located and exclusively used on the Land and that the Borrower will operate the Project Buildings on the Land throughout the term of this Agreement in the normal conduct of the Borrower's business;

(d) The Note is issued within the exemption provided under Section 142(d) of the Code with respect to qualified residential rental projects; and "substantially all" of the proceeds of the Note will be used for expenditures chargeable to the capital account of the Project;

(e) There is public access to the Project; and, as of the date hereof, and to the Borrower's knowledge, the use of the Project as designed and proposed to be operated complies, in all material respects, with all presently applicable development, pollution control, water conservation and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located. All necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project have been, or will be, obtained to acquire, rehabilitate, install, and operate the Project and the Borrower has obtained all necessary approvals to enter into, execute and perform its obligations under the Borrower Loan Documents.

(f) The proceeds of the Note and the Senior Bonds, together with any other funds to be contributed to the Project by the Borrower, loaned to the Borrower or otherwise in accordance with this Agreement, will be sufficient to pay the cost of acquiring the Borrower's leasehold interest in, and rehabilitation of, the Project, and all costs and expenses incidental thereto, and the proceeds of the Note will be used only for the purposes contemplated hereby and allowable under the Act.

(g) The Borrower is not in the trade or business of selling properties such as the Project and is acquiring the leasehold interest in the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no intention now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project, except as permitted by Section 6.08 hereof.

(h) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the Borrower would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower; and the Borrower is not in default with respect to any order of any court or governmental agency.

(i) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(j) The Borrower has filed all federal and state income tax returns which, to the knowledge of the officers of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by the Borrower to the extent that they have become due.

(k) To the Borrower's knowledge, no public official of the Issuer has a conflict of interest arising from this Agreement nor will any public official either directly or indirectly benefit financially from this Agreement.

### **ARTICLE III. ISSUANCE OF NOTE; LOAN OF PROCEEDS**

Section 3.01 Issuance of Note by Issuer. The Issuer will issue the Note as provided in the Act and the Authorizing Resolution and will deliver the Note to the Lender to evidence the obligation to pay a portion of the purchase price of the Borrower's leasehold interest in the Project. The Lender will receive the Note on the Closing Date, upon satisfaction of the terms and conditions set forth in Section 3.03 of this Loan Agreement (the "Closing"). The proceeds of the Note are considered to be loaned to the Borrower as provided in Section 3.02 of this Loan Agreement.

The Issuer will issue the Note in the authorized original principal amount of \$[5,000,000], consisting of a single fully registered note, numbered R-1, of even date herewith, substantially in the form and containing the terms and provisions set forth in Exhibit A hereto. The Note matures on the Maturity Date and will bear interest at the rates set forth in the Note and will be repaid in accordance with the Note.

Notwithstanding anything contained in this Subordinate Loan Agreement or the Note to the contrary, the Note may be transferred only to Permitted Lenders in minimum denominations of \$100,000 upon delivery by the transferee of an executed certificate in the form attached hereto as Exhibit B. The Note has not been, and will not be, registered under any federal or state securities laws, must be held for investment purposes only, and may be transferred only if an exemption from registration is available.

Section 3.02 Loan of Proceeds. The Issuer hereby lends to the Borrower the entire gross proceeds of the Note, which loan is evidenced by the Issuer's direct delivery of the Note to the Lender, on the Borrower's behalf. The obligation of the Borrower to repay the Loan, together with interest thereon shall become effective immediately upon the Issuer's delivery of the Note to the Lender and shall be evidenced by and be repayable as set forth in the Note.

Section 3.03 Conditions to the Closing. The obligation of the Lender to take delivery of, and the Issuer to deliver, the Note under Section 3.01 is conditioned upon delivery to the Lender and the Issuer on the Closing Date of the following:

(a) An opinion of Nabors, Giblin & Nickerson, P.A., as Note Counsel, and an opinion of counsel to the Borrower, each in form and substance satisfactory to the Issuer and the Lender;

- (b) A certified copy of the Authorizing Resolution;
- (c) The executed Note, Assignment of Subordinate Mortgage and Loan Documents and executed counterparts of this Loan Agreement, the Subordinate Mortgage, and the Regulatory Agreement;
- (d) A Certificate of the Issuer, with an endorsement of the Borrower, pursuant to Section 148 of the Internal Revenue Code and pertinent regulations as to absence of arbitrage expectation;
- (e) Reserved;
- (f) An executed Lender Investor Certificate in the form attached hereto as Exhibit B.
- (g) Executed financing statements under the Uniform Commercial Code of the State, as the Lender may deem necessary or desirable in order to perfect the security interests granted by the Issuer and the Borrower to secure the Note, and completed requests for information, dated on or before the Closing Date, as to effective financing statements filed in all filing offices in which the financing statements shall have been filed;
- (h) A title insurance policy insuring the Lender's interest under the Subordinate Mortgage, in form and substance satisfactory to the Lender; and
- (i) All other documents or certificates the Lender may reasonably request relating to the existence and good standing of the Borrower, the legal authority for and the due execution and validity of the Note, the Authorizing Resolution, this Loan Agreement and the other Subordinate Loan Documents, and the tax-exempt status of interest on the Note for Federal income tax purposes and all other relevant matters, all in form and substance satisfactory to the Lender.

**ARTICLE IV.  
ACQUISITION AND RENOVATION OF THE PROJECT;  
APPLICATION OF PROCEEDS**

Section 4.01 Agreement to Acquire and Renovate the Project. On the Closing Date the Borrower will acquire title to the leasehold interest in the Project. The Note will be delivered to the Lender to evidence the obligation to pay a portion of the purchase price of the Borrower's leasehold interest in the Project.

Section 4.02 Borrower Required to Provide Funds in Event Note Proceeds Insufficient. The Issuer and the Lender make no warranty, either express or implied, that the moneys which under the terms hereof will be available for payment of costs of the Project will be sufficient to pay such costs. The Borrower agrees that it shall pay or cause to be paid all costs of the Project and that to the extent such costs of the Project exceed the available amount of Note proceeds, that it shall not be entitled to any reimbursement therefor from the Issuer or the Lender, nor shall it be entitled to any diminution in or postponement of payments to be made under any provision hereof.

**ARTICLE V.  
LOAN REPAYMENTS AND OTHER PAYMENTS**

Section 5.01 Repayment of Loan. (a) The Borrower covenants and agrees to repay the Loan, together with interest, in Loan Repayments which shall be made at times and in amounts sufficient to pay, in full and when due, all principal and interest on the Note (whether due upon maturity, redemption, mandatory prepayment or acceleration). Such payments by the Borrower under this Section 5.01 shall be made directly by the Borrower to the Lender in such coin or currency of the United States of America as may be legal tender for the payment of public and private debts. The Borrower shall furnish to the Issuer, if the Issuer so requests, the advice of transmittal of such payments at the time of transmittal of payment. All payments under this Section 5.01 shall be Loan Repayments.

(b) The Borrower covenants and agrees to pay the Loan Repayments due hereunder solely from Available Cash Flow [and Sale or Refinancing Transaction Proceeds] (except for the Loan Repayment that is the payment due on the Maturity Date which shall be payable from any funds of the Borrower). Except for the Loan Repayment due on the Maturity Date, the obligation to make Loan Repayments is subject to the availability of Available Cash Flow [or Sale or Refinancing Transaction Proceeds], and it shall not be an event of default under this Loan Agreement to the extent that failure to make a Loan Repayment is due to lack of Available Cash Flow [or Sale or Refinancing Transaction Proceeds]. Subject to the preceding sentence, in the event the Borrower shall fail to make any Loan Repayment as required by this Section 5.01, the payment not made shall continue as an obligation of the Borrower until the amount not paid shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, which interest shall also constitute an obligation of the Borrower. To the extent permitted by law, interest on any overdue payment required hereby shall be paid at the default rate of interest set forth in the Note.

Section 5.02 Additional Payments. In addition to the Loan Repayments, the Borrower shall pay (a) to the Trustee, the Issuer Fee, the Trustee Fee, and amounts sufficient to pay in full all reasonable out-of-pocket expenses and costs of the Issuer and the Trustee set forth below, and (b) to the Lender, amounts sufficient to pay in full all reasonable out-of-pocket expenses and costs of the Lender set forth below. In addition to the fees and costs set forth in the immediately preceding sentence, the Borrower shall also pay to (a) the Trustee for payment to the Issuer and the Trustee, and (b) the Lender, amounts sufficient to pay in full all reasonable out-of-pocket expenses and costs of the Issuer, the Trustee and the Lender, respectively, incurred in the issuance and payment of the Note and the making and collection of the Loan, including: (i) all costs incurred in connection with the purchase, transfer, registration, exchange, or redemption of the Note; (ii) the fees and other costs incurred for services of such engineers, architects, attorneys, management consultants, accountants, and other consultants as are employed by the Issuer, the Trustee or the Lender to make examinations or reports, provide services, or render opinions required or permitted by this Loan Agreement; (iii) all costs reasonably incurred by the Issuer or the Lender in the enforcement of the Note, the Borrower Subordinate Promissory Note or this Loan Agreement; (iv) all costs of issuing the Note; (v) all Rebate Amounts, and (vi) all reasonable fees and expenses of the Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Indenture when due from time to time.

Notwithstanding anything in this Section 5.02 or this Loan Agreement to the contrary, the Borrower shall pay the Issuer Fee and the Trustee Fee to the Trustee for deposit and payment pursuant to Section 4.10 of the Indenture. Notwithstanding anything in this Loan Agreement to the contrary, payment of the Issuer Fee and the Trustee's Fee shall not be subject to the availability



of Available Cash Flow. [The Borrower's failure to pay (or cause to be paid) the Issuer Fee, in whole or in part, shall not constitute a breach of an obligation or an Event of Default under this Loan Agreement or any other Subordinate Loan Document; provided, however, the Borrower shall execute and cause to be executed the Guaranty of Recourse Obligations as provided herein.

The Borrower shall also pay when due to the Trustee any amount required to be (i) deposited in the Rebate Fund in accordance with Section 4.06 of the Indenture, and (ii) paid to the Rebate Analyst.

Section 5.03 No Set-Off; Borrower's Obligations Unconditional. The obligation of the Borrower to make the payments and to perform and observe the other agreements on its part contained herein, in the other Subordinate Loan Documents and in the Borrower Subordinate Promissory Note shall be absolute and unconditional. So long as any principal of the Note or the Borrower Subordinate Promissory Note is outstanding, the Borrower will pay without abatement, diminution or deduction (whether for taxes or otherwise) all Loan Repayments required to be paid hereunder, regardless of any cause or circumstance whatsoever including, without limiting the generality of the foregoing: any defense, setoff, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Lender or any other holder of the Note or any other person; any failure of the Issuer to perform any covenant or agreement contained herein or in any other agreement between the Issuer or any Noteholder and the Borrower; any indebtedness or liability at any time owing to the Borrower by the Issuer, the Lender or any other Noteholder or any other person; any acts or circumstances that may constitute failure of consideration; damage to or condemnation of the Project Facilities; eviction by paramount title; commercial frustration of purpose; bankruptcy or insolvency of the Issuer, or the Lender; enforcement of any of the other Subordinate Loan Documents; any change in the tax or other laws of the United States of America or of any State or any political subdivision of either, or any failure of the Issuer or the Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation, arising out of or connected with this Loan Agreement, the other Subordinate Loan Documents or the Authorizing Resolution.

Section 5.04 Option to Prepay Loan. The Borrower shall have the option to prepay the Loan and cause to be redeemed the Borrower Subordinate Promissory Note and the Note, in whole or in part, upon the terms set forth in the Borrower Subordinate Promissory Note and the Note. Any partial prepayment of the Borrower Subordinate Promissory Note and the Note shall reduce the outstanding principal balance of the Borrower Subordinate Promissory Note and the Note in inverse order of the principal installments unpaid thereon. Any such partial prepayment shall be applied first to accrued interest and finally to installments of principal in the inverse order of their maturity.

In the event the Borrower elects to prepay the Loan, the Borrower shall cause to be given in the name of the Issuer due notice of redemption or prepayment of the Borrower Subordinate Promissory Note and the Note as required by the provisions thereof, and shall pay the redemption price when due to the Lender. The Issuer hereby authorizes the Borrower to give all required notices of prepayment of the Note.

Section 5.05 Tax-Exempt Status of Interest on the Note. It is the intention of the parties hereto that the interest paid on the Note will not be included in the gross income of the recipients

of said interest by reason of Section 103 and related Sections of the Code. In order to confirm and carry out such intention:

(a) The Borrower shall (i) provide such Certificates of the Authorized Borrower Representative, Opinions of Counsel, and other evidence as may be necessary or reasonably requested by the Issuer, the Lender or any Holder to establish the exemption of interest on the Note under Section 103 and related Sections and the absence of arbitrage expectation under Section 148 of the Code, and (ii) file such information and statements, acting alone or with the Issuer, with the Internal Revenue Service, as may be required from the Borrower or the Issuer to establish or preserve such exemption or as may be required by Section 103 and related Sections of the Code, regulations thereunder and related provisions of law or regulation.

(b) If the Lender shall be given notice of a proposed deficiency by the Internal Revenue Service, based upon a proposed Determination of Taxability, or if a responsible officer of the Lender shall have actual knowledge of a proposed ruling by the Internal Revenue Service to the effect that interest on the Note is includable in the gross income of the Holder, the Lender shall give notice to the Borrower of such proposed deficiency or ruling as promptly as possible and permit the Borrower, to the extent reasonably possible, to participate in contesting any such proposed deficiency or ruling. Any expenses incurred by the Borrower or by any Holder at the request of the Borrower in connection with such contest shall be paid by the Borrower. Notwithstanding the foregoing, the Holder shall have the right to control all proceedings before the Internal Revenue Service and any judicial proceedings relating to taxability of interest on the Note received by the Holder, including the compromise of claims in such proceedings and abandonment of rights to appeal.

(c) If there shall occur a Determination of Taxability, the interest rate on the Note shall be adjusted as set forth in the Note.

(d) The Borrower shall (i) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.06 of the Indenture, and (ii) if required to do so under Section 4.06 of the Indenture, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Issuer for the purpose of making any and all calculations required under Section 4.06 of the Indenture. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.06 of the Indenture. The Borrower shall cause the Rebate Analyst to provide such calculations to the Trustee and the Issuer at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Indenture and this Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

(e) The Borrower hereby acknowledges and confirms its obligations under Section 148 of the Code. If the Borrower shall fail to pay the full amount of any Rebate Amount required to be paid by the Borrower when such deposit is due, the Lender may make payment to the United States, and such payment shall be an advance under Section 8.05 of this Loan Agreement. In construing the Borrower's obligations hereunder, all terms used in this paragraph (e) shall have the meanings provided in said Section 148 and regulations thereunder. The Borrower agrees to make all required rebate payments to the United States, as and when required.

## **ARTICLE VI. USE OF FACILITIES**

Section 6.01 Use of Project Facilities. The Borrower will use the Project Facilities only in furtherance of its lawful purposes and will use and operate the Project Facilities, to the extent financed by the proceeds of the Note, only as an authorized project under the Act and as permitted under the Code.

The Borrower will not knowingly use or knowingly permit any person to use the Project Facilities for any use or purpose in violation of the laws of the United States or the State, and agrees to comply with all material requirements of applicable laws, regulations and statutes of the State or other governmental authority having jurisdiction over the Project Facilities. The Borrower shall have the right to contest by appropriate legal proceedings, without cost or expense to the Issuer, the validity of any law, ordinance, order, rule, regulation or requirement of the nature herein referred to.

Section 6.02 Maintenance and Possession of Project Facilities by Borrower; Operating Expenses; Ownership of Project Facilities. The Borrower agrees that so long as the Note is outstanding, the Borrower will keep the Project Facilities in good repair and good operating condition at its own cost, ordinary depreciation excepted, making such repairs and replacements as are reasonably necessary. The Borrower will pay or cause to be paid all expenses arising from the operation and maintenance of the Project Facilities. The Borrower shall at all times use the Project Facilities only in furtherance of its lawful corporate purposes; provided, however, that so long as (i) the exemption from taxation of interest on the Note, (ii) the Borrower Loan Documents, and (iii) any contracts or agreements to which the Borrower is a party are not adversely affected, violated or breached, nothing herein contained shall be construed (i) to prevent it from ceasing to operate any portion of the Project Facilities, if in its reasonable judgment (evidenced, in the case of such a cessation other than in the ordinary course of business, by a determination by its governing body) it is advisable not to operate the same, or (ii) to obligate it to retain, preserve, repair, renew or replace any portion of the Project Facilities, leases, rights, privileges or licenses no longer used or, in the judgment of its governing body, useful in the conduct of its business.

Section 6.03 Liens. The Borrower will pay or cause to be paid all utility charges and other charges arising from its operations at the Project Facilities which, if unpaid, would become a lien on the Project Facilities and will not permit any lien or encumbrance to be established or to remain unsatisfied against (a) the Mortgaged Property, except as permitted by the Subordinate Mortgage or Section 6.08 hereof, and (b) the Project Facilities, other than the Mortgaged Property. The Borrower may in good faith contest any such lien filed or established against the Project Facilities, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom.

Section 6.04 Taxes and Other Governmental Charges. The Borrower will pay, as the same respectively become due and before penalty attaches, any taxes, license fees and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the operation of the Project Facilities. The Borrower may, at its expense in good faith contest any such taxes, assessments, license fees and other governmental charges by appropriate proceedings and, in the event of any such contest, may permit the taxes, assessments,

license fees or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom if funds sufficient to satisfy the contested amount have been deposited in an escrow account satisfactory to the Lender.

Section 6.05 Insurance. So long as the Note is Outstanding, the Borrower agrees at all times to keep the Mortgaged Property insured as required by (i) the Subordinate Mortgage, and (ii) so long as the Senior Loan is outstanding, the Senior Loan Documents.

Section 6.06 Damage; Destruction or Condemnation: Application of Insurance and Award Proceeds. In the event of damage to or destruction of the Project Facilities from any cause whatsoever or any taking of the Project Facilities, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings, except for any award or payment made for relocation benefits (hereinafter called a "Taking"), the Borrower agrees to repair or replace all Project Facilities and apply any insurance proceeds or proceeds of any taking as required by the Subordinate Mortgage, subject, however, to the requirements of the Senior Loan Documents.

Section 6.07 Reserved.

Section 6.08 Senior Loan Refinancing. The Lender shall not unreasonably withhold consent and agrees to subordinate to a refinancing of the Senior Loan with a new permanent mortgage loan if (i) the new loan is on commercially reasonable terms and (ii) will not exceed in principal amount the balance due on the Senior Loan being refinanced plus (a) reasonable financing costs, (b) reasonable repairs and improvements to the Project, and (c) any other purposes approved by the Lender. The Borrower shall submit to the Lender no later than one (1) month prior to the maturity date of the respective Senior Loan a loan commitment letter for the proposed refinancing and draft loan documents for the Lender's review. The Lender shall not unreasonably withhold consent to the refinancing loan, the loan commitment letter, and the loan documents (and will execute a commercially reasonable subordination agreement for the refinancing lender's benefit) if (i) the loan and the loan documents (including any subordination agreement) satisfy the requirements set forth in the preceding sentence, (ii) the loan documents shall provide for the use of insurance proceeds for restoration in the event of casualty loss, and (iii) the loan documents shall allow the Lender reasonable rights to notice and opportunity to cure defaults by the Borrower.

## **ARTICLE VII. SPECIAL COVENANTS**

Section 7.01 No Warranty of Condition or Suitability; Indemnification.

(a) The Issuer does not make any warranty, either express or implied, as to the design or capacity of the Project Facilities, as to the suitability for operation of the Project Facilities or as to the condition of the Project Facilities or that the Project Facilities will be suitable for the Borrower's purposes or needs. The Borrower releases the Issuer from, agrees that the Issuer shall not be liable for, and agrees to hold the Issuer and the County, and their respective members, commissioners, officers, employees, and agents, harmless against, any claim, cause of action, suit or liability for 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, except such loss, damage or injury as results from the gross negligence or willful misconduct of the Issuer.

(b) The Borrower and its authorized member, will indemnify, defend and hold harmless the Issuer and the County, and each of their officers, commissioners, employees and agents (the "Indemnified Parties") from and against any and all claims by or on behalf of any person, firm, corporation or other legal entity arising from the conduct, operation or management of, or from, any work or thing done on the Project during the term of this Agreement, including, without limitation, (i) any condition of the Project; (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under this Agreement; (iii) any act of negligence of the Borrower or of any of its agents, contractors, servants, employees or licensees or (iv) any act of negligence of any assignee or lessee of the Borrower, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Borrower. The Borrower shall indemnify and save the Lender and the Indemnified Parties harmless from any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from the Lender or the Issuer, the Borrower shall defend them or either of them in any such action or proceeding, except such indemnification, defense and hold harmless provision shall not apply with respect to losses, claims, damages or liabilities arising out of the Indemnified Parties' or Lender's gross negligence or willful misconduct.

(c) The Borrower and its authorized member agree to indemnify, defend and hold harmless the Indemnified Parties against any and all losses, claims, damages or liability to which the Indemnified Parties may become subject under any law in connection with the issuance and sale of the Note, the carrying out of the transactions contemplated by this Agreement or the Note, the conduct of any activity in connection with the Project, including claims for which the Indemnified Parties may be or may be claimed to be liable, and to reimburse the Indemnified Parties for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the Indemnified Parties in connection with investigating any such losses, claims, damages or liabilities, or in connection with defending any actions relating thereto, and as a result of the Issuer's compliance with an audit, random or otherwise, by the Internal Revenue Service in connection with the Project or the Note, except such indemnification, defense and hold harmless provision shall not apply with respect to losses, claims, damages or liabilities arising out of the Indemnified Parties' or Lender's gross negligence or willful misconduct. The Indemnified Parties agree, at the request and expense of the Borrower, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses identified in writing by the Borrower which may be available to the Indemnified Parties. These provisions shall survive payment of the Note and termination of this Loan Agreement.

(d) Promptly upon written notice received from the Borrower from any Indemnified Party or parties of any claim or the commencement of any action or proceeding specified in the preceding paragraph, the Borrower will at the request of such Indemnified Party or parties, assume the investigation and defense of such action or proceeding including the employment of counsel satisfactory to such Indemnified Parties and the payment of the fees and disbursements of such counsel. In the event that any Indemnified Party or parties shall determine, in the exercise of their reasonable judgment, that there exists a conflict of interest by reason of having a common counsel with the Borrower or with any other Indemnified Party, or if the Borrower elects not to defend the action with respect to any or all Indemnified Parties, then each such Indemnified Party may employ

separate counsel satisfactory to the Borrower to represent or defend it in any such action or proceeding in which it may become involved or is named as defendant and the Borrower will pay as incurred the fees and disbursements of such counsel. The Borrower also agrees to notify all Indemnified Parties promptly of the assertion against it or any of its officers, directors, partners, employees or agents, as the case may be, of any claim or the commencement of any action or proceeding arising from any act or omission of the Borrower or any of its agents, servants or employees in connection with this Loan Agreement or the Project.

(e) If the Issuer or the County incurs any expense or suffers any losses, claims or damages or incurs any liabilities in connection with the transaction contemplated by this Loan Agreement, the Borrower and its authorized member will indemnify, defend and hold harmless the Issuer and the County from the same and will reimburse the Issuer and the County for any reasonable legal or other expenses incurred by the Issuer or the County in relation thereof. The Borrower shall also reimburse the Issuer and the County for all other costs and expenses, including without limitation, attorneys' fees paid or incurred by the Issuer or the County in connection with: (i) the discussion, negotiation, preparation, approval, execution and delivery of this Agreement and the documents and instruments related thereto; (ii) any amendments or modifications thereto and any document, instrument or agreement related thereto and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modification; and (iii) the enforcement by the Issuer during the term of this Agreement or thereafter of any of the rights or remedies of the Issuer under this Agreement or any document, instrument or agreement related thereto, including, without limitation, costs and expenses of collection in the event of default, whether or not suit is filed with respect thereto.

Section 7.02 Books and Records; Inspection and Examination; Notice of Defaults. The Borrower will keep accurate books of record and account in which true and complete entries will be made in accordance with generally accepted accounting principles consistently applied and upon request of the Lender will give any representative of the Lender access upon reasonable notice during normal business hours to, and permit such representative to examine, copy or make extracts from, any and all books, records and documents in its possession, to inspect any of its properties and to discuss its affairs, finances and accounts with any of its officers, all at such times and as often as it may reasonably be requested.

Section 7.03 Further Assurances, Financing Statements, Maintenance of Lien. At the request of the Issuer or the Lender, the Borrower shall execute any financing statement or other instrument which is or may be required to carry out the intent of the parties as expressed in this Loan Agreement, the Authorizing Resolution, or the other Subordinate Loan Documents. The Borrower shall, at its sole expense, file or cause to be filed all financing statements, including any financing statement of the Issuer, under the Uniform Commercial Code, or similar instruments, deemed necessary by the Lender to perfect and continue the security interest of the Lender in the personal property included in the Mortgaged Property and in this Loan Agreement (except for the Issuer's rights under Sections 5.02, 7.01, 8.04, 9.10 and 9.11 hereof), including any financing statements or continuation statements which the Issuer is required to file. The Lender is expressly authorized to file a financing statement naming the Issuer as debtor and describing the collateral as the Issuer's interest in this Loan Agreement and the Borrower Subordinate Promissory Note.

Section 7.04 Assignments. The Borrower consents to the pledge and assignment of the Borrower Subordinate Promissory Note, the Loan Repayments and other interests of the Issuer in this Loan Agreement by the Issuer to the Lender as provided in the Authorizing Resolution and Assignment of Subordinate Mortgage and Loan Documents. The interests and obligations of the Borrower under this Loan Agreement are non-assignable, unless consented to in writing by the Issuer and the Lender.

Section 7.05 Observance of Authorizing Resolution Covenants and Terms. The Borrower will not do, in any manner, anything which will cause or permit to occur any violation of any provision of the Authorizing Resolution, but will faithfully observe and perform, and will do all things necessary so that the Issuer may observe and perform, all the conditions, covenants and requirements of the Authorizing Resolution. The Issuer agrees that it will observe and perform all obligations imposed upon it by the Subordinate Loan Documents; provided that the Issuer has no obligation to use its own funds to perform or cause performance of any such obligations, and provided further that no covenant, representation or undertaking shall ever give rise to any liability of the Issuer, or its officers, agents or employees, or constitute a charge against their general credit. The Issuer has no taxing power.

Section 7.06 General Tax Representations, Warranties and Covenants of Borrower. The Borrower makes the following representations, understanding, after such consultation with such legal counsel as deemed appropriate, that the exclusion from gross income of interest on the Note for federal income tax purposes is dependent on the accuracy and truthfulness of such representations:

(a) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Regulations applicable thereunder, to qualify the Note under Section 142(d) and the Project as a "qualified residential rental project" thereunder.

(b) The Borrower will not use (or permit to be used) the Project or use or invest (or permit to be used or invested) the proceeds of the Note or any other sums treated as "bond proceeds" under Section 148 of the Code and applicable federal income tax regulations, including "investment proceeds," "sinking funds" and "replacement proceeds," in such a manner as to cause the Note to be classified "arbitrage bonds" under Section 148 of the Code or "federally guaranteed obligations" under Section 149(b) of the Code.

(c) At least 95% of the net proceeds of the Senior Bonds and the Note will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) of the Code and functionally related and subordinate property thereto.

(d) The Borrower has not permitted and will not permit any obligation or obligations other than the Senior Bonds and the Note to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same "issue" as the Senior Bonds and the Note if the result thereof would impair the tax-exempt status of the Note.

(e) No portion of the proceeds of the Note will be used to provide any airplane, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store.

(f) No portion of the proceeds of the Note will be used to acquire (i) property to be leased to the government of the United States of America or to any department, agency or instrumentality of the government of the United States of America, (ii) any property not part of the residential rental housing portion of the Project, or (iii) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice-skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(g) No portion of the proceeds of the Note (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the proceeds of the Note (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(h) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a "qualified residential rental project" are not met, does not allow a deduction for interest paid on the Note which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(i) The average weighted maturity of the Senior Bonds and the Note does not and will not exceed 120% of the average reasonably expected remaining economic life of the Project (\_\_\_\_ years) within the meaning of Section 147(b) of the Code.

(j) The Borrower shall provide on the Closing Date all information required to satisfy the informational requirements set forth in Section 149(e) of the Code, including the information necessary to complete IRS Form 8038.

(k) The Borrower will not permit more than \$[\_\_\_\_\_] of the proceeds of the Note and the Senior Loan Note to be expended (or to be used to reimburse any person for an expenditure) to pay Costs of Issuance as provided by Section 147(g) of the Code.

(l) Neither the Borrower nor any "related person" under Section 147 of the Code will enter into any arrangement, formal or informal, for the Borrower or such "related person" under Section 147 of the Code to purchase the Note.

(m) The Borrower will not otherwise use proceeds of the Note, including earnings thereon, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Note, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income; and, if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

(n) The Borrower will comply with the requirements and conditions of the Tax Certificate and the Regulatory Agreement.



**ARTICLE VIII.  
EVENTS OF DEFAULT AND REMEDIES**

Section 8.01 Events of Default. The following shall be "Events of Default" under this Loan Agreement and the term "Event of Default" shall mean, whenever used in this Loan Agreement, any one or more of the following events:

(a) If the Borrower fails to pay any amount due under the Borrower Subordinate Promissory Note or any Loan Repayment required to be paid under the Note and Section 5.01 hereof within ten (10) days of the due date (including any repayment of principal of the Note due by way of acceleration, call for redemption of the Borrower Subordinate Promissory Note and the Note or otherwise), provided that failure to pay a Loan Repayment because of an insufficiency of Available Cash Flow [or Sale or Refinancing Transaction Proceeds] shall not constitute an Event of Default except for the final Loan Repayment on the Maturity Date; or

(b) If the Borrower shall default in the due and punctual performance of any of the other covenants, conditions, agreements and provisions contained in the Borrower Subordinate Promissory Note or this Loan Agreement, and such default shall continue for thirty (30) days after notice thereof has been furnished to the Borrower and to Investor Member from the Lender; provided, however, that if such default cannot be cured within 30 days, it shall not constitute a default hereunder if the Borrower provides to the Lender a proposed method and schedule of curing such default, initiates action to cure such default within such 30 days, diligently pursues such action until such default is cured and provides the Lender with progress reports relating thereto at such intervals as may be reasonably requested by the Lender; or

(c) If an "Event of Default" or default shall occur and is continuing after the expiration of any applicable grace period under any other Subordinate Loan Documents; or

(d) If the Borrower shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator for it or for any of its property, (ii) admit in writing its inability to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under such law; or

(e) If there is filed against the Borrower any involuntary petition seeking liquidation or reorganization of the Borrower or appointing a receiver, trustee or liquidator of the Borrower or of all or a substantial part of the assets thereof, and such petition shall not be dismissed or vacated within ninety (90) days thereafter; or

(f) Any statement, representation, warranty or certification made by the Borrower under any of the Subordinate Loan Documents shall be incorrect or misleading in any material respect when made.

(g) Notwithstanding anything to the contrary contained in the Subordinate Loan Documents, Lender hereby acknowledges and agrees that the Investor Member (defined below)

has the right to cure any and all Defaults; (ii) prior to Lender exercising any remedies under the Subordinate Loan Documents, the Investor Member will be provided notice of any and all Defaults and an opportunity to cure any such Defaults within thirty (30) days of receiving such notice from Lender; and (iii) Lender will accept any such cure made by the Investor Member of a Default as if such cure was made by Borrower on its own behalf.

Notwithstanding anything in this Loan Agreement to the contrary, the Lender agrees that any cure made or tendered by one or more of the Borrower's members shall be deemed a cure by the Borrower, and treated as if tendered by the Borrower.

Section 8.02 Remedies on Default. Whenever any Event of Default shall have happened and be subsisting, any one or more of the following steps may be taken:

(a) After ten (10) days written notice to the Borrower of the proposed action and provided that the Event of Default has not been duly cured, the Lender may declare the unpaid principal of and interest on the Borrower Subordinate Promissory Note and the Note, and all or any amounts of Loan Repayments thereafter to become due and payable under Section 5.01 hereof for the remainder of the term of this Loan Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable, together with any additional payments due under Sections 5.02, 5.05, 8.04, 8.05 or otherwise under this Loan Agreement.

(b) The Lender may take whatever action at law or in equity that appears necessary or desirable to enforce this Loan Agreement or any of the other Subordinate Loan Documents in accordance with the provisions hereof or thereof.

Any amounts collected by the Lender or any other Holder pursuant to action taken under the foregoing paragraphs (other than such amounts that are payable to the Issuer) shall be applied first to advances and expenses of the Lender or other Holder, then to payment of the Note (interest first, and then principal), and any excess to the Borrower.

Whenever any Default shall occur, the Lender or any other Holder (or the Issuer with respect to Sections 5.02, 7.01, 8.04 or 9.09 hereof) may take whatever action at law or in equity, including all of the remedies available under the Uniform Commercial Code, which may appear necessary or desirable to collect any payments then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement.

Section 8.03 Remedies Cumulative, Delay Not to Constitute Waiver. No remedy conferred upon or reserved to the Issuer, the Lender, any other Holder or a receiver by this Loan Agreement or by the other Subordinate Loan Documents is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or the other Subordinate Loan Documents or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power, and any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, the Lender, any other Holder or a receiver to exercise any remedy reserved to it in this Article VIII, it shall not be necessary to give any notice, other than

such notice as may be herein expressly required. In the event any agreement contained in this Loan Agreement or the other Subordinate Loan Documents should be breached by any party and thereafter waived by the other parties, such waiver shall be limited to a particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.04 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Loan Agreement or other Subordinate Loan Documents, and the Issuer or the Lender should employ attorneys or incur other expenses for the collection of payments due or to become due hereunder or thereunder or the enforcement of performance or observance or any obligation or agreement on the part of the Borrower contained herein or therein, the Borrower agrees that it will on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred by each of the Issuer and the Lender. The Borrower also agrees to pay all costs of the Lender to appear in and defend any action or proceeding purporting to affect the rights or powers of the Lender under this Loan Agreement or the other Subordinate Loan Documents, including the cost of reasonable attorney's fees.

Section 8.05 Advances. In the event the Borrower shall fail to pay any Loan Repayments under Section 5.01 hereof, or to do any other thing or make any other payment required to be done or made by any other provision of this Loan Agreement or the other Subordinate Loan Documents, the Lender or any other Holder, in its own discretion, may do or cause to be done any such thing or make or cause to be made any such payment at the expense or as an advance for the account of the Borrower, and the Borrower shall pay to the Lender or any other Holder, as the case may be, upon demand, all necessary costs and expenses so incurred and advances so made, with interest at the lesser of (i) 4.00% per annum above the then current interest rate on the Note or (ii) the maximum rate permitted by law. Any such advance shall be entitled to priority of payment from any funds thereafter received from the Borrower.

## **ARTICLE IX. MISCELLANEOUS**

Section 9.01 Notices. All notices, certificates or other communications hereunder shall be deemed sufficiently given when delivered or when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

- (a) If to the Issuer: HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
110 N.E. 3<sup>rd</sup> Street, Suite 300  
Ft. Lauderdale, Florida 33301  
Attention: Executive Director
  
- (b) If to the Borrower: THE PALMS OF DEERFIELD TOWNHOMES, LLC  
c/o SHAG Palms of Deerfield Townhomes Developer, LLC  
1100 N.W. 4th Avenue  
Delray Beach, Florida 33444  
Attention: Darren Smith  
Email: [dsmith@smithhenzy.com](mailto:dsmith@smithhenzy.com)

With a copy to: DEERFIELD BEACH FAMILY EMPOWERMENT, INC.  
533 S. Dixie Highway, Suite 201  
Deerfield Beach, Florida 33441

With a copy to: SHUTTS & BOWEN LLP  
200 South Biscayne Boulevard  
Miami, Florida 33131

(c) If to the Lender: THE PALMS OF DEERFIELD BEACH, LP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_

The Borrower, the Issuer and the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

A duplicate copy of each notice or other communication given under the Subordinate Loan Documents by any party to the Borrower shall also be given to the Investor Member, and Lender shall afford Investor Member or its designee, the same opportunity to cure any default by Borrower under this Agreement and the other Subordinate Loan Documents that Borrower has under this Agreement and the other Subordinate Loan Documents, respectively.

Section 9.02 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, subject to the limitation that any obligation of the Issuer created by or arising out of this Loan Agreement shall not be a general debt of the Issuer but shall be payable solely out of the proceeds derived from this Loan Agreement or the other Subordinate Loan Documents.

Section 9.03 Counterparts. This Loan Agreement may be signed in any number of counterparts. Complete sets of counterparts shall be lodged with the Issuer, the Borrower and the Lender.

Section 9.04 Benefit of Holder. Except as otherwise provided herein, all covenants and agreements on the part of the Borrower and the Issuer herein are hereby declared to be for the benefit of the Lender or any Holder of the Note. Persons other than the parties hereto and such other Holders are not intended to be beneficiaries of any of the covenants and agreements set forth in this Loan Agreement.

Section 9.05 Due Dates. Should any payment on the Note become due and payable upon a day that is not a business day, such payment shall be made on the next succeeding business day.

Section 9.06 Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision of this Loan Agreement.

Section 9.07 Term of Agreement. Except as otherwise provided herein, the provisions of this Loan Agreement shall remain in full force and effect from the date of execution hereof until such time as the Borrower Subordinate Promissory Note and the Note are not outstanding.

Section 9.08 Severability. Any provision of this Loan Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.09 Limitation of Issuer's Liability. It is understood and agreed by the Borrower and the Lender that no covenant, provision or agreement contained in this Loan Agreement or the Note, or any obligation herein or therein imposed upon the Issuer or the breach thereof, shall give rise to a pecuniary liability of the Issuer or a charge against its general credit; the Note constitutes a special obligation of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Loan Agreement, and does not now and shall never constitute an indebtedness or a loan of the credit of the Issuer, the State or any political subdivision thereof or a charge against the general credit or taxing powers thereof within the meaning of any constitutional or statutory provision whatsoever. The Issuer has no taxing power. It is further understood and agreed by the Borrower and the Lender that the Issuer has no obligation to use due diligence regarding the financial or legal status, or any representations, of the Borrower or the Lender. It is further understood and agreed by the Borrower and the Lender that the Issuer shall not incur any pecuniary liability hereunder and shall not be liable for any expenses related hereto, all of which the Borrower agrees to pay. Notwithstanding the provisions of the immediately preceding sentence, if the Issuer incurs any expense, or suffers any losses, claims or damages or incurs any liabilities relating to this Loan Agreement, including without limitation, expenses of an audit by the Internal Revenue Service, the Borrower will indemnify and hold harmless the Issuer from the same and will reimburse the Issuer for any legal or other expenses incurred by the Issuer in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer shall survive delivery of and payment for the Note. Notwithstanding anything in this Agreement or this Section 9.09 to the contrary, all references to the Issuer in this Section 9.09 pertaining to the indemnification thereof shall also be deemed to refer to the Indemnified Parties.

Section 9.10 Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Loan Agreement, (1) the liability of the Borrower and any partner, trustee, director, officer, employee, or agent thereof (collectively, "Borrower Parties") under this Loan Agreement or the Subordinate Mortgage shall be limited to the property subject to the Subordinate Mortgage or to such other security as may from time to time be given or have been given for payment of the Borrower's obligations under this Loan Agreement and Note, and any judgment rendered against the Borrower Parties under this Loan Agreement or the Subordinate Mortgage, the Borrower Subordinate Promissory Note and the Note shall be limited to the property subject to the Subordinate Mortgage and any other security so given for satisfaction thereof; and (2) no deficiency or other personal judgment nor any order or decree of specific performance shall be

sought or rendered against the Borrower Parties, their successors, transferees or assigns, in any action or proceeding arising out of the Subordinate Mortgage, this Loan Agreement, the Borrower Subordinate Promissory Note, the Note, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing in this Loan Agreement, the Subordinate Mortgage, the Borrower Subordinate Promissory Note or the Note shall limit the Issuer's or Lender's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Issuer or the Lender, or both of them, or to exercise any right against the Borrower Parties or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or any intentional damage of the property subject to the Subordinate Mortgage. Furthermore, the Borrower shall be fully liable for the misapplication of (1) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Lender and/or the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (2) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to the Subordinate Mortgage, to the full extent of such misapplied proceeds and awards, (3) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Loan Agreement, the Subordinate Mortgage and the Note but prior to foreclosure, and (4) proceeds from the sale of all or any part of the property subject to the Subordinate Mortgage and any other proceeds that, under the terms hereof, should have been paid to the Issuer or the Lender. Furthermore, the Borrower shall be fully liable for the breach of the Borrower's covenants contained in Sections 5.02, 7.01, 8.04 and 9.09 of this Loan Agreement; provided, however in no event shall the Borrower or any Borrower Parties be personally liable for payment of the principal of, premium, if any, or interest on the Borrower Subordinate Promissory Note or the Note. The limit on the Borrower's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Borrower's obligations under this Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of the Subordinate Mortgage, this Loan Agreement, the Borrower Subordinate Promissory Note and the Note upon the properties described therein, or to preclude the Issuer or the Lender from foreclosing the Subordinate Mortgage in case of any default or enforcing any other right of the Issuer or the Lender, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under the Subordinate Mortgage, this Loan Agreement, the Borrower Subordinate Promissory Note and the Note.

Section 9.11 Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer as a result of the Issuer's compliance with an audit, random or otherwise, by the Internal Revenue Service, the Florida Department of Revenue or any other governmental agency with respect to the Senior Bonds, the Note, or the Project.

Section 9.12 Authorized Member Agreement. By his signature hereon, the manager of the authorized member of the Borrower agrees that the authorized member of the Borrower accepts all duties and obligations specified of the authorized member of the Borrower hereunder.

Section 9.13 Transfer of Ownership Interest in Borrower. Notwithstanding anything to the contrary in the Subordinate Loan Documents, Lender hereby acknowledges that at any time, without the consent of Lender, ownership interests in, and the limited liability company interest in

Borrower owned by Borrower's members are freely transferable (which shall include the rights to encumber, pledge, convey, transfer or assign any or all legal or beneficial interest whatsoever). Notwithstanding anything to the contrary in the Loan Documents, Lender hereby acknowledges any and all rights of the Investor Member at any time, without the consent of Lender, to remove the authorized member of the Borrower and substitute an affiliate of the Investor Member as a authorized member of the Borrower.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.)

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed by their duly authorized officers.

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

Attest:

By: \_\_\_\_\_  
Scott Ehrlich, Chair

\_\_\_\_\_  
Milette Manos, Secretary

[Signature Page of Issuer to Subordinate Loan Agreement – The Palms of Deerfield  
Townhomes]



**THE PALMS OF DEERFIELD  
TOWNHOMES, LLC**, a Florida limited liability  
company

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

[Signature Page of Borrower to Subordinate Loan Agreement – The Palms of Deerfield  
Townhomes]

**EXHIBIT A**

**Form of Note**

**NOTWITHSTANDING ANYTHING CONTAINED IN THE SUBORDINATE LOAN AGREEMENT OR THIS NOTE TO THE CONTRARY, THIS NOTE MAY BE TRANSFERRED ONLY IN MINIMUM DENOMINATIONS OF \$100,000 AND ONLY TO PERMITTED LENDERS (AS DEFINED IN THE SUBORDINATE LOAN AGREEMENT) UPON DELIVERY BY THE TRANSFEREE OF AN EXECUTED CERTIFICATE IN THE FORM ATTACHED TO THE SUBORDINATE LOAN AGREEMENT AS EXHIBIT B. THIS NOTE HAS NOT BEEN, AND WILL NOT BE, REGISTERED UNDER ANY FEDERAL OR STATE SECURITIES LAWS, MUST BE HELD FOR INVESTMENT PURPOSES ONLY, AND MAY BE TRANSFERRED ONLY IF AN EXEMPTION FROM REGISTRATION IS AVAILABLE.**

**Housing Finance Authority of Broward County, Florida  
Subordinate Multifamily Mortgage Revenue Note, Series 2023  
(The Palms of Deerfield Townhomes)**

**Dated: November \_\_, 2023**

No. R-1

\$5,000,000

The Housing Finance Authority of Broward County, Florida (the "Issuer"), a public body corporate and politic created and existing under and by virtue of the laws of the State of Florida (the "State"), for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to The Palms of Deerfield Beach, LP, a Florida limited partnership (the "Lender"), or registered assigns, the maximum principal sum of [FIVE MILLION AND 00/100 DOLLARS (\$[5,000,000.00]), and to pay to the registered owner hereof from such sources interest on the outstanding and unpaid balance of this Note (the "Principal Balance") from the date hereof until such principal sum is paid, at the rate of \_\_%, compounded annually. Interest shall compound as of December 31 of each calendar year, commencing on December 31, 2023. All payments shall be applied first to accrued but unpaid interest on the unpaid Principal Balance and next to the Principal Balance.

1. This Note was issued by the Issuer for the purpose of providing purchase money financing for The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"), in connection with the acquisition of the Borrower's leasehold interest in, and rehabilitation of, an existing 56-unit multifamily rental housing facility located at [407 – 431] NW 1<sup>st</sup> Terrace, Deerfield Beach, Broward County, Florida (the "Project"). The Borrower is obligated to repay all amounts due under this Note pursuant to a Subordinate Loan Agreement of even date herewith (the "Loan Agreement").

2. This Note shall be repaid from Available Cash Flow, as hereafter defined (except for the payment on the Maturity Date under clause (c) which shall be made regardless of the availability of Available Cash Flow), in installments of principal of and interest as follows:

(a) on or before June 1 of each year beginning June 1, 2024 (each an "Interest Payment Date"), first, all or a portion of the Available Cash Flow up to one half (1/2) of the amount equal to any and all accrued but unpaid interest due on the Note through and including December 31 of the prior calendar year (including any and all accrued but unpaid interest due on all previously accrued but unpaid interest), such amount to be applied to the payment of all such accrued but unpaid interest;

(b) on each Interest Payment Date, second, an amount equal to the balance of the Available Cash Flow after making the payment required by (a) above, such balance to be applied to the prepayment of principal of this Note on such Interest Payment Date; and

(c) on December 1, 20\_\_ or upon an earlier acceleration of the payment, in full, of the then-outstanding Principal Balance of this Note plus the accrued but unpaid interest thereon pursuant to the terms of this Note, the Subordinate Loan Agreement, or any other document relating to the loan that this Note represents (the "Maturity Date"), the amount that is necessary to pay the then-outstanding Principal Balance of this Note plus any and all accrued but unpaid interest thereon on such date (including any and all accrued but unpaid interest due on all previously accrued but unpaid interest).

To the extent Available Cash Flow is not sufficient to pay all interest owing under Section 2(a) above, the interest not paid shall compound on the Interest Payment Date. All payments due hereunder shall be made solely from Available Cash Flow (except for the payment due on the Maturity Date) for the calendar year that precedes the applicable Interest Payment Date (e.g., the payment of Available Cash Flow to be made on June 1, 2024 will be based on Available Cash Flow, if any, for 2023). Except for the payment due on the Maturity Date, the obligation to make payments is subject to the availability of Available Cash Flow, and it shall not be an event of default under this Note or the Subordinate Loan Agreement to the extent that failure to make a payment is due to lack of Available Cash Flow. Subject to the preceding sentence, in the event the Issuer shall fail to make any payment as required by this Note, the payment not made shall continue as an obligation until the amount not paid shall have been fully paid, and the Issuer agrees to pay the same with interest thereon at the rate that is set forth in the following sentence for the period from and including the date that the payment was due to but excluding the date that the Lender receives the payment. To the extent permitted by law, interest on any overdue payment required hereby shall be paid at the rate of interest per annum equal to the sum of (i) the rate of interest per annum then-payable on this Note plus (ii) four percentage points (4.0% points).

This Note shall also be payable from Sale or Refinancing Transaction Proceeds, if any.

3. For purposes of this Note, "Available Cash Flow" shall be as defined in the Subordinate Loan Agreement.

4. After the date of a Determination of Taxability (the "Taxable Date"), as defined in the Subordinate Loan Agreement, the Principal Balance of this Note, and all accrued but unpaid interest compounded as of or before the preceding June 1, will bear interest from the Taxable Date at a fixed rate equal to the greater of (i) 5.0% per annum, compounded annually, and (ii) the highest 3-month rate (within the meaning of Section 1274(d)(2) of the Internal Revenue Code of 1986, as amended) of the long-term, unadjusted (i.e., taxable) Applicable Federal Rate for purposes of

Section 1274 of the Internal Revenue Code of 1986, as amended, compounded annually, with respect to the calendar month in which the Taxable Date occurs provided, however, in no event shall principal due under this Note bear interest at a rate less than the rate set forth in the opening paragraph of this Note. Accrued but unpaid interest shall continue to compound as of December 31 of each calendar year after the Taxable Date.

5. Principal and interest shall be paid to the registered owner hereof in lawful money of the United States as provided in the Subordinate Loan Agreement, at its registered address.

6. This Note is a special limited obligation of the Issuer issued pursuant to the Act and pursuant to the Authorizing Resolution of the Issuer adopted on October 18, 2023. This Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer (except for the interests of the Issuer in the Subordinate Loan Agreement, which, with certain exceptions, are assigned to the Lender; no owner of this Note shall ever have the right to compel the exercise of the taxing power of the State of Florida or any political subdivision or other public body of the State of Florida to pay this Note or the interest hereon, nor to enforce payment hereof against any property of the Issuer (except for the interests of the Issuer in the Subordinate Loan Agreement assigned to the Lender); and this Note does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation. The Issuer has no taxing power.

7. This Note is payable solely from the Loan Repayments (as defined in the Subordinate Loan Agreement) payable by the Borrower under the Subordinate Loan Agreement, pursuant to which the Borrower has agreed to make payments sufficient to provide for the payment of the Principal Balance hereof and all interest thereon, which payments are pledged to the payment hereof.

8. Pursuant to an Assignment of Subordinate Mortgage and Subordinate Loan Documents, of even date herewith (the "Assignment"), the Issuer has assigned its interests in the Subordinate Loan Agreement (except its rights to indemnity, limitation of liability, payment of the Issuer Fee and repayment of expenses and advances under Sections 5.02, 7.01, 8.04, 9.09 and 9.11 thereof) to the Lender. This Note is secured by the Subordinate Loan Agreement, the Assignment and the Subordinate Mortgage described in the Subordinate Loan Agreement. Reference is hereby made to such documents and resolution for a description and limitation of the revenues and funds pledged and appropriated to the payment of this Note, the nature and extent of the security thereby created, the rights of the registered owner of this Note, and the rights, immunities and obligations of the Issuer hereunder and thereunder.

9. This Note may be prepaid, in whole or in part, at any time, without premium. Any partial prepayment shall be applied first to any and all accrued but unpaid interest and then to the then-outstanding Principal Balance.

10. Notice of any such prepayment shall be given by the Borrower to the registered owner of this Note by first class mail, addressed to it at its registered address, as set forth in the registration records maintained by the Issuer, not less than thirty (30) days prior to the date fixed for prepayment. At the date fixed for prepayment, funds shall be paid, upon the presentation and surrender hereof, to the registered owner hereof, sufficient to pay this Note, or the principal amount hereof to be prepaid and all accrued but unpaid interest hereon. Upon the happening of the above

conditions, the principal portion of this Note thus called and prepaid shall not bear interest after the date specified for prepayment.

11. Subject to the legend on the face of this Note and the transfer restrictions set forth in the Subordinate Loan Agreement, this Note is transferable pursuant to entries duly made in the registration records maintained by the Issuer, by the registered owner hereof in person or by his duly authorized attorney.

12. In case an Event of Default, as defined in the Subordinate Loan Agreement, occurs and is continuing after the expiration of any cure period, this Note and the Loan Repayments thereafter to become due under the Subordinate Loan Agreement may become immediately due and payable, in the manner and with the effect and subject to the conditions provided in the Subordinate Loan Agreement. The registered owner of this Note shall have the right to enforce the provisions of the Authorizing Resolution, the Subordinate Loan Agreement, the Assignment, and the Subordinate Mortgage, but only following the surrender of this Note to the Issuer for cancellation as paid in full.

13. The right of the holder of this Note to payment of any of the indebtedness evidenced hereby is and will at all times be subordinate to the right of the Issuer, its successors and assigns, under the Senior Bonds, as defined in the Subordinate Loan Agreement, to payment in full of the indebtedness evidenced by the Senior Bonds.

14. To the extent allowed by law, the Issuer hereby waives presentment, demand for payment, and notice of dishonor. The terms and provisions of the Authorizing Resolution, the Subordinate Loan Agreement, the Assignment, and the Subordinate Mortgage, or of any instrument supplemental to any of them, may be modified or altered pursuant to the terms of the Subordinate Loan Agreement.

15. It is hereby certified and recited and the Issuer has found that the financing of the Project constitutes a "housing development" as defined in the Act; that the issuance of this Note and the Project promote the public welfare and carry out the purposes of the Act; and that all acts, conditions and things required to be done precedent to and in the issuance of this Note have been properly done, have happened and have been performed in regular and due time, form and manner as required by law.

16. The Borrower's obligations with respect hereto are subject to the nonrecourse provisions of Section 9.10 of the Subordinate Loan Agreement.

IN WITNESS WHEREOF, the Housing Finance Authority of Broward County, Florida, has caused this Note to be signed in its behalf by the manual signatures of its duly authorized officers as of the date and year first listed above

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA,** as  
Governmental Lender

Attest:

By: \_\_\_\_\_  
Scott Ehrlich, Chair

\_\_\_\_\_  
Milette Manos, Secretary

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

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(Please Print or Typewrite Name and Address of Transferee)

the Housing Finance Authority of Broward County, Florida Subordinate Multifamily Mortgage Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) and does hereby irrevocably constitute and appoint \_\_\_\_\_ to transfer the Note on the books kept for registration thereof with full power of substitution in the premises.

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

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Registered Owner

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NOTICE: The Signature(s) to this assignment must correspond with the name as it appears upon the face of the Note in every particular, without alteration or enlargement or any change whatsoever.

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid Principal Balance of this Note and the interest accruing thereon is registered on the books of the Housing Finance Authority of Broward County, Florida in the name of the holder last noted below.

<u>Date of Registration</u>	<u>Name and Address of Registered Owner</u>	<u>Signature of Administrator</u>
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## **EXHIBIT B**

### **Form of Lender Investor Certificate**

This is to certify to the Housing Finance Authority of Broward County, Florida (the "Issuer") and to Raymond James & Associates, Inc. and RBC Capital Markets, LLC (collectively, the "Placement Agent"), that The Palms of Deerfield Beach, LP, a Florida limited partnership (the "Lender") has made a loan (the "Loan") to the Issuer for the benefit of The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"). The Loan is evidenced by the Issuer's Subordinate Multifamily Mortgage Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) dated November \_\_, 2023 (the "Note"). The Lender acknowledges that the Note is being issued to evidence a private direct loan and not as part of publicly offered sale, and that the Issuer will not make a filing with the Municipal Securities Rulemaking Board's Electronic Municipal Market Access repository. Any capitalized terms not otherwise defined herein shall have the meaning set forth in the Subordinate Loan Agreement, dated as of November 1, 2023 between the Issuer and the Borrower (the "Subordinate Loan Agreement").

We are aware that investment in the Loan involves various risks, that the Note is not a general obligation of the Issuer and that the repayment of the Loan is secured solely from the funds received from the Borrower from sources described in the Subordinate Loan Agreement and the Note (the "Loan Security").

We acknowledge that we have either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable lender would attach significance in making lending decisions, and which information the Lender considers necessary to make an informed decision to make the Loan, and the Lender has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Project, the Borrower, the use of proceeds of the Loan and the Loan Security so that, as a reasonable investor, the Lender has been able to make its decision to make the Loan. The Lender acknowledges that it has made the decision to make the Loan based on its own independent investigation regarding the Loan, the Borrower and the Project and has not relied upon either of the addressees to which this Certificate is made for any information in connection with the Lender's making of the Loan. In addition, the Lender has not relied upon the use of any offering memorandum, placement memorandum or any other similar document with regards to its decision to make the Loan. The Lender is making its decision to make the Loan directly through its credit review and due diligence concerning the Project and the Borrower.

We have sufficient knowledge and experience in financial and business matters (i) in general, and tax-exempt obligations in particular, and (ii) with respect to the evaluation of residential real estate developments such as the Project, and are capable of evaluating the merits and risks of the Loan and the issuance of the Note. We are able to bear the economic risks of the Loan, including a total loss in connection with the repayment of the Loan and the Note.

The Lender has conducted its own investigation, to the extent it deems satisfactory or sufficient, into matters relating to business affairs or conditions (either financial or otherwise) of the Borrower in connection with the Loan and no inference should be drawn that the Lender, in the acceptance of said Note, is relying on the Issuer or any other party as to any such matters.

We acknowledge that we are making the Loan solely for our own account and not with a view to resell. We understand that the Loan is evidenced by the Note and the Note is issued in a single denomination equal to the aggregate principal amount of the Loan. The Note may only be sold to a Permitted Lender in whole but not in part. "Permitted Lender" means an "accredited investor" or "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933 or Rule 501 of Regulation D promulgated under the Securities Act of 1933, as applicable.

We are not acting as a broker or other intermediary and are funding the Loan with our own capital and for our own account and not with a present view to a resale or other distribution to the public.

This Certificate is furnished by us as Lender based solely on our knowledge on the day hereof and is solely for the benefit of the Issuer and the Placement Agent and may not be relied upon by, or published or communicated to, any other person without our express written consent. We disclaim any obligation to supplement this letter to reflect any facts or circumstances that may hereafter come to our attention.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**THE PALMS OF DEERFIELD  
TOWNHOMES, LLC**, a Florida limited  
liability company

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

[Signature Page to Lender Investor Certificate]

## EXHIBIT C

### FORM OF BORROWER'S SUBORDINATE PROMISSORY NOTE

#### BORROWER SUBORDINATE PROMISSORY NOTE

[\$5,000,000]

November \_\_, 2023

The Palms of Deerfield Townhomes, LLC, a Florida limited liability company (the "Borrower"), for value received, promises to pay to the order of the Housing Finance Authority of Broward County, Florida (the "Issuer") and its assigns, the principal sum of [FIVE MILLION AND NO/100 DOLLARS (\$[5,000,000.00]), and to pay interest on the unpaid balance of such principal sum from and after the date hereof at a rate equal to the rate payable on the Issuer's Subordinate Multifamily Mortgage Revenue Note, Series 2023 (The Palms of Deerfield Townhomes) (the "Issuer Subordinate Note"), as adjusted, as applicable, which interest shall be calculated on the basis, at the times and in the manner set forth in the Issuer Subordinate Note. The principal amount stated above shall be paid in lawful currency of the United States and in immediately available funds at such times and in such amounts as principal on the Issuer Subordinate Note is payable, on or before December 1, 20\_\_ (the "Maturity Date"). Interest hereon shall be paid in lawful currency of the United States and in immediately available funds.

This Note has been executed and delivered by the Borrower to the Issuer pursuant to the Subordinate Loan Agreement, dated as of November 1, 2023, between the Issuer and the Borrower (the "Subordinate Loan Agreement"), pursuant to which the Issuer has made a loan in the principal amount of this Note to the Borrower (the "Subordinate Loan"), which Subordinate Loan Agreement and Note have been assigned to The Palms of Deerfield Beach, LP, as the initial holder of the Issuer Subordinate Note pursuant to that certain Assignment of Subordinate Mortgage and Subordinate Loan Documents dated as of November 1, 2023. This Note is entitled to the benefits of the Subordinate Loan Agreement and is subject to the terms, conditions and provisions thereof. The Subordinate Loan was funded with proceeds from the Issuer Subordinate Note. Terms used but not defined herein shall have the meanings ascribed to such terms in the Subordinate Loan Agreement.

Under the Subordinate Loan Agreement, the Borrower has agreed to repay the Subordinate Loan by making payments ("Loan Payments") at the times and in the amounts set forth in this Note and in the Subordinate Loan Agreement for application to the payment of principal of and interest on the Issuer Subordinate Note as and when due.

To provide funds to pay the principal of and interest on the Issuer Subordinate Note as and when due as specified therein, the Borrower hereby agrees to and shall make Loan Payments in lawful currency of the United States and in immediately available funds at the times and in an amount equal to the principal of and interest on the Issuer Subordinate Note, when due, by acceleration or otherwise, as adjusted in accordance therewith.

---

THIS NOTE AND THE MORTGAGE SECURING THIS NOTE ARISE OUT OF OR ARE GIVEN TO SECURE  
THE REPAYMENT OF A LOAN ISSUED IN CONNECTION WITH THE FINANCING OF HOUSING  
AND ARE EXEMPT FROM DOCUMENTARY STAMP TAX AND INTANGIBLE TAX  
PURSUANT TO SECTION 159.621, FLORIDA STATUTES.

---

If payment or provision for payment in accordance with the Subordinate Loan Agreement is made in respect of the principal of and interest on this Note from moneys other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of the Issuer Subordinate Note has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts paid to the holder of the Issuer Subordinate Note for the payment of the principal of and interest on the Issuer Subordinate Note or any other amounts written down or forgiven by the holder of the Issuer Subordinate Note, it being the intent hereof that the outstanding balance of the Issuer Subordinate Note shall equal the outstanding balance of this Note. All Loan Payments constituting principal hereof and interest hereon shall be made directly to the holder of the Issuer Subordinate Note, as assignee of the Issuer in accordance with the Subordinate Loan Agreement.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer or any other person.

This Note is subject to prepayment by the Borrower on the same terms as the Issuer Subordinate Note, as stated therein and in the Subordinate Loan Agreement.

Whenever an Event of Default under the Subordinate Loan Agreement shall have occurred and, as a result thereof, the principal of and any premium on this Note and the Issuer Subordinate Note then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 8.02 of the Subordinate Loan Agreement, the unpaid principal amount of and any premium and accrued interest on this Note shall also be due and payable in lawful currency of the United States and in immediately available funds on the date on which the principal of and premium and interest thereon shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Issuer Subordinate Note shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse obligations of the Borrower. No member, partner, officer, director or employee of the Borrower shall have any personal liability for the repayment of the Subordinate Loan. Except as provided in the immediate preceding sentence, the Issuer's sole recourse shall be to realize against the collateral described in the Subordinate Loan Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered on its behalf on the date first written above.

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC**, a Florida limited liability company

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company,  
its Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

[Signature page to Borrower Subordinate Promissory Note – The Palms of Deerfield  
Townhomes]

**EXHIBIT "I"**

**FORM OF**

**SUBORDINATE ASSIGNMENT**

**[ATTACHED]**

PREPARED BY AND  
WHEN RECORDED MAIL TO:

Junious D. Brown III, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308

**ASSIGNMENT OF SUBORDINATE MORTGAGE  
AND SUBORDINATE LOAN DOCUMENTS**

KNOW ALL PERSONS BY THESE PRESENTS:

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 (“**Assignor**”), pursuant to that certain Subordinate Loan Agreement dated as of November 1, 2023 (the “**Subordinate Loan Agreement**”), between Assignor and **THE PALMS OF DEERFIELD TOWNHOMES, LLC**, a Florida limited liability company (“**Borrower**”), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents assign, without recourse, to **THE PALMS OF DEERFIELD BEACH, LP**, a Florida limited partnership, as Assignee (“**Assignee**”) all of Assignor's right, title and interest in and to, subject to the Unassigned Rights of the Issuer (as defined in the Subordinate Loan Agreement), the instruments described on Schedule 1 attached hereto (“**Assigned Instruments**”).

TOGETHER with the Note described in the Assigned Instruments, and the money due and to become due thereon, with the interest thereon, TO HAVE AND TO HOLD the same unto the said Assignee forever, subject only to all the provisions contained therein, AND the said Assignor hereby constitutes and appoints the Assignee as the Assignor's true and lawful attorney, irrevocable in law or in equity, in the Assignor's name, place and stead, but at Assignee's cost and expense, to have, use and take all lawful ways and means for the recovery of all of the said money and interest; and in case of payment, to discharge the same as fully as the Assignor might or could if these presents were not made.

**Overriding Limitations.** In no event shall Assignor:

(i) prosecute its action to a lien on the Project, as defined in the Subordinate Loan Agreement; or

(ii) take any action which may have the effect, directly or indirectly, of impairing the ability of Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or



(iii) interfere with the exercise by Assignee of any of its rights under the Borrower Loan Documents upon the occurrence of an event of default by Borrower under the Borrower Loan Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan.

**Definitions.** All capitalized terms that are used and are not defined herein shall have the respective meanings ascribed to them in the Subordinate Loan Agreement. In all references herein to any parties, persons, entities or corporations the use of any particular gender on the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

Dated as of the 1<sup>st</sup> day of November, 2023 (the foregoing date is for reference purposes only and this Assignment shall not be effective until the date of issuance and delivery of the Note).

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Assignment of Subordinate Mortgage and Subordinate Loan Documents or caused this Assignment of Subordinate Mortgage and Subordinate Loan Documents to be duly executed and delivered by its authorized representative as of the date first set forth above.

**ASSIGNOR:**

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

By: \_\_\_\_\_  
Scott Ehrlich, Chair

**ACKNOWLEDGEMENT**

STATE OF FLORIDA        )  
  ) SS:  
COUNTY OF BROWARD    )

I hereby certify that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared SCOTT EHRLICH, personally known to me or producing \_\_\_\_\_ as identification, who executed the foregoing instrument as Chair of the Housing Finance Authority of Broward County, Florida.

Witness my hand and official seal in the County and State, last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2023.

[SEAL]

\_\_\_\_\_  
NOTARY PUBLIC; STATE OF FLORIDA  
Printed Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**SCHEDULE 1  
TO  
ASSIGNMENT OF SUBORDINATE MORTGAGE AND  
SUBORDINATE LOAN DOCUMENTS**

**ASSIGNEE:**

The Palms of Deerfield Beach, LP

**ASSIGNED INSTRUMENTS:**

1. The Borrower Subordinate Promissory Note, dated as of November \_\_\_, 2023, from The Palms of Deerfield Townhomes, LLC (the "Borrower") to Housing Finance Authority of Broward County, Florida (the "Authority").
2. The Subordinate Multifamily Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents, dated as of the date hereof, executed by Borrower for the benefit of the Authority securing the principal amount of up to \$[5,000,000], which is being recorded immediately prior hereto in the Clerk's Office of Broward County, Florida, and encumbers the real property (and improvements thereon) that is more particularly described on **Exhibit A** thereto.
3. The Subordinate Loan Agreement, dated as of the date hereof, between the Authority and the Borrower.

**EXHIBIT A**

**LEGAL DESCRIPTION**

**EXHIBIT "J"**

**FORM OF**

**PLACEMENT AGENT AGREEMENT**

**[ATTACHED]**

## **PLACEMENT AGENT AGREEMENT**

**THIS PLACEMENT AGENT AGREEMENT** dated as of November 1, 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 THE PALMS OF DEERFIELD TOWNHOMES, LLC, a Florida limited liability company (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 Subordinate Multifamily Housing Revenue Note, Series 2023 (The Palms of Deerfield Townhomes), in the principal amount of \$[5,000,000] (the “Note”) to provide financing to the Borrower for the acquisition, rehabilitation and equipping of a 56-unit multifamily residential rental development in Broward County, Florida (the “County”) known as The Palms of Deerfield Townhomes (the “Development”).

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 Lender on the financial feasibility of the Development.
2. Prepared or disseminated any offering materials.
3. Investigated or determined the credit worthiness or accreditation of the Lender. In that regard the Issuer will receive an accredited investor letter.
4. Provided any advice regarding obtaining a rating or credit enhancement for the transaction.
5. Taken any action in connection with the issuance of the Note to effect a financial transaction as contemplated by the USA Patriot Act.

It should be noted that the Issuer has retained the services of a registered financial advisor in connection with the issuance of the Note. The Agents are not acting as a financial advisor for the Issuer or Borrower for purposes of Rule G-23 of the Municipal Securities Rulemaking Board, nor acting as a municipal advisor to either the Issuer or the Borrower. Neither of the Agents shall be responsible or liable for any negligence or willful misconduct of the other Agent.

**D. Fees for Agents' Services.**

Simultaneously with the closing of the Note, the Borrower will pay the Agents for the Agents' Services rendered a fee equal to \$[35,000], plus reasonable, documented out-of-pocket expenses.

**E. Future Services of Agents.**

In the event the Borrower and the Issuer determine that there will be Future Services relating to the Note, the Agents will act, on behalf of the Issuer, as placement agent, remarketing agent or underwriter, as the structure so dictates. The fees and expenses associated with any future engagement will be (i) determined at such time that the details of such engagement and scope of service are identified, and (ii) subject to the approval of the Borrower, which approval shall not be unreasonably withheld, conditioned or delayed.

To the extent the Agents are (i) unable to perform any of the Future Services, or (ii) no longer on the Issuer's underwriting team, the Issuer may, in its sole discretion, and upon written notice to the Borrower and the Agents, assign Future Services to an entity on its then-current underwriting team.

**F. Governing Law; Multiple Counterparts.**

This Agreement shall be governed by Florida Law and may be signed in multiple counterparts.

**G. Amendments; Modifications.**

This Agreement may not be amended or modified except by written agreement signed by all parties hereto.

[SIGNATURE PAGE TO FOLLOW]



**SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT**

**(The Palms of Deerfield Townhomes)**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

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

By: \_\_\_\_\_  
Scott Ehrlich, Vice Chair

**RAYMOND JAMES & ASSOCIATES, INC.**

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

**RBC CAPITAL MARKETS, LLC**

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

**THE PALMS OF DEERFIELD TOWNHOMES,  
LLC, a Florida limited liability company**

By: SHAG Palms of Deerfield Townhomes,  
LLC, a Florida limited liability company, its  
Authorized Member

By: \_\_\_\_\_  
Darren Smith, Manager

# **ITEM 5**

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

**Multifamily Bonds/Notes - Action Item**

*MOTION TO ADOPT a Resolution providing authorization and/or approval: a) to issue the Housing Finance Authority’s Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) (the “Note”) in an aggregate amount not to exceed \$40,000,000, for the purpose of financing the acquisition, construction and equipping of Lauderhill Point Apartments located in Broward County, b) of the form, execution and delivery of the documents included as Exhibits A-G of the Resolution, c) to execute certain additional agreements in connection with the issuance of the Note, d) to waive the annual audit fee, e) take other actions required to issue and deliver the Note, and f) for the establishment of an effective date.*

**Background**

1. On May 11, 2023, the HFA received a multifamily bond application from Fairstead Aff. Development regarding Lauderhill Point Apartments to be owned by Lauderhill Preservation LP, a Florida Limited Partnership (the “Owner”), pertaining to a 176-unit rehabilitation development, known as Lauderhill Point Apartments (the “Development”). The application requested that the HFA issue bonds to support the Development in the amount of \$37,500,000.
2. The Development is located at 3146 NW 19<sup>th</sup> St. Lauderhill, FL.
3. On June 13, 2023, the HFA received a revised application, requesting that the maximum bond amount be increased to \$40,000,000.
4. At its June 21, 2023, meeting the Board adopted Resolution No. 2023-006 (the “Inducement Resolution”) declaring its official intent to issue bonds in an amount not to exceed \$40,000,000 (the “Bonds”), (ii) authorizing the issuance of the Bonds in an amount not to exceed \$40,000,000, 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. 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 Credit Underwriting Report (“CUR”) will be included as an Informational Item within the HFA’s November 15, 2023, agenda.
3. 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 Note, Series 2023 (Lauderhill Point Apartments) (the "Note") in an aggregate amount not to exceed \$40,000,000, for the purpose of financing the acquisition, construction and equipping of Lauderhill Point Apartments located in Broward County,
- b) of the form, execution and delivery of the documents included as Exhibits A-G hereto,
- c) to execute certain additional agreements in connection with the issuance of the Note, 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 Note, and
- f) for the establishment of an effective date.

## **EXHIBITS**

1. HFA Resolution including form of:
  - A. Funding Loan Agreement
  - B. Project Loan Agreement
  - C. Land Use Restriction Agreement
  - D. Placement Agent Agreement
  - E. Project Note
  - F. Security Instrument
  - G. Fiscal Agent Fee Agreement
  - H. Term Sheet

# **ATTACHMENT 1**

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 NOTE, SERIES 2023 (LAUDERHILL POINT APARTMENTS) IN A PRINCIPAL AMOUNT OF NOT TO EXCEED \$40,000,000 (THE "NOTE") FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A MULTIFAMILY HOUSING PROJECT KNOWN AS LAUDERHILL POINT APARTMENTS LOCATED IN BROWARD COUNTY, FLORIDA; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LAND USE RESTRICTION AGREEMENT BY AND AMONG THE HFA, THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS FISCAL AGENT AND LAUDERHILL PRESERVATION LP, AS BORROWER; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FUNDING LOAN AGREEMENT AMONG THE HFA, BERKADIA COMMERCIAL MORTGAGE, LLC AND THE FISCAL AGENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT LOAN AGREEMENT AMONG THE HFA, THE BORROWER AND THE FISCAL AGENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PLACEMENT AGENT AGREEMENT FOR THE NOTE BY AND AMONG THE HFA, RBC CAPITAL MARKETS, LLC AND RAYMOND JAMES & ASSOCIATES, INC.; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FISCAL AGENT FEE AGREEMENT BY AND BETWEEN THE HFA AND THE FISCAL AGENT; APPROVING AND AUTHORIZING THE EXECUTION OF THE ASSIGNMENT TO THE PROJECT NOTE; APPROVING AND**

**AUTHORIZING THE EXECUTION OF THE ASSIGNMENT OF SECURITY INSTRUMENT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN ADDITIONAL AGREEMENTS NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE OF THE NOTE; 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 NOTE; 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 Note, Series 2023 (the "Note") in a principal amount of not to exceed \$40,000,000 for the purpose of financing the acquisition, rehabilitation, construction and equipping of a multi-family residential housing development in Lauderhill, Broward County, Florida (the "County") known as Lauderhill Point Apartments (the "Project"); and

**WHEREAS**, Lauderhill Preservation LP, a Florida limited partnership (the "Borrower"), has requested the HFA to issue its Note to provide funds to make a loan to the Borrower (the "Loan") to finance the acquisition, construction and equipping of the Project; and

**WHEREAS**, the HFA shall enter into a Funding Loan Agreement (the "Funding Loan Agreement"), Berkadia Commercial Mortgage, LLC (the "Funding Lender"), the HFA and The Bank of

New York Mellon Trust Company, N.A. (the "Fiscal Agent") for the purpose of setting forth the terms, conditions and covenants that are necessary to secure the Note and protect the rights of the holders of the Note and to evidence the terms and conditions of the funding loan from the Funding Lender to the HFA, in substantially the form attached hereto as Exhibit "A"; and

**WHEREAS**, the HFA shall enter into a Project Loan Agreement (the "Project Loan Agreement"), among the HFA, the Borrower and the Fiscal Agent 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 Fiscal Agent in substantially the form attached hereto as Exhibit "C"; 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 "D"; and

**WHEREAS**, the HFA shall execute the Assignment to the Project Note, in substantially the form attached hereto as Exhibit "E"; and

**WHEREAS**, the HFA shall execute the Assignment of Security Instrument, in substantially the form attached hereto as Exhibit "F"; and

**WHEREAS**, the HFA shall execute the Fiscal Agent Fee Agreement, 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 Note 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 Funding Loan Agreement. 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 Note; 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 Funding Lender, or its affiliates, it is in the best interest of the HFA to negotiate the sale of the Note. The disclosure required in Section 218.385, Florida Statutes, as amended, shall be provided to the HFA prior to the sale of the Note; and

**WHEREAS**, a notice of public hearing inviting written and oral comments and discussions concerning the issuance of the Note was published in the Sun-Sentinel, a newspaper of general circulation on October 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 Note in a face amount of not to exceed \$40,000,000 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 102,614,0908.20, 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 Note be approved by the Board.

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

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

**Section 1. Adoption of Representations.** The foregoing WHEREAS paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

**Section 2. Authorization of the Note.** The 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 Note to be designated “Housing Finance Authority of Broward County, Florida Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments)” in a principal amount of not to exceed \$40,000,000 or such other series or name designation as may be determined by the HFA.

**Section 3. Details of the Note.** The Note shall be issued under and secured by the Funding Loan Agreement, by which reference is hereby incorporated into this Resolution as if set forth in full herein. The proceeds of the Note, together with any commitment fees, shall be applied as provided in the Funding Loan Agreement, the Note shall mature in the years and in the amounts, bear interest at such rates, be subject to redemption and shall have such other characteristics as shall be provided in the Funding Loan Agreement.

**Section 4. Execution of Note.** 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 Note. The Note shall be in substantially the form set forth in the Funding Loan Agreement, with such changes, modifications and deletions as the officers executing the Note, with the advice of Bryant Miller Olive P.A. ("Bond Counsel") and the County Attorney, may deem necessary and appropriate and as are not inconsistent with the Funding Loan Agreement and this Resolution. The execution and delivery of the Note by the aforementioned persons shall be conclusive evidence of the HFA's approval and authorization thereof.

**Section 5. Authentication and Delivery of Note.** Upon execution of the Note in the form and manner set forth in the Funding Loan Agreement, the HFA shall deliver the Note to the Fiscal Agent for authentication, and the Fiscal Agent is hereby authorized and directed to authenticate and deliver said Note to the Funding Lender, subject to the terms for delivery set forth in the Funding Loan Agreement.

**Section 6. Approval of Funding Loan Agreement.** The form and content of the Funding Loan Agreement by and among the HFA, the Funding Lender and the Fiscal Agent, 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 Funding 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 7. Approval of Project Loan Agreement.** The form and content of the Project Loan Agreement among the HFA, the Borrower and the Fiscal Agent, 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 Project 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 Fiscal Agent, 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. 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 "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 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 10. Assignment to Project Note.** The Borrower intends to execute and deliver a multifamily note in favor of the HFA (the "Project Note"). The HFA will assign its interest in the multifamily note to the Fiscal Agent. The execution of the Assignment to Project Note, 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 to Project 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 11. Execution of Assignment of Security Instrument.** The form and content of the Assignment of the Security Instrument made by the HFA in favor of the Fiscal Agent (the "Assignment"), attached hereto as Exhibit "F", 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 12. Appointment of Fiscal Agent, 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 Fiscal Agent, Registrar and Paying Agent under the Funding Loan Agreement; and the HFA approves the form and content of the Fiscal Agent Fee Agreement between the HFA and the Fiscal Agent and attached hereto as Exhibit "G". The Chair or Vice Chair of the HFA is hereby authorized to execute and deliver the Fiscal Agent 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 13. Sale of Note.** The Note is hereby sold and awarded to Berkadia Commercial Mortgage, LLC, or its affiliates as Construction Lender, at the price of par pursuant to its term sheet (the "Term Sheet"). The Term Sheet is attached hereto as Exhibit "H". The Chair or Vice Chair and the Secretary are authorized to make any and all changes to the form of the Note which shall be necessary to conform the same to the Term Sheet.

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

**Section 15. 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 Note annually. The HFA waives such audit fee in connection with the Project.

**Section 16. Further Actions and Ratifications of Prior Actions.** The officers, agents and employees of the HFA and the officers, agents and employees of the Fiscal Agent are hereby authorized and directed to do all acts and things required of them by the provisions of the Note, the Funding Loan Agreement, the Project Loan Agreement, the Land Use Restriction Agreement, the Project 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 17. Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Funding Loan Agreement.

**Section 18. 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 Note, Series 2023 (Lauderhill Point Apartments) of the Housing Finance Authority.

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

WITNESS my hand and the corporate seal of said Housing Finance Authority, this \_\_\_\_\_ day of October, 2023.

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

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

(SEAL)

**EXHIBIT "A"**

**FORM OF FUNDING LOAN AGREEMENT**

**FUNDING LOAN AGREEMENT**

**among**

**BERKADIA COMMERCIAL MORTGAGE LLC  
as Initial Funding Lender**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
as Governmental Lender**

**and**

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

**Dated as of \_\_\_\_\_, 2023**

**Relating to**

**MULTIFAMILY HOUSING MORTGAGE REVENUE NOTE, SERIES 2023  
(LAUDERHILL POINT APARTMENTS)**

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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this “**Funding Loan Agreement**”), is made and entered into as of \_\_\_\_\_, 20\_\_ by and among **BERKADIA COMMERCIAL MORTGAGE LLC**, in its capacity as Initial Funding Lender (the “**Initial Funding Lender**”), the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FL** (the “**Governmental Lender**”), a public body corporate and politic existing under the laws of the State of Florida (the “**State**”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, as Fiscal Agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

A. Pursuant to the Housing Finance Authority of Broward County, Florida 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**”), Ordinance 79-41 enacted by the Board of County Commissioners of Broward County, Florida on June 20, 1979, as amended, and the Project Loan Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Project Loan Agreement**”), by and among the Governmental Lender, the Fiscal Agent and Lauderhill Preservation LP, a Florida limited partnership duly organized and existing under the laws of the State of Florida (the “**Borrower**”), the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_ (the “**Project Loan**”) to provide for the financing of the acquisition and rehabilitation of a multifamily rental housing development located at 3146 NW 19th Street in Lauderhill, Florida 33311 and known as Lauderhill Point Apartments. The Land, Improvements, and Fixtures (each as defined in the Security Instrument) are collectively referred to herein as the “**Project**”.

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan being made to the Governmental Lender pursuant to this Funding Loan Agreement in the original principal amount of \$\_\_\_\_\_ (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan is being originated and funded by the Initial Funding Lender hereunder and is evidenced by the Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments), dated \_\_\_\_\_, 2023 (the “**Delivery Date**”), executed by Governmental Lender and authenticated by Fiscal Agent in favor of Initial Funding Lender, in the form attached hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all addenda thereto, the “**Governmental Note**”).

C. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with the Initial Funding Lender dated \_\_\_\_\_, 2023 (as the same may be amended, modified or supplemented from time to time, the “**Freddie Mac Commitment**”) whereby Freddie Mac has



agreed to purchase the Funding Loan upon the date of satisfaction of the conditions set forth therein (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, this Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents (as such terms are herein defined) to Freddie Mac.

D. The Borrower has agreed to use the proceeds of the Project Loan to finance a portion of the acquisition and rehabilitation of the Project.

E. The Borrower’s payment obligations in respect of the Project Loan will be evidenced by a Project Note dated the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto, the “**Project Note**”) delivered to the Governmental Lender, which Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a **Multifamily Mortgage, Assignment of Rents and Security Agreement (Florida)** dated as of the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Security Instrument**”) granting a first priority mortgage and security interest in the Project in favor of Governmental Lender. Pursuant to the Assignment, the Security Instrument will be assigned by Governmental Lender to Fiscal Agent as security for the Funding Loan.

G. As a condition to making the Funding Loan, and the subsequent purchase of the Funding Loan by Freddie Mac on the Freddie Mac Purchase Date, the Borrower is entering into a Continuing Covenant Agreement dated as of the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Continuing Covenant Agreement**”) with the Initial Funding Lender, to set forth various other requirements with respect to the Loans and the Project, which will be assigned to Freddie Mac on the Freddie Mac Purchase Date.

H. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans. Berkadia Commercial Mortgage LLC will act as initial Loan Servicer for the Loans on behalf of the Funding Lender Representative.

I. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, Prepayment Premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this

Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

J. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loan by the Initial Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein (including when used in the Recitals) not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement and the Continuing Covenant Agreement.

*“Act”* is defined in the Recitals of this Funding Loan Agreement.

*“Additional Servicing Fee”* is defined in Section 2.09 hereof.

*“Administration Fund”* means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Assignment”* means the Assignment of Security Instrument dated as of the Delivery Date by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

*“Authorized Officer”* means (a) when used with respect to the Governmental Lender, the Chair or Vice Chair of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any General Partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Loan Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative,

any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

*"Bankruptcy Code"* means the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., as amended from time to time.

*"Bond Counsel"* means (a) on the Delivery Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer's Municipal Marketplace and is acceptable to the Funding Lender Representative.

*"Borrower"* means the entity identified as "Borrower" in the Recitals of this Funding Loan Agreement, together with any of its permitted successors and assigns, as owner of the Project.

*"Borrower Equity Account"* means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*"Borrower Equity Deposit"* means \$\_\_\_\_\_, which shall be comprised of sources other than the proceeds of the Project Loan.

*"Business Day"* means any day other than a Saturday, a Sunday, or any other day on which Fiscal Agent, Funding Lender or the national banking associations are not open for business.

*"Certificate of the Governmental Lender"* and *"Request of the Governmental Lender"* mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

*"County"* means the Broward County, Florida.

*"Closing Memorandum"* means the memorandum delivered to the Fiscal Agent, Governmental Lender, Borrower and the Initial Funding Lender setting forth the sources and uses of all moneys deposited with the Fiscal Agent and Title Company on the Delivery Date.

*"Code"* means the Internal Revenue Code of 1986, as amended and supplemented, and the regulations promulgated thereunder.

*"Continuing Covenant Agreement"* is defined in the Recitals of this Funding Loan Agreement.

*“Cost,” “Costs” or “Costs of the Project”* means costs paid with respect to the Project that:

(a) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1),

(b) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code,

(c) are paid after the earlier of (i) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (ii) the Delivery Date, and

(d) if previously paid and are to be reimbursed with proceeds of the Loans were:

(i) Costs of Issuance of the Governmental Note,

(ii) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or rehabilitation of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in Section 1.148-1 of the United States Treasury Regulations), or

(iii) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid);

provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), *“Cost,” “Costs” or “Costs of the Project”* shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, rehabilitation or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

*“Costs of Issuance Fund”* means the Costs of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Costs of Issuance”* means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent’s counsel, (d) the Loan Servicer and the Loan Servicer’s counsel, (e) the Funding Lender and the Funding Lender’s counsel (including both the Initial Funding Lender and Freddie Mac, as assignee thereof on the Freddie Mac Purchase Date), (f) Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any, and (g) Governmental Lender’s Servicer’s fees, and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loan, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

*“Costs of Issuance Deposit”* means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$\_\_\_\_\_ and shall be comprised of sources other than the proceeds of the Project Loan.

*“Cure Amount”* is defined in Section 6.02 hereof.

*“Default Rate”* means the lower of (i) the Interest Rate otherwise in effect notwithstanding the default plus four percent (4 %) per annum or (ii) the Maximum Interest Rate.

*“Delivery Date”* means the date identified as “Delivery Date” in the Recitals of this Funding Loan Agreement, which is the date of funding of the Funding Loan and the delivery of the Governmental Note by Governmental Lender to Initial Funding Lender.

*“Determination of Taxability”* means, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

*“Electronic Instruction and Notice”* means delivery of written instructions, directions and/or notice signed by an Authorized Officer in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 10.04 hereof (if any); provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 10.04 hereof.

*“Equity Investor”* means \_\_\_\_\_ a \_\_\_\_\_, and its permitted successors and assigns as the investor limited partner of the Borrower.

*“Escrow Agent”* means the Title Company or, if applicable, a separate escrow company selected by Borrower and acceptable to Initial Funding Lender that will handle the collection and disbursement of funds in connection with the closing of the Loans and, if applicable, the acquisition of the Project.

*“Event of Default”* means the occurrence of any event listed in Section 6.01 hereof.

*“Extraordinary Services”* means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

*“Fair Market Value”* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

*“Financing Documents”* means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents and all other documents or instruments evidencing, securing or relating to the Loans.

*“Fiscal Agent” means the entity identified as “Fiscal Agent” in the introductory paragraph of this Funding Loan Agreement, together with any successor Fiscal Agent(s) appointed hereunder.*

*“Fiscal Agent’s Extraordinary Fees and Expenses” means all those fees, expenses and reimbursements earned or incurred by Fiscal Agent as described in Section 7.05 hereof for Extraordinary Services, as set forth in a detailed invoice to Borrower, Loan Servicer and Funding Lender Representative.*

*“Fiscal Agent’s Ordinary Fees and Expenses” means the annual administration fee for Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$[\_\_\_\_\_] and shall be payable [semi-]annually [in arrears on][in advance on the Delivery Date and] each [\_\_\_\_\_] and [\_\_\_\_\_] [commencing \_\_\_\_\_][thereafter].*

*“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.*

*“Freddie Mac Commitment” is defined in the Recitals of this Funding Loan Agreement.*

*“Freddie Mac Purchase Date” is defined in the Recitals of this Funding Loan Agreement.*

*“Funding Lender” means any Person who is the holder of the Governmental Note.*

*“Funding Lender Representative” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.*

*“Funding Loan” is defined in the Recitals of this Funding Loan Agreement.*

*“Funding Loan Agreement” means this Funding Loan Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.*

*“Funding Loan Amortization Schedule” means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.*

*“Funding Loan Payment Date” means (a) the first day of each calendar month, commencing \_\_\_\_\_1, 2024, (b) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (c) the Maturity Date.*

*“Government Obligations” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.*

*“Governmental Fee”* means the (i) Governmental Lender’s one (1) time initial issuance fee in the amount equal to fifty basis points (0.50%) of the original principal amount of the Funding Loan, as evidenced by the Governmental Note, for a total of \$\_\_\_\_\_, (ii) Governmental Lender’s indemnification fee of \$\_\_\_\_\_, and (iii) Governmental Lender’s counsel fee of \$\_\_\_\_\_, all of which shall be payable by the Borrower to the Governmental Lender on the Delivery Date pursuant to Section 4.02 of the Project Loan Agreement from money contributed by or on behalf of the Borrower and deposited with the Fiscal Agent for payment to the Governmental Lender pursuant to the Closing Memorandum.

*“Governmental Lender”* means the entity identified as *“Governmental Lender”* in the introductory paragraph of this Funding Loan Agreement.

[*“Governmental Lender Fee”* means, collectively, the Governmental Fee and the Ongoing Governmental Lender Fee.]

*“Governmental Note”* is defined in the Recitals of this Funding Loan Agreement.

*“Guide”* means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

*“Initial Funding Lender”* means the entity identified as *“Initial Funding Lender”* in the introductory paragraph of this Funding Loan Agreement.

*“Interest Payment Date”* means (i) the first day of each calendar month, commencing \_\_\_\_\_ 1, 2024, (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

*“Interest Rate”* means the interest rate of \_\_\_\_\_% per annum; provided during the continuance of any Event of Default hereunder, the Interest Rate shall be the Default Rate.

*“Investment Income”* means the earnings and profits derived from the investment of money pursuant to Section 4.07 hereof.

*“Loan Payment Fund”* means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Loan Prepayment Fund”* means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Loan Servicer”* means any entity appointed by Funding Lender Representative to service the Loans and any successor in such capacity as appointed by Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. Initially, Loan Servicer shall be Berkadia Commercial Mortgage LLC.

*“Loans”* is defined in the Recitals of this Funding Loan Agreement.



*“Maturity Date”* means \_\_\_\_\_, 20\_\_\_, which is the same as the Scheduled Maturity Date as defined in the Project Note.

*“Maximum Interest Rate”* means the rate of interest which results in the maximum amount of interest allowed by applicable law.

*“Net Proceeds”* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

*“New Borrower”* is defined in Section 6.12 hereof.

*“New Project Loan”* is defined in Section 6.12 hereof.

*“Notes”* means, together, the Project Note and the Governmental Note.

*“Ongoing Governmental Lender Fee”* means the annual program administration fee of the Governmental Lender, payable in advance by the Borrower to the Fiscal Agent for payment to the Governmental Lender in the amount of eighteen basis points (0.18%) per annum of the outstanding principal amount of the Funding Loan (calculated on the Business Day prior to any principal reduction of the Funding Loan). The first payment of the Ongoing Governmental Lender Fee shall be payable on the Delivery Date for the period beginning on the Delivery Date and ending on \_\_\_\_\_, 2023. Thereafter, the Ongoing Governmental Lender Fee shall be payable in semi-annual installments on each May 1 and November 1, with the first semi-annual payment due and payable on \_\_\_\_\_ 1, 2024; provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, the Fiscal Agent, Bond Counsel, the Governmental Lender’s counsel, or the Fiscal Agent’s counsel to be paid by the Borrower pursuant to the Project Loan Agreement.

*“Paying Agent”* means the Person designated to make payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan, to the Funding Lender pursuant to Section 2.12 hereof. The initial Paying Agent shall be the Fiscal Agent.

*“Person”* means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

*“Pledged Security”* shall have the meaning given to that term in Section 2.02 hereof.

*“Prepayment Premium”* shall mean any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to the amount

payable by the Borrower under Section 4(d) of the Project Note in connection with a prepayment of the Project Loan.

*“Principal Office of the Fiscal Agent”* means the office of the Fiscal Agent referenced in Section 10.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

*“Project”* is defined in the Recitals of this Funding Loan Agreement.

*“Project Account”* means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*“Project Loan”* is defined in the Recitals of this Funding Loan Agreement.

*“Project Loan Agreement”* is defined in the Recitals of this Funding Loan Agreement.

*“Project Loan Documents”* means the Security Instrument, the Project Note, the Project Loan Agreement, the TEL Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s), and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

*“Project Loan Fund”* means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*“Project Note”* is defined in the Recitals of this Funding Loan Agreement.

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

*“Qualified Investments”* means any of the following if and to the extent permitted by law:

(a) direct and general obligations of the United States of America;

(b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America;

(c) senior debt obligations of Freddie Mac;

(d) senior debt obligations of Fannie Mae;

(e) demand deposits or time deposits with, or certificates of deposit issued by the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits

of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least "VMIG-1"/"A-1+" by one of the Rating Agencies which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency;

(f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by one of the Rating Agencies to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by one of the Rating Agencies, and which are approved by the Funding Lender Representative;

(g) shares or units in any money market mutual fund rated "Aaa"/"AAA" by one of the Rating Agencies (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax exempt obligations;

(h)(i) tax-exempt obligations rated in the highest short term rating category by one of the Rating Agencies, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by one of the Rating Agencies (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or

(i) any other investments approved in writing by the Funding Lender Representative.

For purposes of this definition, the "highest rating" shall mean a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments shall be determined only at the time of purchase of such Qualified Investments and without regard to ratings subcategories.

*“Qualified Transferee”* is defined in Section 2.08 hereof.

*“Rating Agencies”* means Fitch, Inc., Moody’s Investors Service, Inc., or S&P Global Ratings, a division of S&P Global Inc., or any successor entity of the foregoing, or any other nationally recognized statistical rating organization.

*“Rebatable Arbitrage”* is defined in Section 4.10 hereof.

*“Rebate Analyst”* means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

*“Rebate Fund”* means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Rebate Year”* means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

*“Rehabilitation”* is defined in the Continuing Covenant Agreement.

*“Requisition”* means, with respect to the Project Loan Fund, the requisition in the form of Exhibit E to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Costs of Issuance Fund, the requisition in the form of Exhibit D to this Funding Loan Agreement required to be submitted in connection with disbursements from the Costs of Issuance Fund.

*“Resolution”* means collectively, the resolutions adopted by the Governmental Lender authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

*“Responsible Officer”* means any officer of Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of Fiscal Agent and the trusts created hereunder.

*“Revenue Fund”* means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*“Revenues”* means (a) all payments made with respect to the Project Loan pursuant to the Project Loan Agreement, the Project Note or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Costs of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

*“Security Instrument”* is defined in the Recitals of this Funding Loan Agreement.

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

*“Servicing Fee”* is defined in the Project Loan Agreement.

*“Settlement Statement”* means the settlement statement prepared by the Escrow Agent and executed by Borrower setting forth the various funds to be collected and disbursed by the Escrow Agent on the Delivery Date.

*“Stub Payment Amount”* means an amount equal to the sum of (a) the interest payable on the Funding Loan and (b) the ongoing fees and expenses payable with respect to the Project Loan (as provided in Section 4.02 of the Project Loan Agreement), in each case for the period commencing on the Delivery Date to but not including the first day of the calendar month immediately succeeding the Delivery Date.

*“Subordination Agreement”* means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

*“Tax Certificate”* means collectively, the Certificate as to Arbitrage and Certain other Tax Matters executed by the Governmental Lender and the Arbitrage Rebate Agreement executed by the Governmental Lender, the Fiscal Agent and the Borrower on the Delivery Date.

*“TEL Regulatory Agreement”* means the Land Use Restriction Agreement dated as of \_\_\_\_\_, 2023 among the Governmental Lender, the Fiscal Agent and the Borrower.

*“Title Company”* means \_\_\_\_\_, the title company insuring the lien of the Security Instrument and issuing the lender's title insurance policy in favor of Governmental Lender and Fiscal Agent.

*“Transferee Representations Letter”* has the meaning set forth in Section 2.08 hereof.

*“Treasury Regulations”* is defined in Section 5.07 hereof.

*“Unassigned Rights”* means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

*“Uniform Commercial Code”* means the Uniform Commercial Code as promulgated in the applicable jurisdiction.

*“Window Period”* means the three (3) consecutive month period prior to the Maturity Date.

**Section 1.02 Interpretation.** The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### THE FUNDING LOAN

#### **Section 2.01 Terms.**

A. Subject to Section 2.10 hereof, the Funding Loan shall be originated and funded by Initial Funding Lender to the Governmental Lender on the Delivery Date in the original principal amount of \$\_\_\_\_\_. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

B. The Funding Loan shall bear interest payable on each Interest Payment Date at the Interest Rate and shall mature on the Maturity Date, subject to scheduled monthly principal payments as provided in Section 2.01(c) below and optional and mandatory prepayment prior to maturity as provided in Article III hereof. Interest on the

Funding Loan shall be computed on the basis of a 360-day year and the actual number of days elapsed.

C. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

D. Payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by such Funding Lender (unless otherwise directed by the Funding Lender).

E. Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

F. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the maximum rate permitted by such law.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “**Pledged Security**”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Note, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of

the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance proceeds or condemnation awards, payments, settlements or other compensation to be paid in connection therewith), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Costs of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 Limited Obligations.** The Governmental Note shall be a limited obligation of the Governmental Lender. The Governmental Note and the interest thereon and Prepayment Premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Governmental Lender, the City, 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 Governmental Note and the interest thereon are payable solely from and secured by the Pledged Security, all as described in and subject to limitations set forth in this Funding Loan



Agreement, for the equal and ratable benefit of the owner, from time to time, of the Governmental Note.

**Section 2.04 *Funding Loan Agreement Constitutes Contract.*** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 *Form and Execution.*** The Governmental Note shall be in substantially the form attached as Exhibit A. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Chair or Vice Chair and sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06 *Authentication.*** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.07 *Mutilated, Lost, Stolen or Destroyed Governmental Note.*** In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in Exhibit A in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 *Registration; Transfer of Funding Loan; Transferee Representations Letter.***

A. The Funding Loan shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be

transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loan and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Initial Funding Lender, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

B. The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan but in no event less than \$250,000; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “Qualified Transferee”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as Exhibit C setting forth certain representations with respect to such Qualified Transferee (the “Transferee Representations Letter”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan. Prior to any transfer of the Governmental Note the transferor shall provide or cause to be provided to the Fiscal Agent all information necessary to allow the Fiscal Agent to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended.

**Section 2.09 *Securitization; Allocation of Funding Loan Interest.*** In accordance with the provisions of Section 2.08 hereof, the Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event the Funding Lender Representative may direct the Fiscal Agent to make all future payments with respect to the Funding Loan to the appointed master servicer for that securitization (or an account designated by such master servicer), and the Fiscal Agent shall accept such direction from the Funding Lender Representative. In the event that the Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, the Funding

Lender Representative may also give notice to the Fiscal Agent that the Funding Lender has agreed to allow the Loan Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan (“Additional Servicing Fee”), which Additional Servicing Fee will equal no more than an annual 2 basis points with respect to the unpaid principal balance of the Governmental Note, in which event the Fiscal Agent shall accept and pay to the Funding Lender such lesser amount of interest received from the Loan Servicer and shall consider such payment to be in full compliance with the terms of the Governmental Note, the Project Note and all other Financing Documents with regard to the interest owed on the Funding Loan.

**Section 2.10 *Funding Loan Closing Conditions; Delivery of Governmental Note.***

Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

A. executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the TEL Regulatory Agreement and the Tax Certificate;

B. an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

C. the proceeds of the Funding Loan from the original funding thereof by the Initial Funding Lender;

D. the executed Project Note and an endorsement of the Project Note by the Governmental Lender in favor of the Fiscal Agent;

E. a copy of the executed Security Instrument, the Assignment and the Continuing Covenant Agreement;

F. an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the

Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

G. a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

H. An opinion of Bond Counsel to the effect that the Governmental Note is exempt from registration under the Securities Act, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

I. a certified copy of the Resolution;

J. the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the full amount of the Funding Loan;

K. receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement;

L. receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C; and

M. confirmation that all conditions stated in Section 3.01 of the Project Loan Agreement have been satisfied.

**Section 2.11** *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.*

A. The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account and a Borrower Equity Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

B. The proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date. The Fiscal Agent shall deposit such proceeds to the credit of the Project Account of the Project Loan Fund. On the Delivery Date, amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Project Loan Agreement. Following the Delivery Date, amounts in the Project Loan Fund shall be disbursed as provided in Section 4.02 hereof. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

C. The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date, the Costs of Issuance Deposit for deposit to the credit of the Costs of Issuance Fund and the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account, and (ii) to the Loan Servicer, on or prior to the Delivery Date, the Stub Payment Amount. The Fiscal Agent shall also deposit in the Costs of Issuance Deposit and the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Loan Servicer to be deposited therein, excluding any proceeds of the Loans.

D. Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Project Loan pursuant to the Project Loan Agreement and the Fiscal Agent shall make disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof; provided that prior to making any such disbursement, the Fiscal Agent shall disburse a portion of the proceeds thereof as provided in the Closing Memorandum, without the need of a Requisition therefor.

**Section 2.12 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Loan Servicer is engaged with respect to the Loans, Governmental Lender and Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Project Loan Agreement shall be paid by Borrower to Loan Servicer. Loan Servicer shall remit all payments collected from Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to Funding Lender, directly to Funding Lender (without payment through Fiscal Agent) per the instructions of Funding Lender Representative. Loan Servicer shall be entitled to retain its Servicing Fee collected from Borrower and shall remit the Governmental Lender Fee to Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to Fiscal Agent, together with any other amounts due to Governmental Lender and Fiscal Agent collected by Loan Servicer from Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section 2.12 shall be accompanied by sufficient information to identify the source and proper application of such payment. Loan Servicer shall promptly notify Fiscal Agent, Funding Lender Representative and Governmental Lender in writing of any failure of Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Project Loan Agreement, and Fiscal Agent and Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Project Loan Agreement are being made to Loan Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of Funding Lender Representative. Notwithstanding the foregoing, Funding Lender Representative may elect to have Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to Fiscal Agent, Borrower and Governmental Lender.

## ARTICLE III

### PREPAYMENT OF THE FUNDING LOAN

#### **Section 3.01** *Prepayment of the Funding Loan Prior to Maturity.*

A. **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Project Loan in accordance with the notice and other prepayment provisions set forth in the Project Note.

B. **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and any Prepayment Premium, is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

- (i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to Section 4(b) of the Project Note and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory prepayment as a result thereof; or
- (ii) in part, on the Funding Loan Payment Date next following the completion of the Rehabilitation of the Project, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof.

**Section 3.02** *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent, at the written direction of the Borrower delivered not less than three (3) Business Days prior to date such notice is directed to be delivered in the next sentence, by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender, and the Governmental Lender. All such prepayment notices shall be given not less than

ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state all of the following: (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Loan Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

## ARTICLE IV

### REVENUES AND FUNDS

**Section 4.01** *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- A. Revenue Fund;
- B. Loan Payment Fund;
- C. Loan Prepayment Fund;
- D. Administration Fund;
- E. Costs of Issuance Fund; and

F. Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**Section 4.02 *Project Loan Fund.***

A. Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan delivered by Initial Funding Lender into the Project Account of the Project Loan Fund as provided in Section 2.11(b) hereof. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Loans), as provided in Section 2.11(c) hereof.

B. Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

C. Transfers and Requisitions. Following the Delivery Date, the Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Loan Servicer (each signifying the consent to the Requisition by the Servicer). The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Loan Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed



by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Loan Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which an Event of Default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative, or the Loan Servicer to the Fiscal Agent, and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default), no signature of an Authorized Officer of the Borrower shall be required for any Requisition duly signed by and Authorized Officer of the Loan Servicer.

D. If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Loan Servicer or (as permitted hereunder) solely by an Authorized Officer of the Loan Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

E. Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the Rehabilitation of the Project in accordance with the Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the Rehabilitation of the Project in accordance with the Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Documents, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Loan Servicer.

F. Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.07 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

**Section 4.03 *Application of Revenues.***

A. All Revenues, if any, received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except for each of the following: (i) the proceeds of the Funding Loan received by the Fiscal Agent on the Delivery Date, which shall be applied in accordance with the provisions of Section 2.11 hereof; (ii) deposits into the Loan Prepayment Fund as required under subsection (c) of this Section 4.03; (iii) Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) amounts required to be transferred between funds and accounts as provided in this Article IV.

B. Subject to Section 2.12 hereof, on each Funding Loan Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money, if any, in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

C. Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund: (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all of the Funding Loan pursuant to Section 3.01(a); (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

D. Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such

deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 *Application of Loan Payment Fund.*** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Funding Loan Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Funding Loan Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Funding Loan Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for prepayment on such Funding Loan Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 *Application of Loan Prepayment Fund.*** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Funding Loan Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Funding Loan Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 *Administration Fund.*** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Loan Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used: **FIRST**, to pay to the Fiscal Agent when due the Fiscal Agent's Ordinary Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a

Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Project Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Loan Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower, and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Loan Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Funding Loan Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

**Section 4.07 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized and, in such capacity, the Fiscal Agent or such affiliate may charge its ordinary and customary fees for such trades, including account maintenance fees, which fees, for the

purposes of this Funding Loan Agreement, shall be treated as Fiscal Agent's Extraordinary Fees and Expenses. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter. In no event shall Fiscal Agent be required to provide supervision, recommendations, or advice with respect to any investment. In the absence of written direction from Borrower, Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the current market price obtainable (but not less than par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender and the Borrower acknowledge that to the extent that regulations of the Office of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender and the Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, each of the Governmental Lender and the Borrower specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

**Section 4.08 *Accounting Records.*** The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.09 *Amounts Remaining in Funds.*** After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Loan Servicer and other amounts required to be paid hereunder or under any of the Project Loan Documents, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Loan Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the

Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.10 *Rebate Fund; Compliance with Tax Certificate.*** The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.10. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower, nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.10 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within 55 days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed in writing by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.10, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any rebate requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.10 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.10. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

**Section 4.11 *Costs of Issuance Fund.*** The Fiscal Agent shall use money on deposit to the credit of the Costs of Issuance Fund to pay the Costs of Issuance on the Delivery Date or as soon as practicable thereafter in accordance with the Closing Memorandum, along with appropriate invoices for such expenses. Amounts in the Costs of Issuance Fund funded with proceeds of the Funding Loan, if any, shall be expended prior to the application of the Costs of Issuance Deposit. Investment Income on amounts on deposit in the Costs of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Costs of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Costs of Issuance Fund.

**Section 4.12 *Reports From the Fiscal Agent.*** The Fiscal Agent shall, on or before the fifteenth (15<sup>th</sup>) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month all of the following:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and
- (iv) any other information which the Funding Lender Representative, or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender, and the Funding Lender Representative or the Loan Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## **ARTICLE V**

### **GENERAL COVENANTS AND REPRESENTATIONS**

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.



**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative, the Equity Investor and the Loan Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or
- (v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator,

conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or
- (ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

A. *Governmental Lender's Covenants.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

- (i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the regulations issued under Section 148 of the Code (the "**Treasury Regulations**") or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;
- (ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the TEL Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

- (iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;
- (iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Loans or a “related person” within the meaning of the Code; and
- (v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the regulations issued under Section 149 of the Code.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

B. *Fiscal Agent's Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate. This covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money on deposit to the credit of any such fund or account. The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an “arbitrage bond” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that

the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an "arbitrage bond," then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an "arbitrage bond," and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 *Representations and Warranties of the Governmental Lender.*** The Governmental Lender hereby represents and warrants as follows:

A. The Governmental Lender is a body corporate and politic duly organized, validly existing and in good standing under the laws of the State.

B. The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

C. The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

D. The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 6.01** *Events of Default.* The occurrence of any one or more of the following will constitute an Event of Default with respect to the Funding Loan under this Funding Loan Agreement:

A. failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, whether on an Funding Loan Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

B. failure to observe the covenants set forth in Section 5.05 hereof; or

C. failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

D. receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an "Event of Default" under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Equity Investor, the Loan Servicer, the Borrower and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02** *Acceleration; Other Remedies Upon Event of Default.* Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and all of the Fiscal Agent 's Extraordinary Fees and Expenses incurred to date shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the "Cure Amount") shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the TEL Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Project Loan Agreement, the TEL Regulatory Agreement or any other Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the Pledged Security; and
- (iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the

opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender 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 Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the TEL Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such 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. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** Notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express written direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the

Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

A. For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all of the Fiscal Agent's Extraordinary Fees and Expenses incurred in exercising any remedies under this Funding Loan Agreement.

B. To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

C. Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST:** to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

D. If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the



production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 *Termination of Proceedings.*** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.09 *Waivers of Events of Default.*** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.10 *Interest on Unpaid Amounts and Default Rate for Nonpayment.*** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Funding Loan Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.11 *Assignment of Project Loan; Remedies Under the Project Loan.***

A. The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Project Note, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall do all of the following: (i) endorse and deliver the Project Note to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (ii) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative, and (iii) execute all such documents prepared by

the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii).

B. The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.11 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith: (i) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments, and (ii) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

C. The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Note or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.12 Substitution.** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the TEL Regulatory Agreement, the Fiscal Agent shall exchange the Project Note and the Security Instrument for a new Project Note and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a Person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the TEL Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

## ARTICLE VII

### CONCERNING FISCAL AGENT

**Section 7.01 Standard of Care.** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement, and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested

in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

For the avoidance of doubt, the permissive right of the Fiscal Agent to do things enumerated in this Funding Loan Agreement or the Project Loan Agreement shall not be construed as a duty. No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

A. prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

- (i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and
- (ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

B. at all times, regardless of whether or not any such Event of Default shall exist:

- (i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and
- (ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

When the Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

A. the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion (including an opinion of independent counsel), report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper party or parties, including any Electronic Instruction and Notice as permitted hereunder or under the Project Loan Agreement;

B. any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

C. any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

D. any notice, request, certificate, statement, requisition, direction, election, order or demand of the Loan Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Loan Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

E. any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

F. in the administration of the trusts of this Funding Loan Agreement, (i) the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, custodians, nominees, receivers or attorneys appointed with due care, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Loan Servicer or the Funding Lender Representative) concerning all matters of trusts hereof and duties hereunder, and (ii) the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel;

G. whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

H. the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

I. the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(i);

J. the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(j);

K. the Fiscal Agent shall be under no duty to confirm, or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of

the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

L. the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent security or indemnity satisfactory to the Fiscal Agent against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the TEL Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note and no responsibility for compliance with any state or federal securities laws in connection with the Governmental Note. In acting or omitting to act pursuant to the Project Loan Agreement, the TEL Regulatory Agreement or any other documents executed in connection herewith, Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including, but not limited to, this Article VII.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.15 hereof.

Notwithstanding anything contained herein or in the Security Instrument to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be

furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action. The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the Security Instrument unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained.

**Section 7.03 Use of Proceeds.** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan or any other moneys paid over by the Fiscal Agent in accordance with the provisions of this Funding Loan Agreement, except as provided herein.

**Section 7.04 Trust Imposed.** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.05 Compensation of Fiscal Agent.** The Fiscal Agent shall be entitled to its Fiscal Agent's Ordinary Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Fiscal Agent's Extraordinary Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not perform any Extraordinary Services or incur any Fiscal Agent's Extraordinary Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and this Funding Loan Agreement, in particular Sections 4.06, 4.09 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.08 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Fiscal Agent's Ordinary Fees and Expenses or, if applicable, the Fiscal Agent's Extraordinary Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and

servants, past, present or future, from and against all of the following: (a) any and all claims by or on behalf of any Person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such Person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses (except for matters attributable to the negligence or willful misconduct of such Person). The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.05 shall survive the termination of this Funding Loan Agreement.

**Section 7.06 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly-owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.10 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.06, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.06 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.08 hereof.

**Section 7.07 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers,



discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.08 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving thirty (30) days prior written notice to the Governmental Lender, the Borrower, the Loan Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Loan Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder; provided, however, that after giving notice of resignation, Fiscal Agent may petition any court of competent jurisdiction for appointment of a temporary Fiscal Agent until a successor Fiscal Agent is appointed. The rights of Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive Fiscal Agent's resignation as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

**Section 7.09 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld) by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Loan Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Loan Servicer, the Governmental Lender, and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower, the Fiscal Agent and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder. The rights of Fiscal Agent to indemnity, compensation and reimbursement of fees and expenses shall survive Fiscal Agent's removal as set forth herein and in Section 6.01(d) of the Project Loan Agreement.

**Section 7.10 *Appointment of Successor Fiscal Agent.***

A. In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by

a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following receipt of notice of the resignation or removal of the Fiscal Agent pursuant to Section 7.08 or Section 7.09 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

B. If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.10 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.08 hereof or of removal of the Fiscal Agent pursuant to Section 7.09 hereof, the retiring Fiscal Agent may petition any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.11 *Concerning Any Successor Fiscal Agent.*** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article VII, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

**Section 7.12 *Successor Fiscal Agent.*** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.13 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.*** It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of

any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.13. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

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**Funding Loan Agreement**  
**Fixed Rate**

A. the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

B. all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co- fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co- fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co- fiscal agent or separate fiscal agent;

C. any request in writing by the Fiscal Agent to any co- fiscal agent or separate fiscal agent 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- fiscal agent or separate fiscal agent;

D. any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

E. the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.13 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent 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-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.13;

F. no Fiscal Agent or co- fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

G. any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co- fiscal agent or separate fiscal agent; and

H. any money, papers, securities or other items of personal property received by any such co- fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.14 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Governmental Lender, the Loan Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the TEL Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.15 *Filing of Financing Statements.*** The Fiscal Agent shall, at the expense of the Borrower, file or record or cause to be filed or recorded all continuation statements for financing statement that have been delivered to the Fiscal Agent on which the Fiscal Agent is named as secured party or additional secured party for the purpose of continuing without lapse the effectiveness of those financing statements which have been filed on or approximately on the Delivery Date in connection with the security for the Funding Loan pursuant to the authority of the Uniform Commercial Code. Upon the filing of any such continuation statement the Fiscal Agent shall immediately notify the Governmental Lender, the Borrower, the Funding Lender Representative and the Servicer that the same has been done. If direction is given by the Loan Servicer or the Funding Lender Representative, the Fiscal Agent shall file all continuation statements in accordance with such directions.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code and unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (i) relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.15 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

**Section 7.16 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each Person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request

financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01** *Amendments to this Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02** *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative. In the event that the parties agree to amend the Funding Loan Amortization Schedule, the Loan Servicer or the Funding Lender Representative shall promptly deliver such amended Funding Loan Amortization Schedule to the Fiscal Agent.

**Section 8.03** *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Note, the Project Loan Agreement, the Project Note, the Security Instrument or the TEL Regulatory Agreement shall become effective unless and until all of the following have occurred: (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01** *Discharge of Lien.*

- (a) These presents and the estates and rights hereby granted shall cease, determine and be void if Governmental Lender shall:

- (i) pay or cause to be paid to the Funding Lender the principal, interest and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:
  - A. by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or
  - B. prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or
  - C. by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation; and
- (ii) have paid all amounts due and owing under the other Financing Documents;
- (iii) have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Loan Servicer and the Rebate Analyst; and
- (iv) keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part.

(b) Upon satisfaction of each of the requirements of Section 9.01(a), Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to Governmental Lender the estate hereby conveyed, and assign and deliver to Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by Fiscal Agent for the payment of principal of, interest and Prepayment Premium, if any, on the Governmental Note, and the payment of any amounts owed to the United States of America pursuant to Section 4.10 hereof.

(c) Prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in Section 9.01(a) based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(a)(i)(B) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled:

(i) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date;

(ii) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan;

(iii) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan;

(iv) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and

(v) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Loan Servicer under the Financing Documents have been fully paid.

**Section 9.02 *Discharge of Liability on Funding Loan.*** Upon the deposit with the Fiscal Agent, in trust, on or before the Maturity Date, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to the Maturity Date or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.



**Section 9.03 *Payment of Funding Loan After Discharge of Funding Loan Agreement.*** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or Prepayment Premium, if any, on the Governmental Note remaining unclaimed for five (5) years after the maturity or earlier payment date: (a) shall be reported and disposed of by the Fiscal Agent in accordance with applicable unclaimed property laws; or (b) to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement.

**Section 10.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Loan Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 10.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 10.04 Notices.**

- A. Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Loan Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Instruction and Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Loan Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: Housing Finance Authority of Broward County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, Florida 33301  
Attention: Finance Director  
Email: \_\_\_\_\_  
Telephone: 954-357-5320

The Fiscal Agent: The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Email: tricia.heintz@bnymellon.com  
Telephone: 904-645-1915

The Borrower: Lauderhill Preservation LP  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:

Email:  
Telephone:

with a copy to:                      Lauderhill Point Apartments

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

Attention:  
Email:  
Telephone:

with a copy to:                      Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.

(which copy shall not constitute notice to  
Borrower)  
150 W. Flagler Street  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Email: bmcdonough@stearnsweaver.com  
Telephone: 305-789-4107

with a copy to the Investor  
limited partner:

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

Attention:

with a copy to the Special  
limited partner:

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

Attention:

with a copy to:

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

Attention:  
Email:  
Telephone:

Funding Lender  
Representative  
(as of Freddie Mac Purchase Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

Initial Funding Lender  
and Servicer:

Berkadia Commercial Mortgage LLC  
323 Norristown Road, Suite 300  
Ambler, PA 19002  
Attn: Servicing – Executive Vice President

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Loan Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice pursuant to this Funding Loan Agreement.

B. The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

**Section 10.05 *Funding Lender Representative.***

A. The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Freddie Mac Purchase Date, Freddie Mac shall be the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

B. The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Loan Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Loan Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Loan Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

C. Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

D. Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 10.06 *Payments Due on Non-Business Days.*** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 10.07 *Counterparts.*** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 10.08 *Laws Governing Funding Loan Agreement .*** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 10.09 No Recourse.** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 10.10 Successors and Assigns.** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

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

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

Scott Erlich  
Chair

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO LAUDERHILL POINT APARTMENTS FUNDING  
LOAN AGREEMENT]

**BERKADIA COMMERCIAL MORTGAGE LLC, a**  
Delaware limited liability company

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

[FUNDING LENDER'S SIGNATURE PAGE TO LAUDERHILL POINT APARTMENTS FUNDING LOAN  
AGREEMENT]



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

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

[FISCAL AGENT'S SIGNATURE PAGE TO LAUDERHILL POINT APARTMENTS FUNDING LOAN  
AGREEMENT]

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

THIS GOVERNMENTAL NOTE MAY ONLY BE TRANSFERRED PURSUANT TO THE TERMS OF THE FUNDING LOAN AGREEMENT.

HOUSING FINANCE AUTHORITY OF BROWARD COUNTY  
MULTIFAMILY HOUSING MORTGAGE REVENUE NOTE, SERIES 2023  
(LAUDERHILL POINT APARTMENTS)

US \$ \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned, Housing Finance Authority of Broward County, FL (the "**Obligor**"), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of **BERKADIA COMMERCIAL MORTGAGE LLC**, (the "**Funding Lender**"), and its assigns, the principal sum of \_\_\_\_\_ (US \$ \_\_\_\_\_), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) (this "**Governmental Note**") is being delivered pursuant to that certain Funding Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (together with any and all amendments, modifications, supplements and restatements, the "**Funding Loan Agreement**"), among the Funding Lender, the Obligor and The Bank of New York Mellon Trust Company, N.A. (the "**Fiscal Agent**"), pursuant to which the Obligor has incurred a loan in the original principal amount of \$ \_\_\_\_\_ (the "**Funding Loan**"), and this Governmental Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Lauderhill Preservation LP (the "**Borrower**") pursuant to the Project Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the "**Project Loan Agreement**"), among the Obligor, the Borrower and the Fiscal Agent.

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the holder of this Governmental Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under this Governmental Note or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Governmental Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar

day of each month commencing \_\_\_\_\_, 20\_\_, interest on this Governmental Note at the rate of \_\_\_% per annum (or such higher rate of interest borne by the Funding Loan upon any default) (the “**Interest Rate**”) on the outstanding principal balance of this Governmental Note, and shall also pay interest on this Governmental Note at the Interest Rate on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Governmental Note subject to prepayment (each such date for payment an “**Interest Payment Date**”). Interest on this Governmental Note shall be computed on the basis of a 360-day year and the actual number of days elapsed.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Governmental Note in full on \_\_\_\_\_, 20\_\_, the “**Maturity Date**”) and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon, or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Governmental Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender’s discretion. Neither the Funding Lender’s acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Governmental Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Governmental Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Governmental Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Governmental Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Governmental Note and all other third-party obligors.

10. **Loan Charges.** Neither this Governmental Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Governmental Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Governmental Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Governmental Note.

11. **Governing Law.** This Governmental Note shall be governed by the internal law of the State of Florida (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Governmental Note are for convenience only and shall be disregarded in construing this Governmental Note.

13. **Address for Payment.** All payments due under this Governmental Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Governmental Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Governmental Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate (the “**Default Rate**”) equal to the lesser of (i) the Interest Rate otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

15. **Limited Obligation.** This Governmental Note shall be a limited obligation of the Obligor. This Governmental Note and the interest hereon and redemption premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Obligor, the City, 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. This Governmental Note and the interest hereon are payable solely from and secured by the Pledged Security, all as described in and subject to limitations set forth in the Funding Loan Agreement, for the equal and ratable benefit of the Owner, from time to time, of this Governmental Note.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Governmental Note to be duly executed by the manual or facsimile signature of its Chair.

SEAL

HOUSING FINANCE AUTHORITY  
BROWARD COUNTY, FLORIDA

By \_\_\_\_\_  
Chair

**CERTIFICATE OF AUTHENTICATION**

This Governmental Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

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

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent

By: \_\_\_\_\_  
Authorized Signer

**SCHEDULE 1**  
**FUNDING LOAN AMORTIZATION SCHEDULE**

{25925/032/02575857.DOCXv3}

**Funding Loan Agreement**  
**Exhibit A - 7**

**Fixed Rate**



**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attn: Corporate Trust Department

Lauderhill Point Preservation LP

\_\_\_\_\_

\_\_\_\_\_

Attn:  
Email:  
Telephone:

Housing Finance Authority of Broward County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, Florida 33301  
Attn: Finance Director

Berkadia Commercial Mortgage LLC  
10 Milk Street, Suite 720  
Boston, MA 02108  
Attn:

Re: Lauderhill Point Apartments

Ladies and Gentlemen:

The undersigned is the holder (the "**Funding Lender**") of the Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) dated \_\_\_\_\_, 20\_\_ (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of \_\_\_\_\_, 20\_\_ (the "**Funding Loan Agreement**"), among Berkadia Commercial Mortgage LLC, in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the Housing Finance Authority of Broward County, Florida (the "**Governmental Lender**") and The Bank of New York Mellon Trust Company, N.A. (the "**Fiscal Agent**"). Pursuant to Section 10.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 10.05 of the Funding Loan Agreement shall be [\_\_\_\_\_]. The Person previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.

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**Funding Loan Agreement  
Exhibit B - 1**

**Fixed Rate**

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME	SIGNATURE
_____	_____
_____	_____
_____	_____
_____	_____

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**[FUNDING LENDER SIGNATURE BLOCK]**

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

## EXHIBIT C

### FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

Housing Finance Authority of Broward County, Florida  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, Florida 33301  
Attn: Finance Director

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attn: Corporate Trust Department

**Re:** Lauderhill Point Apartments

Ladies and Gentlemen:

The undersigned (the "Funding Lender") hereby acknowledges receipt of the Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) dated \_\_\_\_\_, 20\_\_ (the "Governmental Note") delivered pursuant to the Funding Loan Agreement dated as of December 1, 2021 (the "Funding Loan Agreement"), among Berkadia Commercial Mortgage LLC, in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the Housing Finance Authority of Broward County, Florida (the "Governmental Lender") and The Bank of New York Mellon Trust Company, N.A. (the "Fiscal Agent"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "Act") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "Qualified Transferee"), and therefore, has sufficient knowledge and experience in financial and business matters, including

purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to the commitment dated \_\_\_\_\_, 2023 (the "Freddie Mac Commitment").

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan is 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 Governmental Lender has no taxing power, (b) the Funding Loan does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Florida or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the security therefor, and other material factors affecting the security and payment of the Funding Loan. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan.

9. The Funding Lender acknowledges that the Governmental Lender, its Counsel and its advisors bear no responsibility for the accuracy or completeness of information with respect to the Borrower and the Project contained in any disclosure document, if any, related to the purchase of the Governmental Note.

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[SIGNATURE BLOCK]**

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

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

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

EXHIBIT D

COSTS OF ISSUANCE REQUISITION  
(Costs of Issuance Fund)

The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent  
Jacksonville, Florida

Re: Lauderhill Points Apartments

Fiscal Agent:

You are requested to disburse funds from the Costs of Issuance Fund pursuant to Section 4.11 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "**Requisition**"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "**Funding Loan Agreement**"), dated as of \_\_\_\_\_, 20\_\_, by and among Berkadia Commercial Mortgage LLC, in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the Housing Finance Authority of Broward County and The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, securing the Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) dated \_\_\_\_\_, 20\_\_ (the "**Governmental Note**").

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT TO BE DISBURSED: \$

The undersigned, on behalf of Lauderhill Point Preservation LP, a Florida limited partnership duly organized and existing under the laws of the State of Florida (the "**Borrower**"), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Costs of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

Date of Requisition: [\_\_\_\_\_]

**LAUDERHILL PRESERVATION LP**, a Florida limited partnership

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

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

EXHIBIT E

PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)

The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent  
Jacksonville, Florida

Re: Lauderhill Point Apartments

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the Person(s) and for the purpose(s) set forth in this requisition (the "**Requisition**"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "**Funding Loan Agreement**"), dated as of \_\_\_\_\_, 20\_\_, by and among Berkadia Commercial Mortgage LLC, in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the Housing Finance Authority of Broward County, Florida (the "**Governmental Lender**") and The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent (the "**Fiscal Agent**"), securing the Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments) dated \_\_\_\_\_, 20\_\_ (the "**Governmental Note**").

REQUISITION NO.:

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$[\_\_\_\_\_] from the Project Account

\$[\_\_\_\_\_] from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Loan Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested and the party or parties to whom the disbursements shall be made are specified in the **attached Schedule 1** (and may include the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, however, that no reimbursement shall be made for advances and payments made prior to [\_\_\_\_\_] 20[\_\_\_].
2. Attached hereto as Schedule 2 is a report setting out the progress of the Rehabilitation and all other reports or information relating to the completion of the Rehabilitation requested by Initial Funding Lender, if any.
3. Attached hereto as Schedule 3 are copies of any applicable invoices, bills, and appropriate lien waivers for the prior period for which disbursement was made,



executed by all contractors and suppliers supplying labor or materials for the Rehabilitation.

4. Attached hereto as Schedule 4 is a report prepared by the professional engineer employed by Initial Funding Lender as to the status of the Rehabilitation, unless Initial Funding Lender has waived this requirement in writing.
5. The undersigned certifies that:
  - a. the conditions precedent to disbursement set forth in the Continuing Covenant Agreement have been satisfied;
  - b. the disbursement requested pursuant to this Requisition: (i) will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and (ii) is substantially in accordance with the proforma draw schedules previously delivered to and accepted by the Initial Funding Lender;
  - c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on Schedule 1 attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
  - d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
  - e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
  - f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Project Loan Agreement, the TEL Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
  - g. with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:

- (A) the amounts requisitioned by this Requisition; plus
- (B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;

have been or will be applied by Borrower to pay the Costs of the Project;

- h. Borrower is not in default under the Project Loan Agreement, the Continuing Covenant Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or pay debt service with respect to the Loans;
- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit; and
- k. Borrower has not requested any disbursement pursuant to this Requisition for stored items.

[Following items may not be required for Initial Disbursement]

- 6. Estimated costs of completing the uncompleted Repairs (as defined in the Continuing Covenant Agreement) as of the date of this Requisition: [\_\_\_\_\_].
- 7. Percent of the Rehabilitation completed as of the date this request: [\_\_\_\_\_]%
- 8. The Borrower certifies that monthly occupancy for the month preceding this Requisition was [\_\_\_\_\_], as indicated by the **rent roll** attached as Schedule 5 which is true, correct and complete.
- 9. The Borrower certifies that net operating income for the month preceding this Requisition was [\_\_\_\_\_], as indicated by the **operating statement** attached as Schedule 6.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

Date:[\_\_\_\_\_]

**LAUDERHILL POINT PRESERVATION LP,**  
a Florida limited partnership

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

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

Authorized Signatory

**APPROVED:**

**BERKADIA COMMERCIAL MORTGAGE LLC**

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

Name:

Title:

**EXHIBIT "B"**

**FORM OF PROJECT LOAN AGREEMENT**

**PROJECT LOAN AGREEMENT**

among

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA,  
as Governmental Lender**

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

and

**LAUDERHILL PRESERVATION LP,  
as Borrower**

Dated as of \_\_\_\_\_, 2023

Relating to

**MULTIFAMILY HOUSING MORTGAGE REVENUE NOTE, SERIES 2023  
(LAUDERHILL POINT APARTMENTS)**

All of the right, title and interest of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of \_\_\_\_\_, 2023 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.

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## PROJECT LOAN AGREEMENT

THIS PROJECT LOAN AGREEMENT (this “**Project Loan Agreement**”) dated as of \_\_\_\_\_, 2023, is made by and among the **HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA** (the “**Governmental Lender**”), a public body corporate and politic existing under the laws of the State of Florida (the “**State**”), **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 (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and **LAUDERHILL PRESERVATION LP**, a Florida limited partnership duly organized and existing under the laws of the State of Florida (together with its successors and assigns permitted hereunder, the “**Borrower**”).

### RECITALS

A. Pursuant to the Housing Finance Authority of Broward County, Florida (the “**Authority**”) is empowered under the laws of the State of Florida, including the Florida Housing Finance Authority Law, Florida Statutes, Sections 159.601 through 159.623, as amended (the “**Act**”) , Ordinance 79-41 enacted by the Board of County Commissioners of Broward County, Florida (the “**Board**”) on June 20, 1979, as amended, and this Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the original principal amount of \$\_\_\_\_\_ (the “**Project Loan**”) to provide for the financing of the acquisition and rehabilitation of a multifamily rental housing development located at 3146 NW 19th Street, Lauderhill, Florida 33311, known as Lauderhill Point Apartments. The Land, Improvements, and Fixtures (each as defined in the Security Instrument) are collectively referred to herein as (the “**Project**”).

B. The Governmental Lender is making the Project Loan to the Borrower with the proceeds received from the separate loan incurred by Governmental Lender pursuant to the Funding Loan Agreement dated as of the date hereof (the “**Funding Loan Agreement**”), among **Berkadia Commercial Mortgage LLC**, in its capacity as initial holder of the Governmental Note (the “**Initial Funding Lender**”), the Governmental Lender, and Fiscal Agent, in the original principal amount of \$\_\_\_\_\_ (the “**Funding Loan**” and together with the Project Loan, the “**Loans**”). The Funding Loan is being originated and funded by the Initial Funding Lender under the Funding Loan Agreement and is evidenced by the Governmental Lender's Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments), dated \_\_\_\_\_, 2023 (the “**Delivery Date**”), delivered by the Governmental Lender to the Initial Funding Lender, (as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto, the “**Governmental Note**”).

C. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“**Freddie Mac**”), has entered into a commitment with the

Initial Funding Lender dated \_\_\_\_\_, 2023 (as the same may be amended, modified or supplemented from time to time, the “**Freddie Mac Commitment**”) whereby Freddie Mac has agreed to purchase the Funding Loan from Initial Funding Lender on the date of satisfaction of the conditions set forth therein (the “**Freddie Mac Purchase Date**”). On the Freddie Mac Purchase Date, the Initial Funding Lender will assign to Freddie Mac all of its rights and interest in the Governmental Note, the Funding Loan Agreement, the Continuing Covenant Agreement and the other Financing Documents to Freddie Mac.

D. The Borrower has agreed to use the proceeds of the Project Loan to finance the acquisition and rehabilitation of the Project.

E. The Borrower’s payment obligations in respect of the Project Loan will be evidenced by a Project Note dated the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto, the “**Project Note**”), delivered to Governmental Lender, which Project Note will be endorsed by Governmental Lender to Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower’s obligations under the Project Note, the Borrower will execute and deliver to the Governmental Lender a **Multifamily Mortgage, Assignment of Rents and Security Agreement (Florida)** dated as of the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time the “**Security Instrument**”), granting a first priority mortgage and security interest in the Project in favor of the Governmental Lender.

G. All of the right, title and interest of Governmental Lender (except for its Unassigned Rights) in and to this Project Loan Agreement, the Security Instrument, and the other Financing Documents are being assigned to Fiscal Agent as security for the Funding Loan pursuant to the Assignment.

H. As a condition to the initial funding of the Funding Loan on the Delivery Date, and the subsequent purchase of the Funding Loan by Freddie Mac on the Freddie Mac Purchase Date, the Borrower is entering into a Continuing Covenant Agreement dated as of the Delivery Date (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Continuing Covenant Agreement**”) with the Initial Funding Lender, to set forth various other requirements with respect to the Loans and the Project, which will be assigned to Freddie Mac on the Freddie Mac Purchase Date.

I. On and after the Freddie Mac Purchase Date, Freddie Mac will act as Funding Lender Representative with respect to the Loans. Berkadia Commercial Mortgage LLC will act as initial Loan Servicer for the Loans on behalf of the Funding Lender Representative.

J. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, Prepayment Premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

H. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

NOW, THEREFORE, for and in consideration of the premises and of the origination and funding of the Project Loan by the Governmental Lender, and for other good and valuable consideration mutual covenants and representations hereinafter contained, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Project Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Project Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein (including when used in the Recitals) not otherwise defined shall have the respective meanings set forth in the Funding Loan Agreement and the Continuing Covenant Agreement.

“**Act**” is defined in the Recitals of this Project Loan Agreement.

“**Additional Loans**” is defined in Section 8.13 of this Project Loan Agreement.

“**Borrower**” means the entity identified as “Borrower” in the Recitals of this Project Loan Agreement, together with any of its permitted successors and assigns, as owner of the Project.

“**Continuing Covenant Agreement**” is defined in the Recitals of this Project Loan Agreement.

**"Delivery Date"** means the date identified as "Delivery Date" in the Recitals of this Project Loan Agreement, which is the date of funding of the Funding Loan and the delivery of the Governmental Note by Governmental Lender to Initial Funding Lender.

**"Event of Default"** means the occurrence of any event listed in Section 7.01 hereof.

**"Fee Component"** means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent, and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

**"Fiscal Agent"** means the entity identified as "Fiscal Agent" on Page 1 of this Project Loan Agreement, together with any successor Fiscal Agents appointed under the Funding Loan Agreement.

**"Freddie Mac"** means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

**"Freddie Mac Commitment"** is defined in the Recitals of this Project Loan Agreement.

**"Freddie Mac Purchase Date"** is defined in the Recitals of this Project Loan Agreement.

**"Funding Loan"** is defined in the Recitals of this Project Loan Agreement.

**"Funding Loan Agreement"** is defined in the Recitals of this Project Loan Agreement.

**"Governmental Lender"** means the entity identified as "Governmental Lender" on Page 1 of this Project Loan Agreement.

**"Governmental Note"** is defined in the Recitals of this Project Loan Agreement.

**"Initial Funding Lender"** is defined in the Recitals of this Project Loan Agreement.

**"Loans"** is defined in the Recitals of this Project Loan Agreement.

**"Project"** is defined in the Recitals of this Project Loan Agreement.

**"Project Loan"** is defined in the Recitals of this Project Loan Agreement.

**"Project Loan Agreement"** means this Project Loan Agreement, together with any amendments hereto.

**“Project Loan Amortization Schedule”** means the Project Loan Amortization Schedule attached as Schedule 1 to the Project Note.

**“Project Loan Payment”** means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Note and this Project Loan Agreement.

**“Project Loan Payment Date”** means (A) the first day of each calendar month, commencing \_\_\_\_\_ 1, 2024, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date, as provided in Section 4.01(c) hereof.

**“Project Note”** is defined in the Recitals of this Project Loan Agreement.

**“Security Instrument”** is defined in the Recitals of this Project Loan Agreement.

**“Servicing Fee”** means the ordinary fee payable to the Loan Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one twelfth of \_\_\_\_\_% of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed.

**“Taxes”** means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. The headings of this Project Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

#### **Section 2.01** *Representations, Warranties and Covenants of the Governmental Lender.*

The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Loan Servicer:

(a) The Governmental Lender is a body corporate and politic duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of

any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate or the TEL Regulatory Agreement, the Governmental Lender will in writing promptly notify the Borrower, the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Project Loan Agreement, the Tax Certificate and the TEL Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the

issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 *Representations, Warranties and Covenants of the Borrower.*** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Loan Servicer, and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Loan Servicer, and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a Florida limited partnership duly organized, validly existing and in good standing under the laws of the State, is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents to which it is a party, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents to which it is a party. All general partners of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, partnerships, or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of rehabilitation of the Project, is required for the due execution and delivery or approval,



as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the rehabilitation of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and TEL Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Loan Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or

materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of Broward County.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion of interest on the Governmental Note from the gross income of the holders thereof for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the TEL Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative, or the Loan Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative, or the Loan Servicer in any manner.

(u) The Borrower covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the U.S. Government, (including, the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC")), the United Nations Security Council, the

European Union, HM Treasury, or other relevant sanctions authority (collectively “Sanctions”).

(v) The Borrower covenants and represents that neither it nor any of its affiliates, subsidiaries, directors or officers will use any payments made pursuant to this Project Loan Agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender, and the Loan Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States of America. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors

generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.10 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.10 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.10 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and the Tax Certificate and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the TEL Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in the gross

income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the TEL Regulatory Agreement);

(c) No changes will be made to the Project, 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 tax-exempt status of the Governmental Note;

It will comply with the requirements of Section 148 of the Code and the Treasury Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the Treasury Regulations, which would cause the Governmental Note to be “arbitrage bonds” within the meaning of Section 148 of the Code; and

(d) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Loan Servicer.

(e) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(f) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the TEL Regulatory Agreement;

(g) All leases will comply with all applicable laws and the TEL Regulatory Agreement;



(h) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement or the TEL Regulatory Agreement;

(i) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(j) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(k) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### ARTICLE III

#### THE PROJECT LOAN

**Section 3.01** *Conditions to Funding the Project Loan.* On the Delivery Date, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Section 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall disburse a portion of the proceeds of the Funding Loan pursuant to the Closing Memorandum, provided that no such disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Project Note and the Governmental Lender shall have endorsed the Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The TEL Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and copies thereof delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Loan Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Loan Servicer.

**Section 3.02** *Terms of the Project Loan; Servicing.*

(a) The Project Loan shall (i) be evidenced by the Project Note; (ii) be secured by the Security Instrument; (iii) be in the original principal amount of \$\_\_\_\_\_; (iv) bear interest as provided in the Project Note; (v) provide for principal and interest payments in accordance with the Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Project Note.

(b) The Funding Lender Representative may appoint a Loan Servicer to service the Loans for all or a portion of the term of the Loans. The initial Loan Servicer of the Loans is Berkadia Commercial Mortgage LLC who shall service the Loans pursuant to the terms of the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Loan Servicer or appoint a replacement Loan Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Loan Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.



(c) During any period that the Loan Servicer services the Loans, the Borrower shall make all payments in connection with the Project Loan to the Loan Servicer, and the Loan Servicer will:

- (i) retain the allocable portion of the monthly Servicing Fee, if any, for its own account;
- (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together with any other amounts due to the Funding Lender,
- (iii) remit to Fiscal Agent the Fiscal Agent's Ordinary Fees and Expenses, together with any other amounts due to the Fiscal Agent, collected by the Loan Servicer from the Borrower, and
- (iv) remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender, collected by the Loan Servicer from the Borrower.

During a period in which there is no Loan Servicer, all notices to be sent to the Loan Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Loan Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that:

- (i) the Funding Lender Representative has appointed the Loan Servicer to service and administer the Project Loan;
- (ii) the selection or removal of any Loan Servicer is in the sole and absolute discretion of the Funding Lender Representative;
- (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Loan Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan,
- (iv) the *Guide* is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and
- (v) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*.

**Section 3.03 Initial Deposits.** (a) On the Delivery Date, proceeds of the Funding Loan shall be deposited in the Project Account of the Project Loan Fund, of which \$\_\_\_\_\_ shall be transferred from the Project Account for deposit to the Costs of Issuance Fund as provided in Section 2.11(d) of the Funding Loan Agreement. In addition, on the Delivery Date, Borrower will deposit (i) with Fiscal Agent, the sum of (A) \$\_\_\_\_\_ for credit to the Costs of Issuance Fund; and (B) \$\_\_\_\_\_ for credit to the Borrower Equity Account of the Project Loan Fund and (ii) with Loan Servicer the Stub Payment Amount. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.]

(b) To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Pledge and Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loan, the Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.07 of the Funding Loan Agreement. The Fiscal Agent may conclusively rely upon the written instructions of the Governmental Lender or Borrower as to both the suitability and legality of the directed investments. The Borrower acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Borrower specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

**Section 3.06 Damage; Destruction and Eminent Domain.** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Loan Servicer receives Net Proceeds from

insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

## ARTICLE IV

### LOAN PAYMENTS

**Section 4.01 *Payments Under the Project Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Loan Servicer to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment, the Loan Servicer shall collect from the Borrower, and the Borrower shall provide to the Loan Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Note, provided that in all events payments made by the Borrower under and pursuant to the Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Project Note or any provision of the Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Project Note or such provision of the Project Note shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed

without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Loan Servicer.** Each payment by the Borrower hereunder or under the Project Note shall be made in immediately available funds to the Loan Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Loan Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Loan Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Loan Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 *Additional Payments Under the Project Note and this Project Loan Agreement.***

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Note include certain money to be paid in respect of, among other things, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03 hereof, the Borrower shall pay (or cause to be paid by the Loan Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Costs of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third party and out-of-pocket expenses of Freddie Mac (including but not limited to the reasonable fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, an initial financing fee in an amount equal to \$\_\_\_\_\_, together with all third party and out-of-pocket expenses of the Governmental Lender (including but not limited to the reasonable fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iii) On the Delivery Date, from money on deposit in the Costs of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Loan Servicer, its commitment fees and application fees, together with all third party and out of pocket expenses of the Loan Servicer (including but not limited to the reasonable fees and expenses of counsel to the Loan Servicer, if any) in connection with the Loans.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$\_\_\_\_\_ together with all third party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the reasonable fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(v) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vi) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(vii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(viii) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(ix) To the Loan Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Loan Servicer as provided in the Continuing Covenant Agreement.

(x) To the Loan Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xi) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to pay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Project Note, as provided in the Project Note.

(c) **Defeasance of the Funding Loan.** In addition, prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a “**Defeasance Notice**”) to the Funding Lender Representative, the Loan Servicer, the Governmental Lender

and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower’s Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Loan Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in Section 9 of the Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys’ fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Loan Servicer or the Funding Lender Representative may have to enforce the Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower’s general partner: (i) the Borrower’s obligations to the Governmental Lender, and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower’s obligations under Sections 2.05 and 6.01 of this Project



Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.02(b)(vii) of this Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.



**Section 5.05 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

**Section 5.06 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.07 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Loan Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.08 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Loan Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.09 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.10 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Loan Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours to do any of the following: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Loan Servicer, and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Loan Servicer, or the Funding Lender Representative, as the

case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Loan Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Loan Servicer, and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.11 *TEL Regulatory Agreement.*** The covenants of the Borrower in the TEL Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the TEL Regulatory Agreement. The Borrower covenants to file of record in the Recorder's office the TEL Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the TEL Regulatory Agreement will, subject to the terms of the TEL Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the TEL Regulatory Agreement. Subject to the provisions of Section 7.06 of this Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the TEL Regulatory Agreement.

**Section 5.12 *Damage, Destruction and Condemnation.*** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.13 *Obligation of the Borrower To Rehabilitate the Project.*** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the rehabilitation, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of such acquisition, rehabilitation, development and equipping, the Borrower shall pay

such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender Representative, the Governmental Lender Servicer, or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative, or the the Governmental Lender Servicer, or the Loan Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the rehabilitation of the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative, or the Governmental Lender Servicer, or the Loan Servicer shall be liable to the Borrower or any other person if for any reason the rehabilitation of the Project is not completed.

**Section 5.14 *Filing of Financing Statements.*** The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date all UCC financing statements sent to the Fiscal Agent by the Funding Lender which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and the Fiscal Agent shall, at the expense of the Borrower, file or cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Project which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings were made, provided that a copy of the filed original financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender or the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (i) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section 5.15 and (ii) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder.

**Section 5.15 Disbursements.** The Borrower shall notify the Governmental Lender Servicer within two Business Days of any disbursements from any reserve or escrow fund established pursuant to the Continuing Covenant Agreement.

## ARTICLE VI

### INDEMNIFICATION

**Section 6.01 Indemnification.**

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower hereby agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to any of the following:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loan or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Loan Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of

the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(vii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(viii) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in the gross income of the holders thereof for federal income tax purposes;

(ix) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(x) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party; except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are found by a court of competent jurisdiction in a final judgment to have been caused by the negligence, unlawful acts, or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Loan Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party,

and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Continuing Covenant Agreement, the Security Instrument and the TEL Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The occurrence of any one or more of the following will constitute an Events of Default under this Project Loan Agreement:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Project Loan Agreement, the Project Note or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Note and the Security Instrument, as applicable (subject to any applicable grace periods);

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of thirty (30) days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within thirty (30) days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within thirty (30) days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document; and

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default

hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Loan Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) Such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) Without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) Whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue rights and remedies with respect to the Unassigned Rights. Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any Prepayment Premium, if any, and interest on and all other amounts due on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure



proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Loan Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Note or in the TEL Regulatory Agreement, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) Notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) prosecute any action with respect to a lien on the Project; or
  - (ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or
  - (iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or
  - (iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.
- (c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may take one or both of the following actions:
- (i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;
  - (ii) specifically enforce the TEL Regulatory Agreement or seek injunctive relief against acts which may be in violation of the TEL Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of Fiscal Agent's Extraordinary Fees and Expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an Event of Default with respect to the Funding

Loan, which Fiscal Agent's Extraordinary Fees and Expenses shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, construction, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Note, the TEL Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

**Section 8.01 Notices.**

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Equity Investor, or the Governmental Lender Servicer, or the Loan Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 10.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Governmental Lender Servicer, the Equity Investor, or the Loan Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Loan Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Loan Servicer, the Governmental Loan Servicer, and the Equity Investor.

The Fiscal Agent agrees to accept and act upon Electronic Instruction and Notice of written instructions and/or directions pursuant to this Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative, the Governmental Lender Servicer, the Equity Investor and the Loan Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Loan Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including

such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

**Section 8.06 Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

**Section 8.07 Severability.** The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 Effective Date and Term.** This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 Cross References.** Any reference in this Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement, an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All schedules and exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

**Section 8.12 Funding Lender Representative and Loan Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Funding Lender Representative and the Loan Servicer are third party beneficiaries of this Project Loan Agreement.

**Section 8.13 *Supplemental Financings.*** The Governmental Lender and the Fiscal Agent each acknowledges that the Funding Lender or, if Freddie Mac is not the Funding Lender, Freddie Mac may make additional loans to the Borrower secured by additional mortgages on the Project ("**Additional Loans**"); provided however that no such Additional Loans may be made without the prior written consent of Governmental Lender as set forth in Section \_\_\_\_ of the Resolution.

**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or Prepayment Premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement and the Project Note, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid

by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

**Section 8.17 *Reliance.*** The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Governmental Lender Servicer, the Loan Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. In acting or omitting to act pursuant to this Project Loan Agreement, the TEL Regulatory Agreement, the Arbitrage Rebate Agreement, or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under the Funding Loan Agreement, including, but not limited to, Article VII thereof. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such

services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Loan Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]



IN WITNESS WHEREOF, the parties hereto have executed this Project Loan Agreement, all as of the date first set forth above.

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

By: \_\_\_\_\_  
Scott Erlich  
Chair

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

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

[FISCAL AGENT'S SIGNATURE PAGE TO LAUDERHILL POINT APARTMENTS PROJECT LOAN  
AGREEMENT]

**LAUDERHILL PRESERVATION LP**, a Florida limited partnership

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

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

[BORROWER'S SIGNATURE PAGE TO LAUDERHILL POINT APARTMENTS PROJECT LOAN AGREEMENT]

**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:                      Lauderhill Preservation LP  
250 West 55<sup>th</sup> Street, 35<sup>th</sup> Floor  
New York, New York 10019

Location of Property:                See legal description attached hereto as Exhibit "A"

Name of Project:                        Lauderhill Point 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 \_\_\_\_\_, 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 "State"), whose mailing address is 110 N.E. 3<sup>rd</sup> Street, Suite 300, Fort Lauderdale, Florida 33301; The Bank of New York Mellon Trust Company, N.A., a national banking association, whose mailing address is 10161 Centurion Parkway N., Jacksonville, Florida 32256, Attention: Corporate Trust Department, in its capacity as fiscal agent (including its successors and assigns, the "Fiscal Agent") pursuant to the Funding Loan Agreement between the Issuer, the Fiscal Agent and Berkadia Commercial Mortgage LLC dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), securing the Housing Finance Authority of Broward County, Florida Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments); and Berkadia Commercial Mortgage LLC, a Florida limited liability company and its successors and assigns, whose mailing address is 250 West 55<sup>th</sup> Street, 35<sup>th</sup> Floor, New York, New York 10019 (the "Owner");

**WITNESSETH:**

**WHEREAS**, the Owner intends to acquire, construct and equip a multifamily residential housing development located in Fort Lauderdale, Broward County, Florida (the "County") a portion 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 Note in the aggregate principal amount of \$\_\_\_\_\_ pursuant to the Funding Loan Agreement in order to provide for a loan (the "Loan") to the Owner pursuant to a Project Loan Agreement dated as of \_\_\_\_\_ 1, 2023 (the "Project Loan Agreement"), among the Issuer, the Owner and the Fiscal Agent to finance the Project (as hereinafter defined) and certain costs incurred in connection with the issuance of the Note, all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Funding Loan Agreement and the Project Loan Agreement require, 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 Fiscal Agent and the Owner have determined to enter into this Agreement to set forth certain terms and conditions relating to the operation of the Project, which is located on the 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 Note, covenants and agrees with the other parties hereto as follows:

Section 1. Definitions and Interpretation.

(a) The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement):

"Affiliated Party" of a person means a person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein or (iii) a related person within the meaning of Section 144(a) or 147(a) of the Code.

“Applicable Income Limit” means fifty percent (50%) 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.

“Certificate of Continuing Program Compliance” means the certificate required to be delivered by the Owner to the Issuer and the Fiscal Agent pursuant to Section 4(e) of this Agreement.

“Closing Date” means the delivery date of the Note.

“Code” means the Internal Revenue Code of 1986, as amended, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations or temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

“Compliance Agent” shall mean initially, the Issuer, and thereafter such other organization subsequently designated by the Issuer to serve as Compliance Agent for the Project.

“County” means Broward County, Florida.

“Current Annual Family Income” is determined in accordance with Section 8 of the Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), and includes wages and salaries, overtime pay, commissions, fees, tips and bonuses and other forms of compensation for personal services, net income from operation of a business or a profession, interest, dividends and other net income of any kind from real or personal property, periodic payments from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits or similar types of periodic receipts, payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay, welfare assistance, periodic and determinable allowances such as alimony and child support and regular pay, special pay and allowances of a member of the Armed Forces, and other forms of income described in the Income Certification (as promulgated by the Issuer from time to time in accordance with the Housing Act) but does not include earnings of children under 18, payments received for care of

foster children or adults, lump sum insurance payments, inheritances, capital gains and settlements for personal or property losses, amounts received specifically for, or in reimbursement of, the cost of medical expenses, income of a live-in aide, certain student financial assistance, special pay to a member of the Armed Forces who is exposed to hostile fire, amounts received under certain training programs and other social service programs, temporary, nonrecurring or sporadic income or other forms of income that the Income Certification specifies may be excluded.

“Eligible Persons” means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap or sex, who are either Lower-Income Persons or whose Current Annual Family Income does not exceed one hundred fifty percent (150%) of the area median gross income (within the meaning of Section 142(d) of the Code) for Broward County, Florida, Standard Metropolitan Statistical Area, subject to family size adjustment, as indicated in the latest published Decile Distributions of Family Income by Standard Metropolitan Statistical Areas and Non-Metropolitan Counties prepared and published from time to time by HUD, or such other reliable compilation of income statistics as the Issuer may determine to employ, as adjusted by the Issuer according to the most recent Consumer Price Index statistics; provided that persons of 65 years of age or older shall be defined as “Eligible Persons” regardless of their income.

“Funding Lender” means the owner of the Note, which shall initially mean Berkadia Commercial Mortgage LLC.

“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.

“Issuer’s Compliance Fee” means a compliance monitoring fee in an annual amount equal to \$25.00 per rental unit in the Project (or such other amount as is implemented by the 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 is no Note outstanding. Such fee will be due in a lump sum payment on the date the Note is paid in full. The fee will be calculated for the period commencing on the date the Note is paid in full and ending on the last date of the Qualified Project Period, or such longer period if the set-aside required by the Code, Chapter 159, Part IV, Florida Statutes or other Issuer requirements remain in force after there is no Note outstanding.

“Land” means the real property located in Broward County, Florida, described in Exhibit “A” attached hereto.

“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 \$\_\_\_\_\_ Housing Finance Authority of Broward County, Florida Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments).

“Project” means the acquisition, and construction and equipping of a multi-family residential housing development in Lauderhill, Broward County, Florida known as Lauderhill Point Apartments, located on the Land and financed with proceeds of the Note pursuant to the Project Loan Agreement.

“Project Loan” means the loan made by the Issuer to the Owner pursuant to the Project Loan Agreement in the maximum aggregate amount of \$\_\_\_\_\_, as evidenced by the Note.

“Project Loan Agreement” means that certain Project Loan Agreement dated as of \_\_\_\_\_ 1, 2023 among the Owner, the Issuer and the Fiscal Agent, as amended or supplemented from time to time.

“Project Loan Documents” has the meaning given to that term in the Funding Loan Agreement.

“Qualified Project Period” means the period beginning on the first (1<sup>st</sup>) day on which ten percent (10%) of the residential units in the Project are first occupied or the delivery date of the Note, whichever is later, and ending on the latest of (a) the date that is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Project are first occupied, or (b) the first (1<sup>st</sup>) day on which no tax-exempt private activity bond (as that term is defined in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates.

“Regulations” means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

“Security Instrument” means the \_\_\_\_\_ dated as of the date hereof, by the Owner, granting a first priority mortgage and security interest in the Project to the Issuer to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Issuer to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

(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, construct, equip, own and operate the Project for the purpose of providing a “qualified residential rental project” as such phrase is used in Sections 142(a)(7) and 142(d)(1) of the Code, (2) the Owner shall own the entire Project for federal tax purposes, and (3) the Project shall be owned, managed and operated as multifamily residential rental property, comprised of a building or structure or several buildings or structures containing similarly constructed units, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103-8(b)(4) and 1.103-8(a)(3) of the Regulations, and in accordance with such requirements as may be imposed thereby on the Project from time to time.

(b) Each residential unit in the Project shall be contained in one or more buildings or structures located on the Land and shall be similarly designed, furnished and constructed (except as to number of bedrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family,

including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range or microwave oven, refrigerator and sink, all of which are separate and distinct from the other units.

(c) None of the units in the Project will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.

(d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to Lower-Income Persons or Eligible Persons. Lower-Income Persons and Eligible Persons who are residents of the Project will have equal access to and enjoyment of all common facilities of the Project at all times. The Owner will not discriminate against children of any age when renting the units in the Project.

(e) The Land 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 Note (such as swimming pools, recreational facilities, parking areas and other facilities which are reasonably required for the Project, for example, heating and cooling equipment, trash disposal equipment or units for resident managers or maintenance or security personnel) are functionally related and subordinate to the Project and are commensurate with its size and intended use.

(f) The Owner or an Affiliated Party of the Owner shall not occupy any of the units in the Project; provided, however, that the Owner or an Affiliated Party of the Owner may occupy a unit in a building or structure in the Project that contains five or more units if the Owner or an Affiliated Party of the Owner is a resident manager or other necessary employee (e.g., maintenance and security personnel). No more than two units in the Project shall be occupied by resident managers or maintenance or security personnel.

(g) None of the proceeds of the Note (including investment earnings) may be used to provide a skybox or any other private luxury box, an airplane, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises or a facility used primarily for gambling.

The requirements of this Section 2 shall remain in effect during the term of this Agreement (as defined in Section 13 below).

Section 3. Lower-Income Persons and Eligible Persons. The Owner hereby represents, warrants and covenants as follows:

(a) At all times during the Qualified Project Period, not less than twenty percent (20%) 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 twenty percent (20%) of the completed units in the Project shall be rented to or be available for rent by Eligible Persons.

(c) For purposes of paragraphs (a) and (b) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person (or Eligible Person). However, a Lower-Income Person whose income as of the most recent Income Certification (as described in Section 4(a) below) exceeds one hundred forty percent (140%) of the Applicable Income Limit shall not continue to be treated as a Lower-Income Person if after delivery of such Income Certification, but before the delivery of the next Income Certification, any residential unit in the Project of comparable or smaller size is occupied by a new resident who is not a Lower-Income Person. In addition, a unit that was occupied by a Lower-Income Person (or Eligible Person) shall be counted as occupied by a Lower-Income Person (or Eligible Person) until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person (or Eligible Person) only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person (or Eligible Person).

Section 4. Reporting Requirements; Payment of Issuer's Compliance Fee and Late Reporting Fee; Maintenance.

(a) The Owner shall obtain and maintain on file an Income Certification from each Lower-Income Person and Eligible Person dated immediately prior to the initial occupancy of such tenant in the Project in the form and containing such information as may be required by Section 142(d) of the Code, as the same may be from time to time amended by the Issuer on the advice of 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 Fiscal Agent, 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 Fiscal Agent to inspect the books and records of the Owner pertaining to the incomes of and rentals charged to all tenants residing in the Project.

(e) The Owner shall prepare and submit to the Issuer 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 Fiscal Agent a

Certificate of Continuing Program Compliance in the form and content approved by the Issuer, executed by the Owner stating (i) the percentage of residential units that were occupied by Lower-Income Persons and Eligible Persons as of the 20th day of the previous month, (ii) that at all times during the previous month 20% of the residential units, were occupied (or held available for occupancy) by Eligible Persons (as determined in accordance with Section 3 of this Agreement), (iii) that at all times during the previous month at least 20% 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 Fiscal Agent or a newly designated Compliance Agent under Section 23 hereof, the Issuer may direct the Owner to provide and the Owner shall provide to the Fiscal Agent or the newly designated Compliance Agent copies of all of the reports, documents and certificates required under this Section. The Owner shall pay all reasonable fees and expenses of the Fiscal Agent or the newly designated Compliance Agent in connection with such responsibilities. Upon the designation of the Fiscal Agent or the Compliance Agent as the compliance monitor under this Agreement, all references herein to the Issuer as the recipient of reports and filings shall be deemed to be the Fiscal Agent and/or the Compliance Agent, as applicable.

(h) The Owner shall immediately notify the Fiscal Agent and the Issuer of any change in the management of the Project.

(i) If at any time during the term of this Agreement there is no Note Outstanding (as provided in the Funding Loan Agreement), the Owner shall pay the Issuer's Compliance Fee.

(j) The Owner will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected as part of the Project, in good condition and repair (normal wear and tear excepted), will not commit or suffer any waste and will not do or suffer to be done anything

which would or could increase the risk of fire or other hazard to the Project or any part thereof. In order to ensure the Owner's compliance with this covenant, the Issuer or its representatives are hereby authorized to enter upon and inspect the Project at any time during normal business hours upon reasonable notice and subject to the rights of tenants. Notwithstanding the foregoing, the Issuer has no affirmative duty to make such inspection.

(k) The Owner will construct and operate the Project so that it conforms in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, including, but not limited to, the Americans with Disabilities Act of 1990.

(l) The Owner hereby agrees to pay a late fee in the amount of \$100 per day (including weekends) for each day that the Owner fails to timely submit (in the sole, reasonable opinion of the Issuer) any of the information, Income Certifications, rent rolls, Certificates of Continuing Program Compliance, reports, documents and/or certificates (collectively, the "Compliance Reporting Information") required by this Section 4, as may be amended from time to time (the "Late Reporting Fee"). The Owner acknowledges and hereby agrees that, notwithstanding anything in this Agreement to the contrary, a Late Reporting Fee shall apply to and be payable in connection with each separate instance in which any of the Compliance Reporting Information (including individual components thereof) is not timely submitted pursuant to this Section 4, as may be amended from time to time.

Section 5. Indemnification. The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, the County and the Fiscal Agent and their respective officers, directors, officials, employees and agents from and against any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Agreement, the Loan, the Project or the sale of the Note 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 Note to finance the Project, and all costs, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Owner shall not be required to indemnify any person for damages caused by the negligence or willful misconduct 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 Fiscal Agent or any of their respective officers, directors, officials, employees or agents, with respect to which indemnity may be sought hereunder, the Owner, upon written notice from the indemnified party (which notice shall be given in a timely manner so as not to impair Owner's rights to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably

acceptable to the indemnified party and the payment of all expenses. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, but, unless such separate counsel is employed with the approval and consent of the Owner, or because of a conflict of interest between the Owner and the indemnified party, the Owner shall not be required to pay the fees and expenses of such separate counsel. The Owner agrees to execute any additional documents deemed necessary by the Issuer, the County or the Fiscal Agent to evidence the indemnification provided for in this Section 5. At the request of the Issuer or County, Owner agrees, in addition to the above indemnification, to pay the reasonable costs and expenses of the County Attorney of Broward County in connection with the action or proceeding giving rise to the indemnification.

While the Owner has possession of the Project, the Owner also shall pay and discharge and shall indemnify and hold harmless the Issuer and the Fiscal Agent from (a) any lien or charge upon payments by the Owner to the Issuer and the Fiscal Agent hereunder, and (b) any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges other than income and other similar taxes in respect of any portion of the Project. If any such claim is asserted, or any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges other than income and other similar taxes, are sought to be imposed, the Issuer or the Fiscal Agent shall give prompt notice to the Owner and the Owner shall have the sole right and duty to assume, and will assume, the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion.

In addition thereto, the Owner will pay upon demand all of the reasonable fees and expenses paid or incurred by the Fiscal Agent and/or the Issuer in enforcing the provisions hereof.

Section 6. Reliance. The Issuer and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the owners from time to time of the Note, the County, Bond Counsel and the other parties to transactions involving the issuance, sale or remarketing of the Note and their respective counsel. In performing their duties and obligations hereunder, the Issuer and the Fiscal Agent may rely upon statements and certificates of the Owner, Lower-Income Persons and Eligible Persons reasonably believed by the Owner, its agents and employees to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In addition, the Issuer and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Issuer or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel. In performing its duties and obligations hereunder, the Owner may rely upon certificates of Lower-Income Persons and Eligible Persons reasonably believed to be genuine and to have been executed by the proper person or persons.

Section 7. Fair Housing Laws.



The Owner will comply with all fair housing laws, rules, regulations or orders applicable to the Project and shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. 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 or the Funding Lender from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer, the Funding Lender or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the Issuer, the Funding Lender or Fiscal Agent after written request therefor will be a default hereunder.

Section 9. Tenant Lease Restrictions. All tenant leases shall be expressly subordinate to the Security Instrument, 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 Fiscal Agent, the Funding Lender or the Issuer, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and

(c) Agrees not to sublease to any person or family who does not execute and deliver an Income Certification.

Section 10. Sale 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 Fiscal Agent 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 Note, or any part thereof, becoming includable in the gross income of the

holders thereof for federal income tax purposes, and (iii) upon receipt by the Issuer of a fee from the Owner upon transfer of ownership in excess of fifty percent (50%) interest in the Project or the Owner (which fee shall be refunded by the Issuer to the Owner in the event the Issuer does not approve the transfer of the Project to the proposed purchaser or assignee thereof, or in the event such transfer is not consummated) as follows:

- (a) Ten percent (10%) of the amount of Note outstanding if up to ten percent (10%) of the units are rented.
- (b) Two percent (2%) of the amount of Note outstanding if eleven percent (11%) to sixty percent (60%) of the units are rented.
- (c) One percent (1%) of the amount of Note outstanding if over sixty percent (60%) of the units are rented.
- (d) One-half percent (.5%) of the amount of Note outstanding after one (1) year from the date of completion of construction, 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, the Issuer will provide to the Owner and the purchaser or transferee on request its written consent to any transfer in accordance with this Section an estoppel certificate. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Agreement. Nothing contained in this Section 10 shall affect any provision of the Security Instrument 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 Note or any other person as a precondition to sale, transfer or other disposition of the Project. The Transfer Fee will apply if a material portion of the Project financed with proceeds from the 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 Security Instrument. If such material portion of such Project consists of real property and improvements, the purchaser thereof must execute and deliver to the Owner and the Fiscal Agent a document in form and substance reasonably satisfactory to the Issuer and the Funding Lender pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this Agreement. If the Note has been paid at the time of such transfer, no Transfer Fee will apply.

The Owner shall not sell or otherwise transfer the Project in whole, nor shall there be substituted a new developing member of the Owner or a change in the controlling ownership in the developing member of the Owner, or other merger, transfer or consolidation of the Owner,

unless (a) the Owner has received the prior written consent of the Issuer (which shall respond within a reasonable period of time and shall not unreasonably withhold such consent), (b) the fees and expenses of the Issuer and its professionals have been paid, including the Transfer Fee, (c) the Owner shall not be in default hereunder, (d) it is reasonably expected that continued operation of the Project will comply with the requirements of this Agreement, (e) the subsequent purchaser or assignee shall execute any document reasonably requested by the Issuer and the Funding Lender with respect to assuming the obligations of the Owner under this Agreement, (f) the Funding Lender and the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, (g) the purchaser or assignee shall have satisfied such other conditions as may be reasonable under the circumstances, (h) the purchaser or assignee shall have first executed a document in recordable form addressed to the Issuer, the Funding Lender and the Fiscal Agent to the effect that such purchaser or assignee will comply with the terms and conditions of this Agreement, the Project Loan Agreement and the other Project Loan Documents, (i) the Fiscal Agent, the Funding Lender and the Issuer shall receive an opinion of counsel reasonably acceptable to the Issuer to the effect that the purchaser's or assignee's obligations under this Agreement, the Project Loan Agreement and other Project Loan Documents relating to the Note is enforceable against such purchaser or assignee in accordance with their terms, and (j) the Fiscal Agent, the Funding Lender 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 Note, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes.

It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section shall be ineffective to relieve the Owner of its obligations under this Agreement or the Project Loan Agreement. In the event that the purchaser or assignee shall assume the obligations of the Owner under the Security Instrument, the Project Loan Agreement and this Agreement, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations hereunder and under the Project Loan Agreement arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

Notwithstanding the foregoing, ownership of the Project may be transferred in connection with a foreclosure thereof under the Security Instrument, or the acceptance of the Project by the mortgagee or its designee in lieu of foreclosure under the Security Instrument, without complying with this Section 10; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any of such parties obtains an ownership interest in the Project for federal tax purposes.

Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by this Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by this Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Project which is made expressly subject and subordinate hereto and to the Security Instrument, or (v) subject to the provisions of the Security Instrument, any transfer of membership interests in the Owner or in the entities which are members in the Owner.

Section 11. Negative Covenants. During the term of this Agreement, the Owner shall not:

(a) Except pursuant to the provisions of this Agreement, the Project Loan Agreement and the other Project Loan Documents, or except upon a sale or transfer of the Project in accordance with the terms of this Agreement, the Project Loan Agreement and the Security Instrument, encumber any of the mortgaged property, including the grant of commercial leases (other than for vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Project and granted in connection with the day to day operation of an apartment complex), or permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Project.

(b) Demolish any part of the Project necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Project; or

(c) Permit the use of the dwelling accommodations of the Project for any purpose except rental residences in compliance with Section 142(d) of the Code.

Section 12. Covenants to Run with the Land. This Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding upon the Owner's assigns and successors and all subsequent owners of the Land 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 Note is retired in full or (ii) the proceeds received as a result of such event are used to finance a project that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event (as determined by 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 Fiscal Agent and the Owner shall, upon the written request of the Owner, and at Owner's sole expense, execute and record a Notice of Termination of Land Use Restriction Agreement (the "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 Fiscal Agent an opinion of Bond Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Note from gross income for federal income tax purposes). After the Fiscal Agent learns of such failure, the Fiscal Agent

shall attempt with reasonable diligence to notify the Owner and the Issuer of such failure by telephonic and written communication.

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 Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Project different than those imposed by the Regulations or the Code and stated herein, and the Owner's failure to comply with such different requirements would produce a material and substantial risk that interest on the Note will become subject to federal income taxation, then this Agreement shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Bond Counsel to effectuate the intent of this Section 15.

Section 16. Burden and Benefit. The Issuer, the Fiscal Agent and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Fiscal Agent, the Issuer and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Lower-Income Persons and Eligible Persons, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Note was issued. The Owner hereby expressly acknowledges that this Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Note 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 Security Instrument.

Section 19. Remedies; Enforceability. The benefits of this Agreement shall inure to, and may be enforced by, respectively, the Issuer and the Fiscal Agent and its successors, the holder of the Note and their successors and assigns to the extent permitted by the Funding Loan Agreement, and solely as to Sections 2, 3 and 7 of this Agreement, the Lower-Income Persons and Eligible Persons and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to Section 3 of this Agreement for the period set forth in

Section 13 hereof, whether or not the Security Instrument or Loan may be paid in full, and whether or not the Note is Outstanding. If a material violation of any of the provisions hereof occurs and is not cured within the period provided by Section 14 hereof, any or all of such parties may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to compel specific performance hereunder, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default. The remedies of the beneficiaries of this Agreement other than the Issuer 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 Project 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.

The Owner hereby agrees that the appointment of a new manager may be necessary to serve the public purpose for which the Note was issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Note following a violation of the provisions of this Agreement which is not cured within the period provided in Section 14 hereof. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a new manager to operate the Project following a violation by the Owner of the provisions of this Agreement which is not cured as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of a new manager in accordance with the terms hereof. The Owner further agrees that the Issuer shall have the right to require the Owner to remove any manager or managing agent whose actions or inactions present a material risk of a breach of the agreements of the Owner herein, including, without limitation, a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Note and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such

right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent.

Section 20. Filing. Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public deed records of Broward County, Florida, and in such manner and in such other places as the Issuer or the Fiscal Agent may reasonably request, and shall pay all fees and charges incurred in connection therewith.

Section 21. Governing Law. This Agreement shall be governed by the laws of the State. The venue for any proceeding hereunder shall be a court of appropriate jurisdiction in Broward County, Florida.

Section 22. Amendments.

(a) The Owner shall not assign its interest hereunder, except by writing and in accordance with the provisions of Section 10 hereof.

(b) This Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records for Broward County, Florida. Anything to the contrary notwithstanding, the parties hereby agree to amend this Agreement to the extent required in the opinion of Bond Counsel, in order for interest on the Note to remain exempt from federal income taxation under Section 103 of the Code. The Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Project to comply, with the requirements of Section 142(d) of the Code and to enter into modifications and amendments to this Agreement to the extent required by federal law, by any amendment to the Code or by any Regulation promulgated thereunder, in each case so that interest on the Note remains exempt from federal income taxes. Any such amendment, revision or termination shall be effected only in accordance with the Funding Loan Agreement.

Section 23. Fiscal Agent or Compliance Agent to Monitor Compliance Upon Request of Issuer. The Fiscal Agent shall deliver to the Issuer on or prior to the 20<sup>th</sup> day of each month a statement as to whether the Fiscal Agent has received the Certificate of Continuing Program Compliance required to be delivered by the Owner on the 10<sup>th</sup> day of such month. Additionally, if the Issuer requests in writing that the Fiscal Agent or Compliance Agent assume the role of compliance monitoring, the Fiscal Agent or Compliance Agent shall receive and examine all other reports, certifications and other documents required to be delivered to the Issuer or the Fiscal Agent or Compliance Agent hereunder and shall notify the Issuer promptly of non-compliance with this Agreement. In such event the Fiscal Agent or Compliance Agent



shall include in its monthly statement described above a statement as to whether it has received the rent rolls and whether any of the information in any such documents received by the Fiscal Agent or Compliance Agent indicates the Owner has failed to comply with any of the requirements contained in this Agreement. The Fiscal Agent or Compliance Agent shall be authorized to charge reasonable fees and expenses to the Owner if it assumes such role.

Section 24. Notice. All notices and other communications required or permitted under this Agreement must be in writing and shall be deemed to have been duly given (i) when delivered, if sent by registered or certified mail (return receipt requested), (ii) when delivered, if delivered personally, (iii) when transmitted, if sent by facsimile if a confirmation of transmission is produced by the sending machine (and a copy of each facsimile promptly shall be sent by first class United States mail, postage fully prepaid) 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 Fiscal Agent.

Section 25. Freddie Mac Rider. The provisions of this Regulatory Agreement are subject to the provisions of the Freddie Mac Rider attached hereto as Exhibit "C" and made a part hereof. In the event of a conflict between provisions of the Freddie Mac Rider and the provisions of this Regulatory Agreement, the provisions of the Freddie Mac Rider shall control. The provisions of the Freddie Mac Rider shall be terminated automatically and without further action required of any party hereto, the Loan Servicer, or Freddie Mac following the Freddie Mac Purchase Date (as defined in the Funding Loan Agreement) upon the earlier of (a) the date the Governmental Note is paid in full, retired, or otherwise discharged and (b) the date neither the Loan Servicer nor Freddie Mac is the Funding Lender or Funding Lender Representative.

Section 26. 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 27. 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 28. Release of Fiscal Agent. Notwithstanding anything in this Agreement to the contrary, on and after the date the Note is no longer outstanding, the Fiscal Agent shall be released as a party to this Agreement and discharged from any duties or obligations hereunder, and all provisions throughout this Agreement related to the duties of, or notice to or from, the Fiscal Agent shall be of no further force and effect. If any approval or consent of the Fiscal Agent is required, such approval or consent shall be obtained from the Issuer; however, multiple notices need not be provided. Notwithstanding the foregoing, any such references shall remain in effect when needed to construe land use restriction obligations under this Agreement or to provide definitions. The Fiscal Agent's rights to indemnification provided for

in the Funding Loan Agreement, the Project Loan Agreement and this Agreement shall survive such release and discharge.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Issuer, the Fiscal Agent, 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: \_\_\_\_\_

Name: Scott Ehrlich

Title: Chair

ATTEST:

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

Name: Millette Manos

Title: 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 and Millette \_\_ Manos, Chair and Secretary, respectively, of the Housing Finance Authority of Broward County, Florida, a public body corporate and politic, on behalf of said Authority. They are 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 Fiscal Agent**

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 \_\_\_\_, 2023 by \_\_\_\_\_, as \_\_\_\_\_ 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:

**LAUDERHILL PRESERVATION LP,**  
a Florida Limited Partnership

By: \_\_\_\_\_  
a Florida limited liability company, its manager

By: \_\_\_\_\_  
\_\_\_\_\_, 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 \_\_\_\_\_, Vice President of \_\_\_\_\_, a Florida \_\_\_\_\_, the manager of Lauderhill Preservation LP. He is personally known to me or has produced a valid driver's license as identification.

(SEAL)

\_\_\_\_\_  
Printed/Typed Name:  
Notary Public-State of Illinois  
Commission Number:

[BORROWER'S SIGNATURE PAGE |  
LAUDERHILL PRESERVATION APARTMENTS LAND USE RESTRICTION AGREEMENT]

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**

**EXHIBIT "B"**

**FORM OF  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Lauderhill Preservation Apartments)**

ABOVE SPACE RESERVED FOR  
RECORDING PURPOSES ONLY

This NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT (the "Termination") is executed as of \_\_\_\_\_, 20\_\_, with an effective date of \_\_\_\_\_, 20\_\_, by the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Authority"), THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, as Fiscal Agent (the "Fiscal Agent"), and \_\_\_\_\_ a Florida \_\_\_\_\_ (the "Current Owner").

1. That certain Land Use Restriction Agreement dated as of \_\_\_\_\_, 2022 and recorded \_\_\_\_\_, 2022, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Broward County, Florida (the "Land Use Restriction Agreement").

2. The Qualified Project Period, as defined in the Land Use Restriction Agreement, ended on \_\_\_\_\_, and the Authority has authorized the execution and delivery of this Termination.

3. By execution of this Termination, the Land Use Restriction Agreement will be terminated.

4. All payments of any amounts due under the Land Use Restriction Agreement are fully paid and all obligations thereunder have been met. There is currently no default under the Land Use Restriction Agreement.

IN WITNESS WHEREOF, the Authority, the Fiscal Agent and the Current Owner hereby agree to terminate the Land Use Restriction Agreement.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Lauderhill Point Apartments)**

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 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_. Said person is personally known to me or has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of Florida

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

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

My Commission No.: \_\_\_\_\_



**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Lauderhill Point Apartments)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**THE AUTHORITY:**

WITNESSES:

HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

WITNESSES:

[SEAL]

\_\_\_\_\_  
Print: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Print: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as Chair and Secretary, respectively, of the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, who executed the foregoing instrument and acknowledged to me that they did such on behalf of the Authority.

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

**COUNTERPART SIGNATURE PAGE FOR  
NOTICE OF TERMINATION OF LAND USE RESTRICTION AGREEMENT**

**(Lauderhill Point Apartments)**

IN WITNESS WHEREOF, the parties have caused this Notice of Termination of Land Use Restriction Agreement to be executed in their respective names by their duly authorized representative as of the day and year first written above.

**FISCAL AGENT:**

WITNESSES:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Fiscal Agent

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by \_\_\_\_\_, as a \_\_\_\_\_ of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said bank. Said person is personally known to me or has produced a valid driver's license as identification.

(SEAL)

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

## EXHIBIT "C"

### FREDDIE MAC RIDER

This Freddie Mac Rider (the "Rider") is attached to and forms a part of the Land Use Restriction Agreement (the "Regulatory Agreement"), dated as of \_\_\_\_\_, 2023, by and among the Housing Finance Authority of Broward County, Florida (the "Governmental Lender"), The Bank of New York Mellon Trust Company, N.A., as fiscal agent (together with any successor in such capacity, the "Fiscal Agent"), and Lauderhill Preservation LP (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Borrower").

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

**"Delivery Date"** means \_\_\_\_\_, 2023 [date of closing].

**"Freddie Mac"** means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States, and its successors and assigns.

**"Funding Lender"** means the holder of the Governmental Note, initially the Initial Funding Lender and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

**"Funding Loan Agreement"** means the Funding Loan Agreement dated as of \_\_\_\_\_ 1, 2023 by and among the Governmental Lender, the Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended, restated, supplemented or otherwise modified from time to time.

**"Governmental Note"** means the Multifamily Housing Revenue Note, Series 2023 dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Funding Lender, pursuant to the Funding Loan Agreement as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all addenda thereto.

**"Initial Funding Lender"** means Berkadia Commercial Mortgage LLC.

**"Loan Servicer"** means any entity appointed by Funding Lender Representative to service the Loans and any successor in such capacity as appointed by Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. Initially, Loan Servicer shall be Berkadia Commercial Mortgage LLC.

**“Project”** means, collectively, the Land, Improvements, and Fixtures (each as defined in the Security Instrument).

**“Project Loan”** means the loan from the Governmental Lender to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent as security for the Funding Loan.

**“Project Loan Agreement”** means the Project Loan Agreement dated as of \_\_\_\_\_ 1, 2023 among the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may be amended, restated, supplemented or otherwise modified from time to time.

**“Project Loan Documents”** means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

**“Project Note”** means the Project Note dated the Delivery Date, executed by the Borrower in favor of the Governmental Lender, evidencing Borrower’s payment obligations in respect of the Project Loan, and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto.

**“Security Instrument”** means the [Mortgage] dated as of the Delivery Date, granting a first priority mortgage and security interest in the Project in favor of the Governmental Lender, as the same may be amended, restated, supplemented or otherwise modified from time to time or any mortgage executed in substitution therefor, as such substitute mortgage may be amended, restated, supplemented or otherwise modified from time to time, and together with all riders and addenda thereto.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any

transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender's liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. None of the following shall apply to any transfer of title to the Project to Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan:

- (a) Restrictions on sale or transfer of the Project or of any interest in Borrower.
- (b) Governmental Lender or Fiscal Agent consents.
- (c) Transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like.

No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan, provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Mortgaged Property for federal income tax purposes.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents.

(b) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and, if the Fiscal Agent is party to the Regulatory Agreement, the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or if the Fiscal Agent is party to the Regulatory Agreement and required to provide such notice, the Fiscal Agent shall, by notice in writing to the Borrower, the Loan Servicer and the Funding Lender, inform the Borrower, the Loan Servicer and the Funding Lender of each of the following:

- (a) The occurrence of such violation.
- (b) The nature of the violation.
- (c) Whether the violation (i) has been cured, (ii) has not been cured, but is curable within a reasonable period of time, or (iii) is incurable.

Notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 2, 3, 4, 11 and 15 are and shall at all times

remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender or, if applicable, the Fiscal Agent is party to the Regulatory Agreement, the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Loan Servicer at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

Lauderhill Preservation LP  
250 West 55<sup>th</sup> Street, 35<sup>th</sup> Floor  
New York, New York 10019  
Attention:  
Facsimile:  
Telephone:

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: [mfla@freddiemac.com](mailto:mfla@freddiemac.com)  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: [guy\\_nelson@freddiemac.com](mailto:guy_nelson@freddiemac.com)  
Telephone: (703) 903-2000

**EXHIBIT "D"**

**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 RBC CAPITAL MARKETS, LLC and RAYMOND JAMES & ASSOCIATES, INC., as Placement Agents (herein, collectively, the “Agents”), in connection with the issuance of the Note (as defined below) and consented to by Lauderhill Preservation LP., 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 Note, Series 2023 (Lauderhill Point Apartments) (the “Note”) to provide financing to the Borrower for the constructing and equipping of a multi-family residential housing development in Lauderhill, Broward County, Florida (the “County”) known as Lauderhill Point Apartments (the “Project”).

The Note will initially be acquired directly by Berkadia Commercial Mortgage, LLC, a limited liability corporation (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  
(LAUDERHILL POINT 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  
(LAUDERHILL POINT APARTMENTS)

**RBC CAPITAL MARKETS, LLC**

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

Name: Helen Hough Feinberg

Title: Managing Director

SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT  
(LAUDERHILL POINT APARTMENTS)

**RAYMOND JAMES & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Name: Tim Wranovix  
Title: Director

SIGNATURE PAGE FOR PLACEMENT AGENT AGREEMENT  
(LAUDERHILL POINT APARTMENTS)

**LAUDERHILL PRESERVATION LP, a Florida limited  
partnership,**

By \_\_\_\_\_, its sole general partner

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

Name:

Title

**EXHIBIT "E"**

**FORM OF PROJECT NOTE**





Freddie Mac Loan Number: 510663966  
 Property Name: Lauderhill Point Apartments

**Project Note – Fixed Rate – TEL (Immediate)**  
 (Revised 6-27-2023)

**Borrower:** LAUDERHILL PRESERVATION LP, a Florida limited partnership  
**Governmental Lender:** HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
**Fiscal Agent:** THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.  
**Effective Date:** [\_\_\_\_], 2023

FOR VALUE RECEIVED, Borrower (jointly and severally if more than one), promises to pay to the order of Governmental Lender (and its assigns) the Project Loan Amount shown below, plus Prepayment Premium, if any, and interest thereon, and to pay the other amounts owing from time to time hereunder, according to the terms provided in this Project Note (“**Project Note**”).

This Project Note is being delivered pursuant to that certain Project Loan Agreement, dated as of [\_\_\_\_] 1, 2023, among Governmental Lender, Fiscal Agent and Borrower (together with any and all amendments, modifications, supplements and restatements, the “**Project Loan Agreement**”) pursuant to which Governmental Lender is making the Project Loan in the Project Loan Amount to Borrower, and this Project Note is entitled to the benefits of the Project Loan Agreement and is subject to the terms, conditions and provisions thereof. The Project Loan was funded from proceeds of a separate loan (the “**Funding Loan**”) incurred by Governmental Lender pursuant to the Funding Loan Agreement, dated as of [\_\_\_\_] 1, 2023, among Initial Funding Lender (as defined below), Governmental Lender, and Fiscal Agent. This Project Note will be deemed to be fully advanced as of the Effective Date, which is the date of initial funding of the Funding Loan and the delivery of the Governmental Note by Governmental Lender to the Initial Funding Lender.

Capitalized terms used but not defined in this Project Note, including those set forth in the paragraphs above and the tables in Section 1 of this Project Note, will have the meanings given to such terms in the Project Loan Agreement, the Funding Loan Agreement or the Continuing Covenant Agreement by and between Borrower and Berkadia Commercial Mortgage LLC, as Initial Funding Lender (“**Initial Funding Lender**”), effective as of the Effective Date (as amended, modified, or supplemented from time to time, the “**Continuing Covenant Agreement**”).

**1. Key Note Terms**

“ <b>Project Loan Amount</b> ”: US \$ _____		“ <b>First Project Loan Payment Date</b> ” <sup>1</sup> : _____ 1, 20__
“ <b>Interest-Only Period</b> ”: (choose one)		
<input type="checkbox"/>	The period from the Effective Date until the Amortization Commencement Date “ <b>Amortization Commencement Date</b> ” <sup>2</sup> : _____ 1, 20__	
<input type="checkbox"/>	The period from the Effective Date until the Scheduled Maturity Date	
<input checked="" type="checkbox"/>	Not applicable	
“ <b>Amortization Period</b> ” <sup>3</sup> : 480 months		
<sup>1</sup> Insert the first day of the first calendar month following the Effective Date. <sup>2</sup> For partial term interest-only Project Loans, insert the date that is the number of months of interest-only payments (12, 24 or 36 months) after the First Project Loan Payment Date. <sup>3</sup> If the Project Loan is interest-only for the entire term, insert “0”.		

**“Scheduled Maturity Date”:** [ \_\_\_\_\_ 1, 2040]

<b>“Interest Calculation Method”:</b>		<b>“Interest Rate”</b> means the annual interest rate of ____%
<input type="checkbox"/>	30/360	
<input checked="" type="checkbox"/>	Actual/360	

<b>“Base Recourse”</b> <i>(select one)</i>	
<input checked="" type="checkbox"/>	A portion of the Indebtedness equal to 0% of the Project Loan Amount
<input type="checkbox"/>	A portion of the Indebtedness equal to __% of the Project Loan Amount
<i>(See Section 14)</i>	

<b>Prepayment</b>	
<b>“Lockout Period”</b> <i>(select one)</i>	
<input checked="" type="checkbox"/>	The period from and including the Effective Date until but not including that date which is 120 calendar months following the Effective Date <i>(Standard Lockout)</i>
<input type="checkbox"/>	The period from and including the Effective Date until but not including _____ 1, 20__ <i>(Non-standard Lockout)</i>
<input type="checkbox"/>	Not applicable
<b>“Yield Maintenance Period”</b> <i>(select one)</i>	
<input checked="" type="checkbox"/>	The period from and including the Effective Date until but not including that date which is 6 calendar months prior to the Scheduled Maturity Date <i>(Standard Yield Maintenance)</i>
<input type="checkbox"/>	The period from and including the Effective Date until but not including _____ 1, 20__ <i>(Non-standard Yield Maintenance)</i>
<input type="checkbox"/>	Not applicable
<b>“Window Period”</b> <i>(select one)</i>	
<input checked="" type="checkbox"/>	3 consecutive calendar month period prior to the Scheduled Maturity Date <i>(Standard Window Period)</i>
<input type="checkbox"/>	__ consecutive calendar month period prior to the Scheduled Maturity Date <i>(Non-standard Window Period)</i>
<b>“Prepayment Premium Period”</b> means the period from and including the Effective Date until but not including the first day of the Window Period.	
<i>(See Section 4 and Schedule 3)</i>	

<b>Modifications, Riders, and Schedules</b>	
<input type="checkbox"/>	Project Note modifications are included in <u>Exhibit A</u>
<input type="checkbox"/>	The following Rider(s) are attached to this Project Note: <i>[if checked, list name of Rider and revision date]</i>
X	<b>The following Schedules are attached to this Project Note:</b> Schedule 1 – State-Specific Provisions by Property Jurisdiction <b>Property Jurisdiction:</b> Florida <i>(list state in which Mortgaged Property is located)</i>
X	Schedule 2 – Project Loan Amortization Schedule
X	Schedule 3 – Prepayment Premium

## 2. Interest.

- (a) **Interest Rate.** Interest will accrue on the outstanding principal balance of this Project Note at the Interest Rate, subject to the provisions of Section 5(c) of this Project Note related to the Default Rate. Except as set forth in Section 2(c) and Section 4, accrued interest will be payable in arrears.
- (b) **Interest Calculation.** Interest under this Project Note will be computed, payable and allocated using the Interest Calculation Method specified in Section 1.
- (i)
- (A) If the Interest Calculation Method specified in Section 1 is 30/360, interest under this Project Note will be computed, payable and allocated on the basis of a 360-day year consisting of twelve 30-day months.
- (B) If the Interest Calculation Method specified in Section 1 is Actual/360, interest under this Project Note will be computed, payable and allocated on the basis of an actual/360 interest calculation schedule (interest is payable for the actual number of days in each month, and each month's interest is calculated by multiplying the unpaid principal amount of this Project Note as of the first day of the month for which interest is being calculated by the Interest Rate, dividing the product by 360, and multiplying the quotient by the number of days in the month for which interest is being calculated). The amount of the monthly installment of principal and interest under this Project Note attributable to principal and the amount attributable to interest will vary based upon the number of days in the month for which such installment is paid.
- (ii) If Holder receives any regularly scheduled monthly payment before its Project Loan Payment Date, Holder will be deemed to have received the payment on its Project Loan Payment Date for the purpose of calculating interest due.
- (iii) Any accrued interest remaining past due for 30 days or more, at Loan Servicer's discretion, may be added to and become part of the unpaid principal balance of this Project Note and any reference to "accrued interest" will refer to accrued interest that has not yet become part of the unpaid principal balance. Any amount added to principal pursuant to the Financing Documents will bear interest at the applicable rate or rates specified in this Project Note and will be payable with such interest upon demand by Loan Servicer and, absent such demand, as provided in this Project Note for the payment of principal and interest.
- (c) **Interest Due for Partial Month.** Unless the Effective Date is the first day of a calendar month, Borrower must pay interest simultaneously with the execution of this Project Note for the period beginning on the Effective Date through and including the last day of the calendar month. If the Effective Date is the first day of a calendar month, then no payment will be due from Borrower at the time of the execution of this Project Note and the Project Loan Payment Date for the first monthly payment under Section 3 of interest-only or principal and interest, as applicable, will be the First Project Loan Payment Date set forth in Section 1 of this Project Note.

## 3. Payments.

- (a) **Payment of Interest.** Borrower must pay on the first calendar day of each month commencing on the First Project Loan Payment Date (each such date for payment a "**Project Loan Payment Date**"), interest at the Interest Rate on the outstanding principal balance of this Project Note, and must also pay interest on this Project Note at the Interest Rate in the event of an optional or mandatory prepayment or acceleration of all or a part of the Project Loan pursuant to this Project Note or the Project Loan

Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Project Note subject to prepayment.

- (b) **Payment of Principal.** Borrower must pay the outstanding principal of this Project Note in full on the Scheduled Maturity Date and in monthly installments on each date set forth in the Project Loan Amortization Schedule attached as Schedule 2 (the “**Project Loan Amortization Schedule**”) in an amount equal to the corresponding amounts set forth therein, or at such earlier times and in such amounts as may be required in the event of an optional or mandatory prepayment or acceleration of the Project Loan pursuant to this Project Note or the Project Loan Agreement.
- (c) **Application of Payments.** Each payment will be applied as of its scheduled date, and, if the payment consists of both principal and interest, it will be applied first to accrued interest and then to outstanding principal. If, on the Scheduled Maturity Date, Borrower still owes amounts under this Project Note or any other Financing Document, Borrower must pay those amounts and any other Indebtedness in full on the Scheduled Maturity Date.
- (d) **Timing of Payments.** To ensure timely payment, Loan Servicer will collect from Borrower, and Borrower must provide to Loan Servicer, the foregoing payments two (2) Business Days prior to the respective Project Loan Payment Date (except as otherwise stated in Section 2(c) of this Project Note).
- (e) **Manner and Place of Payment.** All payments due under this Project Note must be made in immediately available U.S. funds and will be payable at the principal office designated by Loan Servicer or such other place as may be designated by Notice to Borrower from or on behalf of Loan Servicer. Notwithstanding the foregoing, if there is no Loan Servicer or if the Borrower is so directed in writing by the Funding Lender Representative, all payments due under this Project Note must be made directly to Fiscal Agent as provided in the Project Loan Agreement.
- (f) **Payment of Fees and Expenses.** Borrower must also pay fees and expenses under Section 4.02 of the Project Loan Agreement, rebate amounts under Sections 2.04 and 4.03 of the Project Loan Agreement and indemnification amounts under Section 6.01 of the Project Loan Agreement and Section 10.02 of the Continuing Covenant Agreement, as well as any other amounts owed by the Borrower under the Financing Documents, when due and in accordance with the terms and provisions set forth therein.
- (g) **Deficiencies.** In the event of any deficiency in the funds available under the Funding Loan Agreement for payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loan when due, Borrower must immediately pay the amount of the deficiency to Fiscal Agent upon notice of the deficiency from Governmental Lender, Loan Servicer or Fiscal Agent. Borrower must be obligated to pay the deficiency regardless of the reason for the deficiency, including any deficiency resulting from any shortfall in payments made or to be made by Borrower under this Project Note, any loss due to a default under any investment held by Fiscal Agent, a change in value of any such investment or otherwise.

#### 4. Prepayment.

- (a) **Prepayment Generally.** If Holder receives any principal payment before the Scheduled Maturity Date other than the monthly installments of principal required to be paid in accordance with the Project Loan Amortization Schedule, it will be considered a prepayment of principal under this Project Note (“**Prepayment**”). Without limiting the foregoing, any application by Holder, prior to the Scheduled Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Project Note constitutes a Prepayment. Borrower may not make a full or partial Prepayment unless expressly permitted or required by the Financing Documents. Unless (i) otherwise expressly provided in the Financing Documents, or (ii) Holder agrees otherwise in writing, if Holder accepts and applies any partial Prepayment, Holder will not change the Project Loan Payment Dates, nor will it change the amount of any required monthly payments.
- (b) **Mandatory Prepayments.** This Project Note, together with accrued interest hereon, and together with Prepayment Premium (to the extent provided in Section 4(d) below), is subject to mandatory Prepayment

on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

- (i) the application of any Insurance proceeds or Condemnation award to the Prepayment of the Project Loan as required under the Financing Documents; or
- (ii) in whole, upon the occurrence of a Determination of Taxability; or
- (iii) in part, on the Project Loan Payment Date next following the completion of the Rehabilitation of the Mortgaged Property, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to the Funding Loan Agreement to pay down the Funding Loan; or
- (iv) Reserved
- (v) Reserved

**(c) Voluntary Prepayments.**

- (i) Borrower may not voluntarily prepay any portion of the principal balance of this Project Note during the Lockout Period.
- (ii) After the expiration of the Lockout Period, Borrower may voluntarily prepay all of the unpaid principal balance of this Project Note on any Project Loan Payment Date so long as Borrower designates the date for such Prepayment in a written notice which Borrower gives to Holder at least 30 days prior to the date of such Prepayment. If a Project Loan Payment Date falls on a day which is not a Business Day, then with respect to payments made under this Section 4 only, (A) the term "Project Loan Payment Date" will mean the Business Day immediately preceding the Project Loan Payment Date and (B) the calculation of any required Prepayment Premium will be made as if the Prepayment had actually been made on the Project Loan Payment Date.
- (iii) Notwithstanding Section 4(c)(ii) above, after the expiration of the Lockout Period, Borrower may voluntarily prepay all of the unpaid principal balance of this Project Note on a Business Day other than a Project Loan Payment Date if Borrower provides Holder with written notice at least 30 days prior to the date of such Prepayment (A) designating the date of such Prepayment, (B) acknowledging that Holder has agreed that Borrower may prepay principal on a Business Day other than a Project Loan Payment Date only because Holder will deem any Prepayment received by Holder on any day other than a Project Loan Payment Date to have been received on the Project Loan Payment Date immediately following such Prepayment, and (C) acknowledging that Borrower will be responsible for all interest and any required Prepayment Premium that would have been due if the Prepayment had actually been made on the Project Loan Payment Date immediately following such Prepayment.
- (iv) Unless otherwise expressly provided in the Financing Documents, Borrower may not voluntarily prepay less than all of the unpaid principal balance of this Project Note. In order to voluntarily prepay all of the principal of this Project Note, Borrower must also pay to Holder, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Project Note, (ii) all other fees and amounts due under the Financing Documents at the time of such Prepayment, plus (iii) any Prepayment Premium calculated pursuant to Section 4(d).

**(d) Prepayment Premium.**

- (i) Except as provided in Section 4(d)(ii), in connection with any Prepayment, whether voluntary or mandatory or resulting from a default by Borrower, Borrower must pay the required prepayment premium described on Schedule 3 ("**Prepayment Premium**").

- (ii) Notwithstanding Section 4(d)(i), no Prepayment Premium will be payable with respect to any of the following:
  - (A) Any Prepayment made during the Window Period; provided, that if the first day of the Window Period falls on a day that is not a Business Day, then the “Window Period” will begin on the Business Day immediately preceding the scheduled first day of the Window Period.
  - (B) Any mandatory Prepayment occurring as a result of the application of any Insurance proceeds pursuant to the Continuing Covenant Agreement.
  - (C) Any Prepayment occurring as a result of the application of any Condemnation award, or otherwise required under the terms of the Financing Documents in connection with a Condemnation, unless (1) the Condemnation is intended to result in the continued use of the Mortgaged Property subject to the Condemnation for residential purposes, or (2) applicable law expressly requires or permits that the condemning authority or acquiring entity reimburse prepayment charges incurred in connection with a Prepayment occurring as a result of a Condemnation; in either of the situations described in (1) or (2) above, a Prepayment Premium will be due to the extent permitted by applicable law.
  - (D) Reserved
  - (E) Any Prepayment under Section 4(b)(iii) hereof following the completion of the Rehabilitation of the Mortgaged Property, to the extent amounts remaining in the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) of the Funding Loan Agreement.
- (iii) **Prepayment Premium Not a Penalty.** Borrower recognizes that any Prepayment, whether voluntary or mandatory or resulting from a default by Borrower, will result in Holder incurring loss, including reinvestment loss, additional expense and frustration or impairment of Holder’s ability to meet its commitments to third parties. Borrower agrees to pay to Holder upon demand damages for the detriment caused by any Prepayment and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower agrees that the formulas for calculating the Prepayment Premium in Schedule 3 represent a reasonable estimate of the damages that Holder will incur because of a Prepayment. Borrower further acknowledges that the Lockout Period, if applicable, and Prepayment Premium set forth in Schedule 3 are material parts of the consideration for the Project Loan, and that the terms of the Financing Documents are in other respects more favorable to Borrower as a result of Borrower’s voluntary agreement to the Lockout Period, if applicable, and Prepayment Premium.

**5. Borrower’s Failure to Pay as Required; Events of Default.**

- (a) **Application of Partial Payments.** If at any time Holder receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Holder may apply the amount received to amounts then due and payable in any manner and in any order determined by Holder, in Holder’s discretion. Borrower agrees that neither Holder’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Holder’s application of such payment will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.
- (b) **Reserved**
- (c) **Interest Rate after Default.** If Holder has not received the full amount of any monthly payment by the Project Loan Payment Date or any other Event of Default has occurred and is continuing, then the interest under this Project Note will accrue on the unpaid principal balance at a rate equal to the Interest Rate plus 4% (“**Default Rate**”) beginning on that Project Loan Payment Date or the date such other Event of Default commences; provided, that in no event will the Default Rate exceed the Maximum Interest Rate

specified in Section 9. If Borrower has not paid the entire principal balance of this Project Note by the Scheduled Maturity Date, the unpaid principal balance and all accrued interest will bear interest from the Scheduled Maturity Date at the lesser of the Default Rate or the Maximum Interest Rate until and including the date on which the entire outstanding balance of this Project Note is paid in full.

- (d) **Event of Default.** An Event of Default under the Project Loan Agreement will constitute an Event of Default under this Project Note.
- (e) **Holder's Damages.** Borrower acknowledges that (i) its failure to make timely payments will cause Holder to incur additional expenses in servicing and processing the Project Loan, (ii) during the time that any monthly installment under this Project Note is delinquent, Holder will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Holder's ability to meet its other obligations and to take advantage of other investment opportunities, and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Project Note is delinquent or any other Event of Default has occurred and is continuing, Holder's risk of nonpayment of this Project Note will be materially increased and Holder is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Project Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the Effective Date, of the additional costs and expenses Holder will incur by reason of the Borrower's delinquent payment and the additional compensation Holder is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.
- (f) **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any Prepayment Premium calculated pursuant to Section 4 hereof, and all other amounts payable under this Project Note and any other Financing Document will at once become due and payable, at the option of Holder, without any prior Notice to Borrower (except if Notice is required by applicable law, then after such Notice). Holder may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Holder will calculate any Prepayment Premium as if Prepayment occurred on the date of acceleration. If Prepayment occurs thereafter, Holder will recalculate the Prepayment Premium as of the actual date of Prepayment.
6. **Presentment, Notice of Dishonor, and Other Waivers.** Borrower and all endorsers and Guarantors and all other third-party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.
7. **Forbearance.** Any forbearance by Holder in exercising any right or remedy under this Project Note, the Project Loan Agreement or any other Financing Document, or otherwise afforded by applicable law, will not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Holder of any payment after the applicable Project Loan Payment Date, or in an amount that is less than the required payment, or Holder's application of such payment, will not be a waiver of Holder's right to require prompt payment when due of all other payments, a waiver of the unpaid amounts, an accord and satisfaction, or a waiver of Holder's right to exercise any right or remedy with respect to any failure to make prompt payment. Application by Holder of any security for Borrower's obligations under this Project Note will not constitute an election of remedies by Holder so as to preclude the exercise of any other right or remedy available to Holder.
8. **WAIVER OF TRIAL BY JURY. BORROWER AND HOLDER EACH (a) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS PROJECT NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

- 9. Loan Charges.** Neither this Project Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (“**Maximum Interest Rate**”). If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Project Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Holder in excess of the permitted amounts will be applied by Holder to reduce the unpaid principal balance of this Project Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Project Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Project Note.
- 10. Successors and Assigns.** This Project Note will bind the respective successors and assigns of Borrower and Governmental Lender, and the rights granted by this Project Note will inure to Governmental Lender’s successors and assigns. Borrower acknowledges that this Project Note is being assigned by Governmental Lender to Fiscal Agent as security for the Funding Loan, and this Project Note may be further assigned in accordance with the Financing Documents. Anyone who takes this Project Note by transfer and who is entitled to receive payments under this Project Note will also be called “**Holder**.”
- 11. Counting of Days.** Any reference in this Project Note to a period of “**days**” means calendar days, not Business Days, except where otherwise specifically provided.
- 12. State-Specific Provisions.** State-specific provisions, if any, for the Property Jurisdiction identified in Section 1 are included on Schedule 1 to this Project Note.
- 13. Notices and Written Modifications.** All Notices required or permitted to be given under this Project Note must be given in accordance with Section 8.01 of the Project Loan Agreement. Any modification or amendment to this Project Note will be ineffective unless in writing and signed by the party sought to be charged with such modification or amendment; provided, however, in the event of a Transfer under the terms of the Continuing Covenant Agreement that requires Funding Lender’s consent, any or some or all of the Modifications to Project Note set forth in Exhibit A to this Project Note may be modified or rendered void by Funding Lender at Funding Lender’s option, by Notice to Borrower and the transferee as a condition of Funding Lender’s consent.
- 14. Personal Liability.**
- (a) **Limited Recourse Generally.** Except as otherwise provided in this Section 14, none of Borrower, SPE Equity Owner, or any member or limited partner of Borrower will have any personal liability under this Project Note, the Project Loan Agreement or any other Financing Document for the repayment of the Indebtedness or for the performance of or compliance with any other obligations of Borrower under the Financing Documents and Holder’s only recourse for the satisfaction of the Indebtedness and the performance of such obligations will be Holder’s exercise of its rights and remedies with respect to the Mortgaged Property and to any other collateral held by Holder as security for the Indebtedness. This limitation on Borrower’s liability will not limit or impair Holder’s enforcement of its rights against any Guarantor.
- (b) **Base Recourse.** Borrower will be personally liable to Holder for the amount of the Base Recourse specified in Section 1, plus any other amounts for which Borrower has personal liability under this Section 14.



- (c) **Loss or Damage Recourse.** In addition to Base Recourse, Borrower will be personally liable to Holder for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Holder as a result of the occurrence of any of the following events:
- (i) Borrower fails to pay to Holder upon demand after an Event of Default all Rents to which Holder is entitled under Section 3 of the Security Instrument 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 14(c)(i) if Borrower is unable to pay to Holder all Rents and security deposits as required by the Security Instrument because of a valid order issued in, or an automatic stay applicable because of, a bankruptcy, receivership, or similar judicial proceeding.
  - (ii) Borrower fails to apply all Insurance proceeds and Condemnation proceeds as required by the Financing Documents. However, Borrower will not be personally liable for any failure described in this Section 14(c)(ii) if Borrower is unable to apply Insurance or Condemnation proceeds as required by the Financing Documents because of a valid order issued in, or an automatic stay applicable because of, a bankruptcy, receivership, or similar judicial proceeding.
  - (iii) Either of the following occurs:
    - (A) Borrower fails to deliver the statements, schedules and reports required by Section 6.07 of the Continuing Covenant Agreement and Holder exercises its right to audit those statements, schedules and reports.
    - (B) If an Event of Default has occurred and is continuing, Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.07 of the Continuing Covenant Agreement.
  - (iv) Borrower fails to pay, or cause to be paid, when due any Imposition Reserve marked "Deferred" in Section 1.03 of the Continuing Covenant Agreement.
  - (v) Borrower engages in any willful act of material waste of the Mortgaged Property.
  - (vi) Borrower fails to comply with any provision of Section 6.13(a)(iii) through (xxvi) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with any provision of Section 6.13(b)(v) through (vii) of the Continuing Covenant Agreement (subject to possible full recourse liability as set forth in Section 14(e)(ii) of this Project Note).
  - (vii) Any of the following Transfers occurs:
    - (A) Any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Mortgaged Property and Borrower has not complied with the provisions of the Continuing Covenant Agreement.
    - (B) A Transfer of property by devise, descent or operation of law occurs upon the death of a natural person and such Transfer does not meet the requirements set forth in the Continuing Covenant Agreement.
    - (C) Borrower grants an easement that does not meet the requirements set forth in the Continuing Covenant Agreement.
    - (D) Borrower executes a Lease that does not meet the requirements set forth in the Continuing Covenant Agreement.
  - (viii) Reserved

- (ix) Borrower or any officer, director, partner, member, or employee of Borrower makes an unintentional written material misrepresentation in connection with (1) the application for or creation of the Indebtedness, or (2) any action or consent of Holder; provided that the assumption will be that any written material misrepresentation was intentional and the burden of proof will be on Borrower to prove that there was no intent.
- (x) through (xvii) are reserved.
- (xviii) A default, event of default, or breach (however such terms may be defined in the Regulatory Agreement) occurs after the expiration of any applicable notice and/or cure periods under the Regulatory Agreement.
- (xix) through (xxiii) are reserved.
- (xxiv) A default, event of default, or breach (however such terms may be defined in the Tax Credit Regulatory Agreement) occurs after the expiration of any applicable notice and/or cure periods under the Tax Credit Regulatory Agreement.
- (xxv) through (xl) are reserved.
- (d) **Other Recourse.** Borrower will be personally liable to Holder for all the following:
  - (i) The performance of all of Borrower's obligations under Sections 6.12, 10.02(b), and 10.02(e) of the Continuing Covenant Agreement.
  - (ii) The costs of any audit under Section 6.07 of the Continuing Covenant Agreement.
  - (iii) Any costs and expenses incurred by Holder in connection with the collection of any amount for which Borrower is personally liable under this Section 14, including Attorneys' Fees and Costs and the costs of conducting an independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.
  - (iv) Any fees, costs, or expenses incurred by Holder in conjunction with Borrower's termination of any agreement for the provision of services to or in connection with the Mortgaged Property, including cable, internet, garbage collection, landscaping, security, and cleaning.
  - (v) through (xvii) are reserved.
  - (xviii) The performance of Borrower's obligations to Governmental Lender and Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v) and (b)(vi) of Section 4.02 of the Project Loan Agreement.
  - (xix) The performance of Borrower's tax and indemnification obligations under Section 2.05 and Section 6.01 of the Project Loan Agreement.
  - (xx) Any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Section 2.04 and Section 4.03 of the Project Loan Agreement and the Tax Certificate.
  - (xxi) Any legal fees and expenses under Section 7.04 of the Project Loan Agreement.
  - (xxii) through (xl) are reserved.
- (e) **Full Recourse.** Borrower will become personally liable to Holder for the repayment of all the Indebtedness upon the occurrence of any of the following:

- (i) Borrower fails to comply with Section 6.13(a)(i) or (ii) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with Section 6.13(b)(iii) or (iv) of the Continuing Covenant Agreement.
- (ii) Borrower fails to comply with any provision of Section 6.13(a)(iii) through (xxvi) of the Continuing Covenant Agreement or any SPE Equity Owner fails to comply with any provision of Section 6.13(b)(v) through (vii) of the Continuing Covenant Agreement 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 Borrower or any SPE Equity Owner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code.
- (iii) A Transfer that is an Event of Default under Section 7.01 of the Continuing Covenant Agreement occurs other than a Transfer set forth in Section 14(c)(vii) (for which Borrower will have personal liability for Holder's 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 a general partner in a limited partnership or a manager in a limited liability company.
- (iv) There was fraud or intentional written material misrepresentation by Borrower or any officer, director, partner, member, or employee of Borrower in connection with (1) the application for or creation of the Indebtedness, (2) on-going financial or other reporting requirements or information required by the Financing Documents, or (3) any action or consent of Holder.
- (v) Borrower or any SPE Equity Owner voluntarily files for bankruptcy protection under the Bankruptcy Code.
- (vi) Borrower or any SPE Equity Owner 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.
- (vii) The Mortgaged Property or any part of the Mortgaged Property 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.
- (viii) An order of relief is entered against Borrower or any SPE Equity Owner 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. If Borrower, any Guarantor, any SPE Equity Owner, or any Related Party has solicited creditors to initiate or participate in such a proceeding, regardless of whether any of the creditors solicited actually initiates or participates in the proceeding, then such proceeding will be considered as having been initiated by a Related Party.
- (ix) An involuntary bankruptcy or other involuntary insolvency proceeding is commenced against Borrower or any SPE Equity Owner (by a party other than Holder) but only if Borrower or such SPE Equity Owner has failed to use commercially reasonable efforts to obtain a dismissal of such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in Borrower or any SPE Equity Owner to contribute or cause the contribution of additional capital to Borrower or any SPE Equity Owner.
- (x) through (xi) are reserved.
- (xiv) In the event that any of the interest payable on the Funding Loan is deemed included in any Funding Lender's (other than a Funding Lender who is a "substantial user" of the Mortgaged Property or a "related person" with respect thereto, each as defined in Section 147(a) of the Internal Revenue Code of 1986) gross income for federal income tax purposes as a result of any

action or failure to act by Borrower or any Person or entity acting on behalf of Borrower (including, but not limited to, the Property Manager of the Mortgaged Property).

- (f) **Exercise of Holder's Rights.** If Borrower has personal liability under this Section 14, then Holder may, to the fullest extent permitted by applicable law, exercise its rights against Borrower personally without regard to whether Holder has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any Guarantor, or pursued any other rights available to Holder under this Project Note, the Project Loan Agreement, any other Financing Document, or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 14, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.
- (g) **Application of Payment.** All payments made by Borrower with respect to the Indebtedness and all amounts received by Holder from the enforcement of its rights under the Financing Documents will be applied first to the portion of the Indebtedness for which Borrower has no personal liability.
- (h) **Cure Right of Equity Investor.** Sections 14(c)(i) and 14(c)(ii) of this Project Note will be operative only after Equity Investor has been given 30 days' notice of the applicable Event of Default, together with an opportunity within such 30-day period to remedy the applicable Event of Default. In all events, Funding Lender may, during such 30-day period, exercise all of its rights and remedies under the Continuing Covenant Agreement upon the occurrence of such Event of Default, other than foreclosure of the Mortgaged Property.

**15. Security.** The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument, the Continuing Covenant Agreement and the Project Loan Agreement for other rights of Holder with respect to collateral for the Indebtedness, including the definition of Financing Documents set forth in the Continuing Covenant Agreement.

**16. Payment of Holder's Costs and Expenses.**

- (a) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Project Note or any Financing Document, Borrower will pay all reasonable Attorneys' Fees and Costs and expenses incurred by Holder, regardless of whether the matter is approved, denied or withdrawn.
- (b) Borrower further acknowledges and agrees that to the fullest extent allowed by applicable law, Holder will have the right to be repaid by Borrower for Holder's entire costs and expenses, including Attorneys' Fees and Costs, resulting from any default under this Project Note or the other Financing Documents or in connection with efforts to collect any amount due under this Project Note or the other Financing Documents, or to enforce the provisions of any of the other Financing Documents, including those costs and expenses incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay) or judicial or nonjudicial foreclosure proceeding.
- (c) Any amounts payable by Borrower under this Section 16 will be deemed a part of the Indebtedness, will be secured by the Security Instrument and will bear interest at the Default Rate if not fully paid within 10 days of written demand for payment.

**17. Commercial Purpose.** Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

**18. Governing Law; Consent to Jurisdiction and Venue.**

- (a) This Project Note will be governed by the laws of the Property Jurisdiction.
- (b) Borrower agrees that any controversy arising under or in relation to this Project Note, the Security Instrument, the Project Loan Agreement or any other Financing Document may be litigated in the

Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to this Project Note, any security for the Indebtedness or any other Financing Document. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 18 is intended to limit Holder's right to bring any suit, action or proceeding relating to matters under this Project Note in any court of any other jurisdiction.

## 19. Construction.

- (a) The captions and headings of the Sections of this Project Note are for convenience only and will be disregarded in construing this Continuing Covenant Agreement and the Project Note.
- (b) Any reference in this Continuing Covenant Agreement to a "Schedule," an "Exhibit," an "Article" or a "Section" will, unless otherwise explicitly provided, be construed as referring, respectively, to a Schedule or Exhibit attached to this Continuing Covenant Agreement or to an Article or Section of this Continuing Covenant Agreement.
- (c) All Schedules, Exhibits, and Riders attached to or referred to in this Continuing Covenant Agreement or the Project Note, as applicable, are incorporated by reference in this Continuing Covenant Agreement or the Project Note, as applicable.
- (d) Any reference in this Continuing Covenant Agreement or the Project Note to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
- (e) Use of the singular in this Continuing Covenant Agreement and the Project Note includes the plural and use of the plural includes the singular.
- (f) As used in this Continuing Covenant Agreement and the Project Note, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation."
- (g) As used in this Continuing Covenant Agreement and the Project Note, the use of one gender includes the other gender, as the context may require.
- (h) Unless the context requires otherwise, (i) except as provided in subsection (i) of this Section 11.25, any definition of or reference to any agreement, instrument or other document (including, without limitation, the other Financing Documents) in this Continuing Covenant Agreement or the Project Note will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in the provisions of such agreement, instrument or other document, this Continuing Covenant Agreement and the Project Note), and (ii) any reference in this Continuing Covenant Agreement or the Project Note to any Person will be construed to include such Person's successors and assigns.
- (i) Any reference in this Continuing Covenant Agreement or the Project Note to "Funding Lender's requirements," "as required by Funding Lender," or similar references will be construed, after Securitization, to mean Funding Lender's requirements or standards as determined in accordance with Funding Lender's and Loan Servicer's obligations under the terms of the Securitization documents.
- (j) Any reference in this Continuing Covenant Agreement or the Project Note to "Funding Lender's consent," will be construed to mean Funding Lender's written consent.
- (k) Nothing in this Continuing Covenant Agreement will be deemed to amend, or relieve Borrower of its obligations under, any other Financing Document to which it is a party. Conversely, to the extent that the provisions of any other Financing Document allow Borrower to take certain actions, or not to take certain actions, with regard for example to the encumbrances listed on the Schedule of Title Exceptions,

incurrence of indebtedness, transfers of assets, maintenance of financial ratios and similar matters, Borrower nevertheless will be fully bound by the provisions of this Continuing Covenant Agreement.

- (l) If any provision of this Continuing Covenant Agreement makes reference to specific provisions of any other Financing Document, such other provision will be deemed to be incorporated into this Continuing Covenant Agreement by reference as though specifically set forth in this Continuing Covenant Agreement (with such changes and modifications as may be provided). Such incorporation will continue in full force and effect until all of Borrower's obligations pursuant to Article III above are paid in full. No amendment, modification, consent, waiver or termination with respect to any such provisions will be effective as to this Continuing Covenant Agreement until specifically agreed to in writing by the parties hereto.

**IN WITNESS WHEREOF**, and in consideration of Governmental Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Project Note under seal or has caused this Project Note to be signed and delivered under seal by its duly authorized representative. Borrower intends that this Project Note will be deemed to be signed and delivered as a sealed instrument.

**LAUDERHILL PRESERVATION LP**, a Florida limited partnership

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

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

**ASSIGNMENT**

Pay to the order of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., without recourse or warranty, as Fiscal Agent under the Funding Loan Agreement referred to in the attached Project Note.

SEAL

HOUSING FINANCE AUTHORITY  
BROWARD COUNTY, FLORIDA

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



## Schedule 1

### State-Specific Provisions by Property Jurisdiction

If the Property Jurisdiction for the Project Loan is not listed below, then unless the list below is modified pursuant to Exhibit A to this Project Note, there are no state-specific modifications of this Project Note applicable to the Project Loan.

Property Jurisdiction	State-Specific Provision
Alaska	<u>NOTICE TO BORROWER</u> : The mortgagor or trustor (Borrower) is personally obligated and fully liable for the amount due under this Project Note as provided in Section 14 of this Project Note. The mortgagee or beneficiary (Governmental Lender) has the right to sue on this Project Note and obtain a personal judgment against the mortgagor or trustor (Borrower) for satisfaction of the amount due under this Project Note either before or after a judicial foreclosure of the Instrument under AS 09.45.170 - 09.45.220.
Arizona	Borrower agrees to pay an effective contracted rate of interest equal to the rate of interest resulting from all interest payable as provided in this Project Note, plus an additional rate of interest resulting from all "Other Sums." The " <b>Other Sums</b> " will consist of all fees, charges, or any other sums (other than interest payable as provided in this Project Note) paid or payable by Borrower, whether pursuant to this Project Note, any of the Financing Documents, or any other document or instrument in any way pertaining to this lending transaction that may be deemed to be interest for the purpose of any law of the State of Arizona that may limit the maximum amount of interest to be charged with respect to this lending transaction. The Other Sums will be deemed to be interest for the purposes of any such law only.
California	<p>(a) The following is added at the end of the description of the Prepayment Premium that is due during the Yield Maintenance Period in <u>Schedule 3</u>:</p> <p style="padding-left: 40px;">In addition, if any portion of the principal balance of this Project Note is prepaid during the Lockout Period following a determination that the prohibition on involuntary prepayment following an acceleration after an Event of Default during the Lockout Period is in contravention of applicable law, then Borrower agrees that such prepayment will be deemed an attempt to evade such prohibition on prepayment and Borrower must pay to Governmental Lender, upon demand by Governmental Lender, a Prepayment Premium equal to 5% of the amount of principal being prepaid.</p> <p>(b) Borrower hereby expressly waives any right it may have, under California Civil Code Section 2954.10 or otherwise, to prepay this Project Note, in whole or in part, without prepayment charge, upon acceleration of the maturity date of this Project Note, and agrees that if for any reason, a prepayment of any or all of this Project Note is made, whether voluntarily or upon or following any acceleration of the maturity date of this Project Note by Governmental Lender, then Borrower must pay the Prepayment Premium calculated pursuant to Section 4 and <u>Schedule 3</u> hereof. By initialing this provision in the space provided below, Borrower hereby declares that Governmental Lender's agreement to make the Project Loan at the interest rate provided for in this Project Note and for the term set</p>

Property Jurisdiction	State-Specific Provision
	<p>forth in this Project Note constitutes adequate consideration, given individual weight by Borrower, for this waiver and agreement.</p> <p>(c) If a Guarantor is liable for only a portion of the Indebtedness, Borrower hereby waives its rights under California Civil Code Section 2822(a) to designate the portion of the Indebtedness that will be satisfied by Borrower's partial payment.</p> <p>INITIALS OF BORROWER: _____</p>
Connecticut	<p><b>WAIVER OF PREJUDGMENT REMEDY, HEARING AND NOTICE. THE UNDERSIGNED ACKNOWLEDGES THAT THIS IS A "COMMERCIAL TRANSACTION" AS SUCH IS DEFINED IN CHAPTER 903a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. THE UNDERSIGNED FURTHER ACKNOWLEDGES THAT, PURSUANT TO SUCH SECTION, IT HAS A RIGHT TO NOTICE OF AND HEARING PRIOR TO THE ISSUANCE OF ANY "PREJUDGMENT REMEDY." NOTWITHSTANDING THE FOREGOING, THE UNDERSIGNED HEREBY WAIVES ALL RIGHTS TO SUCH NOTICE, JUDICIAL HEARING, OR PRIOR COURT ORDER IN CONNECTION WITH ANY SUIT ON THIS PROJECT NOTE OR ANY EXTENSIONS OR RENEWALS OF THE SAME OR ON THE MORTGAGE SECURING THIS PROJECT NOTE.</b></p>
Indiana	<p>Borrower must make all payments of principal and interest under this Project Note without relief from valuation and appraisal laws. For purposes of Section 14(d)(iii), Attorneys' Fees and Costs means (i) fees and out-of-pocket costs of Governmental Lender's, Fiscal Agent's, Funding Lender Representative's and Loan Servicer's attorneys, as applicable, including costs of Governmental Lender's, Fiscal Agent's, Funding Lender Representative's and Loan Servicer's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping, and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.</p>
Iowa	<p><b>IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS PROJECT NOTE MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.</b></p> <p><b>Borrower acknowledges receipt of a copy of this Project Note, the Security Instrument, the Project Loan Agreement and all other Financing Documents.</b></p> <p>INITIALS OF BORROWER: _____</p>
Louisiana	<p>Wherever the phrase "jointly and severally" appears in this Project Note, the phrase is amended to read "jointly and severally and solidarily."</p>
Maine	<p><b>NOTICE: BORROWER MAY NOT MAINTAIN ANY ACTION ON ANY AGREEMENT WITH GOVERNMENTAL LENDER TO LEND ADDITIONAL MONEY, EXTEND ADDITIONAL CREDIT, FORBEAR FROM COLLECTION OF THE INDEBTEDNESS OR MAKE ANY OTHER ACCOMMODATION FOR THE</b></p>

Property Jurisdiction	State-Specific Provision
	<b>REPAYMENT OF THE INDEBTEDNESS, UNLESS THE AGREEMENT ON WHICH THE ACTION IS BROUGHT, OR SOME MEMORANDUM OF IT, IS IN WRITING AND SIGNED BY AN INDIVIDUAL AUTHORIZED TO SIGN FOR GOVERNMENTAL LENDER.</b>
New Mexico	Pursuant to Section 58-6-5 NMSA 1978, a contract, promise, or commitment to loan money or to grant, extend, or renew credit, or any modification thereof, in an amount greater than \$25,000.00 not primarily for personal, family or household purposes made by a financial institution is not enforceable unless made in writing and signed by the party to be charged or that party's authorized representatives.
New York	Section 14(c)(x) of this Project Note is deleted and replaced by the following:  (x) Borrower fails to pay any Transfer Taxes (as defined in the Security Instrument) required to be paid by Borrower under the terms of the Security Instrument or the Project Loan Agreement.
North Dakota	<b>PURSUANT TO NORTH DAKOTA CENTURY CODE SECTION 32-19-06.1, BORROWER IS HEREBY PUT ON NOTICE THAT GOVERNMENTAL LENDER MAY HAVE THE RIGHT TO PROCEED TO OBTAIN AND COLLECT A DEFICIENCY JUDGMENT, TOGETHER WITH FORECLOSURE OF THE MORTGAGED PROPERTY UNDER APPLICABLE LAWS.</b>
Ohio	Section 14(c)(x) of this Project Note is deleted and replaced by the following:  (x) The Mortgaged Property is subject to any oil or gas lease, pipeline agreement or other instrument related to the production or sale of oil or natural gas that under applicable state law has been given priority over the Security Instrument.
Texas	Section 9 is deleted and replaced with the following:  <b>9. Loan Charges (Texas Only).</b> Borrower and Governmental Lender intend at all times to comply with the law of the State of Texas governing the Maximum Interest Rate or the maximum amount of interest payable on or in connection with this Project Note and the Indebtedness (or applicable United States federal law to the extent that it permits Governmental Lender to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under this Project Note or under any other Financing Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or as a result of acceleration of the maturity of this Project Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by any applicable law, then Borrower and Governmental Lender expressly intend that all excess amounts collected by Governmental Lender will be applied to reduce the unpaid principal balance of this Project Note (or, if this Project Note has been or would thereby be paid in full, will be refunded to Borrower), and the provisions of this Project Note, the Project Loan Agreement and any other Financing Documents immediately will be deemed reformed and the amounts thereafter collectible under this Project Note or any other Financing Document reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under this Project Note or any other Financing Document. The right to accelerate the

Property Jurisdiction	State-Specific Provision
	<p>Maturity Date of this Project Note does not include the right to accelerate any interest, which has not otherwise accrued on the date of such acceleration, and Governmental Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Governmental Lender for the use, forbearance or detention of the Indebtedness will, to the extent permitted by any applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in this Project Note, the Continuing Covenant Agreement or any other Financing Document that permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of this Project Note, the total amount of interest that Borrower is obligated to pay and Governmental Lender is entitled to receive with respect to the Indebtedness will not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Borrower, including all current and prior advances and any advances made pursuant to the Project Loan Agreement or other Financing Documents (such as for the payment of Taxes, Insurance premiums and similar expenses or costs).</p>
Washington	<p><b>NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FOREBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.</b></p>

## **Schedule 2**

### **Project Loan Amortization Schedule**

See attached.

## Schedule 3

### Prepayment Premium

The Prepayment Premium will be computed as follows:

- (i) For any Prepayment made during the Yield Maintenance Period, the “**Prepayment Premium**” will be whichever is the greater of subsections (A) and (B) below:
- (A) 1.0% of the principal being prepaid; or
- (B) the product obtained by multiplying:
- (1) the principal being prepaid or accelerated,  
*by*
  - (2) the excess (if any) of the Monthly Project Note Rate over the Assumed Reinvestment Rate,  
*by*
  - (3) the Present Value Factor.

For purposes of determining the Prepayment Premium above, the following definitions will apply:

**Monthly Project Note Rate:** 1/12 of the Interest Rate, expressed as a decimal calculated to 5 digits.

**Prepayment Date:** in the case of a voluntary Prepayment, the date on which the Prepayment is made; in the case of the application by Holder of collateral or security to a portion of the principal balance of the Project Note, the date of such application.

**Assumed Reinvestment Rate:** 1/12 of the yield rate expressed as a decimal to 2 digits, as of the close of the trading session that is 5 Business Days before the Prepayment Date, found among the Daily Treasury Yield Curve Rates, commonly known as Constant Maturity Treasury (“**CMT**”) rates, with a maturity equal to the remaining Yield Maintenance Period, as reported on the U. S. Department of the Treasury website. If no published CMT maturity matches the remaining Yield Maintenance Period, Holder will interpolate as a decimal to 2 digits the yield rate between (a) the CMT with a maturity closest to, but shorter than, the remaining Yield Maintenance Period, and (b) the CMT with a maturity closest to, but longer than, the remaining Yield Maintenance Period, as follows:

$$\left[ \left( \frac{B-A}{D-C} \right) \times (E-C) \right] + A$$

A = yield rate for the CMT with a maturity shorter than the remaining Yield Maintenance Period

B = yield rate for the CMT with a maturity longer than the remaining Yield Maintenance Period

C = number of months to maturity for the CMT maturity shorter than the remaining Yield Maintenance Period

D = number of months to maturity for the CMT maturity longer than the remaining Yield Maintenance Period

E = number of months remaining in the Yield Maintenance Period

If the U.S. Department of the Treasury ceases publication of the CMT rates, the Assumed Reinvestment Rate will equal the yield rate on the first U.S. Treasury security that is not callable or indexed to inflation and that matures after the expiration of the Yield Maintenance Period.

The Assumed Reinvestment Rate may be a positive number, a negative number or zero.

If the Assumed Reinvestment Rate is a positive number or a negative number, Holder will calculate the Prepayment Premium using such positive number or negative number, as appropriate, as the Assumed Reinvestment Rate in Section (B)(2) above and in the calculation of the Present Value Factor.

If the Assumed Reinvestment Rate is zero, Holder will calculate the Prepayment Premium twice as set forth in (I) and (II) below and will average the results to determine the actual Prepayment Premium.

- (I) Holder will calculate the Prepayment Premium using an Assumed Reinvestment Rate of one basis point (+0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.
- (II) Holder will calculate the Prepayment Premium using an Assumed Reinvestment Rate of negative one basis point (-0.01%) in Section (B)(2) above and in the calculation of the Present Value Factor.

**Present Value Factor:** the factor that discounts to present value the costs resulting to Holder from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1 - \left( \frac{1}{1 + ARR} \right)^n}{ARR}$$

**n** = the number of months remaining in the Yield Maintenance Period; provided, however, if a Prepayment occurs on a Project Loan Payment Date, then the number of months remaining in the Yield Maintenance Period will be calculated beginning with the month in which such Prepayment occurs and if such Prepayment occurs on a Business Day other than a Project Loan Payment Date, then the number of months remaining in the Yield Maintenance Period will be calculated beginning with the month immediately following the date of such Prepayment.

**ARR** = Assumed Reinvestment Rate

- (ii) For any Prepayment made after the expiration of the Yield Maintenance Period but during the remainder of the Prepayment Premium Period, the “**Prepayment Premium**” will be 1.0% of the amount of principal being prepaid.

## **Exhibit A**

### **Modifications to Project Note**

The following modifications are made to the text of the Project Note that precedes this Exhibit:

None.



**EXHIBIT "F"**

**FORM OF ASSIGNMENT OF SECURITY INSTRUMENT**

Freddie Mac Loan Number: 510663966  
Property Name: Lauderhill Point Apartments

Recording Requested By, and  
When Recorded Return To:

Robert A. Kearbey  
Kearbey Pirulli & Evatt LLC  
7910 Woodmont Ave, Suite 750  
Bethesda, MD 20814

**ASSIGNMENT OF SECURITY INSTRUMENT - TEL**

**(Revised 9-30-2019)**

FOR VALUABLE CONSIDERATION, HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA, a public body corporate and politic created, organized and existing under the laws of the State of Florida (“**Assignor**”), having its principal place of business at 110 N.E. 3<sup>rd</sup> Street, Suite 300, Fort Lauderdale, Florida 33301, hereby assigns, grants, sells and transfers to The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America (“**Assignee**”), having its principal place of business at 4655 Salisbury Road, Suite 300, Jacksonville, Florida 32256, and Assignee’s successors, transferees and assigns forever, all of the right, title and interest of Assignor in and to the Multifamily Mortgage, Assignment of Rents and Security Agreement dated \_\_\_\_\_, 2023, entered into by LAUDERHILL PRESERVATION LP (“**Borrower**”) for the benefit of Assignor, securing an indebtedness of Borrower to Assignor in the principal amount of \$\_\_\_\_\_ simultaneously recorded in the land records of Broward County, Florida (“**Security Instrument**”), which indebtedness is secured by the property described in Exhibit A attached to this Assignment and incorporated into it by this reference.

Together with the Note or other obligation described in the Security Instrument and all obligations secured by the Instrument now or in the future.

IN WITNESS WHEREOF, Assignor has executed this Assignment on \_\_\_\_\_, \_\_\_\_, 2023, to be effective as of the date of the Security Instrument.

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

(SEAL)

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

Name: Scott Ehrlich

Title: Chair

ATTEST:

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

Name: Millette Manos

Title: 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 and Millette \_\_ Manos, Chair and Secretary, respectively, of the Housing Finance Authority of Broward County, Florida, a public body corporate and politic, on behalf of said Authority. They are 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:

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

**EXHIBIT "G"**

**FORM OF FISCAL AGENT FEE AGREEMENT**

**FISCAL AGENT FEE AGREEMENT**

**Between**

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

**and**

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

**DATED AS OF \_\_\_\_\_ 1, 2023**

**PROVIDING FOR**

**A FEE SCHEDULE FOR SERVICES  
RENDERED BY FISCAL AGENT  
FOR**

**\$ \_\_\_\_\_**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING MORTGAGE REVENUE NOTE  
SERIES 2023 (LAUDERHILL POINT APARTMENTS)**

## **FISCAL AGENT FEE AGREEMENT**

This is an Agreement between the HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA (the "Issuer"), a public body corporate and politic duly created under the laws of the State of Florida 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 duly 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 MELLON").

### **WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Issuer and BNY MELLON agree as follows:

### **ARTICLE I** **PREAMBLE**

- 1.1 BNY MELLON did submit certain proposals to serve as Trustee/Fiscal Agent for all financings of the Issuer, including serving as Fiscal Agent in connection with the Issuer's \$\_\_\_\_\_ Housing Finance Authority of Broward County, Florida Multifamily Housing Mortgage Revenue Note, Series 2023 (Lauderhill Point Apartments), (the "Governmental Note"). All terms used in capitalized form herein and not defined have the meanings ascribed to such terms in the Funding Loan Agreement (hereinafter defined).
- 1.2 Said proposals of BNY MELLON 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 MELLON's corporate qualifications and capabilities.
- 1.3 BNY MELLON 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 MELLON 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 MELLON to serve as Fiscal Agent with respect to the Governmental Note.

### **ARTICLE II** **SCOPE OF SERVICES AND FEES**

- 2.1 BNY MELLON hereby accepts all of the duties, responsibilities and obligations imposed on it as fiscal agent under the terms of the Funding Loan Agreement dated as of \_\_\_\_\_ 1, 2023 by and among the Issuer, as Governmental Lender, BNY MELLON, as Fiscal

Agent and Berkadia Commercial Mortgage, LLC as Initial Funding Lender (the "Funding Loan Agreement") and hereby confirms the accuracy of all representations and warranties of the Fiscal Agent contained in the Funding Loan Agreement. 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 MELLON and the fees and costs charged by BNY MELLON for such services. The fees and charges indicated include all expenses incurred by BNY MELLON in connection with the sale and closing of the Governmental Note. Exhibit "A" contains one (1) page under the title of "PROPOSAL FORM FOR FISCAL AGENT 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 MELLON for so long as the terms of the Funding Loan Agreement are effective.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have made and executed this Fiscal Agent Fee Agreement as of the date first above written.

**HOUSING FINANCE AUTHORITY OF  
BROWARD COUNTY, FLORIDA**, as the  
Governmental Lender

(SEAL)

By: \_\_\_\_\_  
Scott Ehrlich, Chair

ATTEST:

By: \_\_\_\_\_  
Milette Thurston Manos, Secretary

[Signature Page to Fiscal Agent Fee Agreement]

**SIGNATURE PAGE TO FISCAL AGENT FEE AGREEMENT  
(Lauderhill Point Apartments)**

**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 FISCAL AGENT SERVICES**

**HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA  
MULTIFAMILY HOUSING MORTGAGE REVENUE NOTE, SERIES 2023  
(LAUDERHILL POINT APARTMENTS)**

(1) Acceptance Fee:

Acceptance and assumption of fiduciary responsibilities and duties as Fiscal Agent under the Funding Loan Agreement dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement") by and among the Housing Finance Authority of Broward County, Florida (the "Issuer") Berkadia Commercial Mortgage, LLC, as Initial Funding Lender and The Bank of New York Mellon Trust Company, N.A. ("BNY MELLON"), and consideration of the Funding Loan Agreement 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 Funding Loan Agreement.

ALL INCLUSIVE ACCEPTANCE FEE TO BE PAID TO FISCAL AGENT AT 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 Funding Loan Agreement 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 GOVERNMENTAL NOTE.

(3) Extraordinary Services

The reasonable fees and expenses of the Fiscal Agent, as applicable, including but not limited to review and execution of supplemental agreements, tender processing, the preparation and distribution of sinking fund redemption notices, optional redemptions, failed

remarketing processing, preparation of special or interim reports, UCC filing fees, auditor confirmation fees, wire transfer fees, transaction fees to settle third-party trades, reconciliation fees to balance trust account balances to third-party investment provider statements, FDIC and other governmental charges, and the reasonable fees and expenses of legal counsel and internal default administrators (including fees prior to litigation, at trial or for appellate proceedings).

**EXHIBIT "H"**

**TERM SHEET**



June 22, 2023

Noah Hale  
Lauderhill Preservation LP  
250 West 55<sup>th</sup> Street  
New York, NY 10019

**RE: APPLICATION FOR A FIXED RATE TAX EXEMPT MORTGAGE LOAN (TEL PROGRAM)  
FREDDIE MAC MULTIFAMILY TAX EXEMPT LOAN PROGRAM  
PROPERTY: LAUDERHILL POINT, 3146 NW 19<sup>TH</sup> STREET, FORT LAUDERDALE, FL 33311  
BERKADIA LOAN NUMBER: 290042**

Dear Mr. Hale:

This letter, once returned countersigned by you, will constitute an application ("**Application**") to Berkadia Commercial Mortgage LLC ("**Funding Lender**") to make a loan ("**Funding Loan**") to Housing Finance Authority of Broward County, Florida (the "**Governmental Lender**") pursuant to the Federal Home Loan Mortgage ("**Freddie Mac**") Multifamily Direct Purchase of Tax-Exempt Loan Program (the "**TEL Program**"). The Funding Loan is requested by Fairstead Capital ("**Sponsor**") on behalf of Lauderhill Preservation LP (the "**Borrower**") in connection with the acquisition and rehabilitation of the property identified above ("**Property**") pursuant to requirements of any Federal, State or local requirements concerning the proposed tax exempt private activity allocation and/or Low Income Housing Tax Credit requirements. The Funding Loan will be originated by Funding Lender to the Governmental Lender. The proceeds of the Funding Loan will be used by the Governmental Lender to fund a mortgage loan with matching economic terms (the "**Project Loan**" and together with the Funding Loan, the "**Loans**") to the Borrower to finance the Property. The Funding Loan will be a nonrecourse obligation of the Governmental Lender secured solely by receipts and revenues from the Project Loan and the collateral pledged therefor (including a first mortgage lien with respect to the Property (the "**Mortgage**")).

Funding Lender will issue a written commitment ("**Loan Commitment**") approving the Loan only if Borrower and the Loan satisfy all terms and conditions of this Application, certain additional requirements of Freddie Mac, consent of the requisite tax exempt bond allocation and Section 42 providers and necessary tax exempt opinions as well as eligibility under the specific Freddie Mac Tax Exempt Loan Program.

NOTE: THIS APPLICATION IS FOR A LOAN UNDER FREDDIE MAC'S TAX EXEMPT LOAN PROGRAM. BORROWER ACKNOWLEDGES THAT THIS LOAN WILL BE SOLD TO FREDDIE MAC AND THAT FREDDIE MAC INTENDS TO SELL THIS LOAN INTO A COMMERCIAL TAX EXEMPT MORTGAGED-BACKED SECURITIZATION OR SIMILAR TYPE EXECUTION ("**SECURITIZED**"), AND THAT THE LOAN WILL NOT BE HELD IN FREDDIE MAC'S PORTFOLIO. THUS, THE REQUIREMENTS AND PROVISIONS IN THIS APPLICATION AND IN THE LOAN DOCUMENTS ARE ANALOGOUS TO THOSE FOR A SECURITIZED CONDUIT LOAN. PLEASE CONTACT THE FUNDING LENDER REPRESENTATIVE LISTED IN THIS APPLICATION IF YOU HAVE ANY QUESTIONS CONCERNING THE TAX EXEMPT CAPITAL MARKETS EXECUTION PROGRAM OR REQUIREMENTS.

**A. FINANCIAL TERMS**

Proposed Maximum Loan Amount: \$40,499,000 ("**Loan Amount**"). Includes \$40,000,000 in tax-exempt proceeds and \$499,000 in taxable proceeds ("**Taxable Tail**") assuming Section 8 mark up to market rents are in place at Loan closing. See Special Conditions for an alternate scenario.

Maximum Loan-to-Value: 90% of the fair market value as determined by Funding Lender and Freddie Mac.

Minimum Debt Service Coverage Ratio: 1.15x, based upon the final underwritten net operating income for the Property, as determined by Funding Lender and Freddie Mac.

Loan Term: 17 years ("**Loan Term**"), commencing on the Funding Date.

Amortization: 40 years, commencing on the Funding Date.

Treasury Floor: 10-year U.S. Treasury of 3.38%. The yield rate used as the underlying rate for the coupon will be the greater of (i) the "live" Treasury Rate and (ii) the Treasury Floor.

Interest Rate: A fixed interest rate for the Permanent Phase will be determined by Freddie Mac based on market rates prevailing at the time of Rate Lock (defined below in Section B). The interest rate for the TEL Permanent Phase will be based on (i) the greater of the yield on the U.S. Treasury Securities with a maturity date of ten (10) years from the date of Rate Lock or Treasury Floor, plus (ii) a spread of approximately 183 basis points (1.83%) for the tax-exempt loan and a spread of approximately 223 basis points (2.23%) for the Taxable Tail. As of the date of this Application, the

estimated interest rate is 5.56% for the tax-exempt loan and **5.96%** for the Taxable Tail (based off of the current 10-year UST of 3.73%. Please note that this rate does not include any issuer fees or fiscal agent fees (Freddie Mac requires that any issuer fees or fiscal agent fees be included in underwritten expenses). Interest for the Funding Loan will be paid in arrears and calculated based on Actual/360 calculation.

**Payment Terms:** Monthly payments of principal and interest for the Funding Loan will be due and payable on the first (1<sup>st</sup>) day of each month through the remainder of the Loan Term. All unpaid principal, unpaid charges and accrued interest will be due in full upon expiration of the Loan Term. All payments of principal, interest or required escrow/reserve amounts not received within ten (10) calendar days following the due date of such payments, will bear a late payment charge for each month during which a delinquency exists equal to lesser of (i) 5% of the delinquent payment or (ii) the maximum amount permitted by the law of the state where the Property is located.

Any payment of principal, interest or required escrow/reserve amounts that remains delinquent for thirty (30) days or more also will accrue interest at a default interest rate equal as defined in the final documents.

**Lock Out  
 Period/Prepayment/  
 Window Period:**

Term (Months)	Prepay Type
120	Lockout
78	Yield Maintenance
3	1%
3	Par

**LIHTC Investor:** TBD The investor must be acceptable to Funding Lender and Freddie Mac. The Low-Income Housing Tax Credit ("LIHTC") investor / syndicator, the upper tier investor(s) and, the terms and conditions of the operating or partnership agreement, must be acceptable to Funding Lender and Freddie Mac in all respects including, particularly, as to the timing and conditions to funding of capital contributions.

**Set-Asides:** 40% of the revenue generating units will be set aside at 60% of the area median income. Rent restrictions will be consistent with Federal Section 42 requirements. Additionally, 174 total units (99% of the revenue-generating units) will be subject to a project-based HAP contract. Additional local requirements are subject to review and approval by Freddie Mac.

**Budget and  
 Contingencies:** The Borrower's rehabilitation budget, plans/specifications and hard cost contingency must be acceptable to Funding Lender and Freddie Mac in all respects.

**B. LOAN COMMITMENT / RATE LOCK / CLOSING**

**Loan Commitment:** A Loan Commitment issued by Funding Lender will require Borrower to lock the interest rate ("**Rate Lock**") on the Loan prior to a specified deadline ("**Rate Lock Deadline**") and to close the Loan prior to the closing deadline identified in the Loan Commitment ("**Closing Deadline**") unless otherwise extended in the sole and absolute discretion of the Funding Lender with Freddie Mac's prior written permission. If Funding Lender does not provide written permission to extend the Closing Deadline, then Funding Lender has no obligation to extend the Rate Lock Deadline or the Closing Deadline and may require payment of an extension fee should Funding Lender be willing to grant an extension.

**Rate Lock Deposit:** Two percent (2%) Rate Lock Deposit is waived.

**Rate Lock Process /  
 Loan Closing / Damages  
 For Failure to Close After  
 Rate Lock:** Rate Lock is permitted only on business days between 10:00 am and 2:00 pm, eastern time, and only after Funding Lender has received (a) Borrower's written authorization (by e-mail or fax) to Rate Lock and (b) full payment of the Rate Lock Deposit.

Funding Lender may decline to Rate Lock when requested by Borrower (without liability to Borrower) if, in Funding Lender's judgment, substantial conditions of the Loan Commitment (including, without limitation, satisfaction of title insurance, survey, occupancy and rental income requirements) remain to be satisfied at the time Rate Lock is requested or at the Rate Lock Deadline. Funding Lender's agreement to Rate Lock does not mean that Borrower has satisfied all conditions of the Loan Commitment.

Borrower acknowledges that upon Borrower's instruction to Rate Lock, Funding Lender also will lock the rate on the Loan with Freddie Mac. Borrower further acknowledges that if Funding Lender fails to close and deliver the Loan to Freddie Mac, Freddie Mac will suffer damages for locking the spread and taking a position in the financial market, and Freddie Mac will calculate damages in accordance with the standard breakage fee as described more fully in Exhibit A attached, subject to a 0.5% minimum. **Should the Loan not close for any reason other than Funding Lender's sole default, or if Funding Lender is unable to satisfy any post-delivery purchase**

**condition raised by Freddie Mac which requires action or cooperation from Borrower that Borrower does not fulfill, Borrower and Guarantors will be liable for the Breakage Fee and, without duplication, for Funding Lender's other actual costs and damages directly related to such breakage (including, and without limitation, claims asserted by Freddie Mac in connection therewith). Funding Lender may apply the Rate Lock Deposit towards the payment of such damages and, if total damages exceed the amount of the Rate Lock Deposit, the Loan Parties will be liable for the remaining damages. In the event that actual Funding Lender damages total less than the Rate Lock Deposit, the remainder of the Rate Lock Deposit, after the payment of such damages (and any other amounts due to Funding Lender), will be refunded to the Borrower/Guarantors.**

**Application Termination:** The terms quoted herein are subject to change if the borrower does not execute this application by June 28, 2023. Once executed, if Funding Lender does not issue a Loan Commitment by November 27, 2023 (as such date may be extended in writing by Funding Lender without obligation to do so), this Application and the terms outlined herein will need to be updated by Funding Lender.

Funding Lender may terminate this Application or an issued Loan Commitment at any time if, in Funding Lender's discretion: (a) Borrower takes any action or fails to disclose any condition that makes the Loan ineligible for purchase by Freddie Mac, (b) Borrower or any principal fails to cooperate or provide information fully responsive to Funding Lender's reasonable request on a timely basis, (c) any information provided by or on behalf of Borrower or any principal is false or misleading in any material respect, (d) a material adverse change (as determined by Funding Lender) occurs in the condition, occupancy or operation of the Property or in the financial condition or credit reputation of Borrower or any principal, (e) Borrower or any principal defaults under any loan owed to Funding Lender or Freddie Mac or that is currently secured by the Property or equity in Borrower, or (f) a change occurs with respect to the Freddie Mac Program that could, in Funding Lender's judgment, affect the eligibility of the loan for sale to Freddie Mac. Funding Lender will be entitled to recover as damages any losses incurred as a result of any such termination, including any losses incurred by Funding Lender under a mandatory delivery contract with Freddie Mac for the Loan.

### **C. LOAN SECURITY, ESCROWS DURING THE LOAN TERM, FEES AND EXPENSES**

**Loan Collateral:** The collateral required to secure the Loan will include a first priority (i) mortgage/deed of trust/deed to secure debt encumbering the Property and all appurtenant rights; (ii) security interest in all fixtures, equipment and personal property (tangible and intangible) owned by Borrower and affixed to the Property or used in the operation thereof, including all replacements, additions, after-acquired property and proceeds of the foregoing; (iii) assignment of leases, rents, lease guaranties, and like profits arising from the Property; (iv) pledge of all escrow and reserve accounts established as conditions to the Loan; and (v) an assignment of Rate Cap if an interest rate cap has been required as a condition of this Application or the Loan Commitment. Borrower must hold fee simple title to the Property.

**Property Use / Minimum Occupancy:** The Property consists of a 176-unit multifamily apartment project. A (i) minimum occupancy of at least 5% of units leased and physically occupied and (ii) minimum monthly rental income net of rent concessions ("**Required NRI**") of at least \$368,267 must exist as of the Closing Deadline. Borrower will be required to demonstrate compliance by submission of a certified rent roll or HAP rent schedule- use as applicable. No new lease can have an initial term less than six (6) months or greater than two (2) years.

**Property Insurance:** Monthly deposits equal to 1/12 of the annual amount estimated by Funding Lender (based on charges known or reasonably anticipated for the pending year) for real estate taxes and property insurance premiums must be escrowed with Funding Lender during the Loan Term. Borrower will fund initial escrow balances at closing and thereafter pay monthly escrow deposits with Borrower's monthly Loan payment, so that during the Loan Term, Funding Lender will have sufficient funds to make each applicable annual payment not less than thirty (30) days prior to its due date.

**Escrow for Insurance Premiums and Real Estate Taxes:** Monthly deposits equal to 1/12 of the annual amount estimated by Funding Lender (based on charges known or reasonably anticipated for the pending year) for real estate taxes and property insurance premiums must be escrowed with Funding Lender during the Loan Term. Borrower will fund initial escrow balances on the Funding Date and thereafter pay monthly escrow deposits with Borrower's monthly Loan payment, so that during the Loan Term, Funding Lender will have sufficient funds to make each applicable annual payment not less than thirty (30) days prior to its due date.

**Property Condition Report/Escrow for Replacements:** A site inspection and Property Condition Report will be performed by Funding Lender. Borrower will be required to escrow funds during the Loan Term with Funding Lender that are sufficient to pay the estimated cost of systems replacements and other capital improvements to the Property determined to be necessary by Funding Lender based on the results of such inspection. Monthly deposits in an amount equal to 1/12 of the estimated annual



replacement reserve determined by Funding Lender will be due with Borrower's monthly Loan payments. Amounts held by Funding Lender will earn interest, to be added to the reserve amounts. Reserve amounts will be disbursed pursuant to a Continuing Covenant Agreement executed as part of the Loan Documents.

Escrow for Immediate Repairs & Rehab:

If immediate repairs are needed to the Property (as determined by Funding Lender following the Property Condition Report arranged by Funding Lender) at Funding Date, Borrower will be required to include such amount sufficient to cover any immediate repairs in the scope and budget for the rehabilitation. Borrower may be required to escrow funds with Funding Lender and/or Fiscal Agent at closing in an amount equal to the rehab budget as determined by Funding Lender and Freddie Mac. Escrowed amounts will be disbursed pursuant to a Continuing Covenant Agreement executed as part of the Loan Documents. In addition, the Borrower will be required to enter into a Guaranty of Completion in regards to any repairs or improvements as required per the Low Income Housing Tax Credit awards.

Loan Origination Fee:

1.00% of the Loan Amount is earned by Funding Lender and due from Borrower as a loan origination fee ("**Loan Origination Fee**") upon Borrower's acceptance of a Loan Commitment. The Loan Origination Fee also is earned by Funding Lender and due from Borrower if a Loan Commitment is issued to Borrower which is in substantial conformity with this Application, but Borrower does not accept such Loan Commitment or if the Loan fails to close after Borrower has accepted a Loan Commitment (unless the failure to close was due to the default of Funding Lender). In such case, the Loan Origination Fee must be paid in full no later than ten (10) days after Funding Lender's written demand for payment.

Freddie Mac Application Fee:

A non-refundable application fee in the amount of \$40,499 (10 basis points of the Loan Amount) is due with this Application to Freddie Mac ("**Freddie Mac Application Fee**").

Due Diligence Expenses/ Due Diligence Deposit:

Borrower must pay all fees identified in this Application, all Due Diligence Expenses (defined below) and all legal fees incurred by Funding Lender in evaluating this Application (even if a Loan is not made to Borrower), in closing the Loan and in selling the Loan to Freddie Mac.

A "**Due Diligence Deposit**" in the amount of \$25,000 is required with this Application to be applied to estimated Due Diligence Expenses. Funding Lender will refund any unused portion of the Due Diligence Fee (i) at closing, if the Loan is made to Borrower or (ii) within thirty (30) days of when this Application terminates if the Loan is not made to Borrower. If the Due Diligence Deposit does not fully cover Due Diligence Expenses, Borrower must pay the deficiency in full at closing or, if the Loan does not close, no later than ten (10) days after Funding Lender's written demand for payment.

"**Due Diligence Expenses**" consist of a \$5,000 nonrefundable underwriting fee that is earned when Borrower submits this Application and all costs and expenses associated with inspections, reports and reviews deemed necessary or appropriate by Funding Lender to underwrite the Loan, Borrower and its principals in accordance with the Freddie Mac Program, including, but not limited to: a MAI property appraisal, phase I (and phase II if necessary) environmental site assessment along with any asbestos, lead based paint, and/or toxic mold testing; review of operations and maintenance plans; wetlands investigation; Property Condition Report (including a seismic inspection and a \$500 seismic review fee required by Freddie Mac where applicable); flood hazard search; third-party zoning and use compliance review/report; financial analyses of the Property (including a review of the standard residential unit lease form and any commercial leases of the Property); insurance review and analysis; site inspection by a Funding Lender representative; review of monthly rent rolls and operating statements for the Property from the date of this Application until Funding Date; credit history searches and financial statements review on Borrower, its principals and guarantors of the Loan.

Funding Lender Legal Fees / Deposit:

"**Funding Lender's Legal Fees**" anticipated to be approximately \$65,000 plus expenses provided that (i) Borrower's structure, as reflected in its organizational documents, meets the single purpose entity requirements defined in Schedule A ("**SPE Requirements**") without substantive restructuring and modification, (ii) the Loan will be documented using the form loan documents required by the Freddie Mac Program ("**Loan Documents**"), and the Loan Documents and third party agreements are not significantly negotiated; (iii) additional legal review is not required during Funding Lender's due diligence review; (iv) all closing requirements requested by Funding Lender's counsel are timely submitted for review; (v) title, survey or other legal difficulties are not encountered; and (vi) the Loan structure does not require additional legal services to reduce recording expenses. Funding Lender Legal Fees represent the costs of counsel for both the Funding Lender and Freddie Mac

A "**Legal Fee Deposit**" of \$7,500 of the estimated \$65,000 shall be paid by Borrower as part of the referenced Due Diligence Deposit once documentation commences. The Legal Fee Deposit as well as any other unused funds from the Due Diligence Deposit shall be refunded to Borrower as described above under 'Due Diligence Expenses/Due Diligence Deposit. Please be advised that (a) the Legal estimate is for the combined Freddie Mac and Funding Lender counsel, and (b) in the event that Freddie Mac desires a larger Legal Fee Deposit, the Borrower and/or Guarantor agrees to fund such request within 5 business days. In all cases. The Borrower and/or

Guarantor shall be responsible for all Funding Lender Legal charges incurred for the transaction.

**Legal Opinion Letter:** Borrower acknowledges and agrees that as part of the loan closing process it is required to deliver to Funding Lender certain legal opinion letters customary for Freddie Mac transactions of this size and type in form and substance acceptable to the Federal Home Loan Mortgage Corporation ("Freddie Mac") addressing, among other things, enforceability, due formation, execution and delivery, non-consolidation (under certain circumstances) and such other matters as may be reasonably required by Freddie Mac (collectively if more than one, the "Opinion Letter"). In order to properly review the Opinion Letter, Freddie Mac must receive a draft of the Opinion Letter, with analysis and recommendations from Funding Lender, not less than 3 Business Days prior to the anticipated consummation of the loan transaction. Accordingly, Borrower acknowledges and agrees to deliver to Funding Lender, not less than 5 Business Days prior to the anticipated consummation of the loan transaction, a draft Opinion Letter for review. Borrower acknowledges and agrees that Funding Lender will not be responsible for reviewing any Opinion Letter received less than 5 Business Days prior to the anticipated consummation of the loan transaction and that Borrower's failure to timely deliver such Opinion Letter may result in the consummation of the loan transaction being delayed. Borrower further acknowledges and agrees that neither Funding Lender nor Freddie Mac will be responsible for any loss, costs or damages incurred by Borrower as a result of the consummation of the loan transaction being delayed due to the failure of Borrower to timely deliver a draft Opinion Letter.

Furthermore, the Borrower will be responsible for securing an unqualified opinion from competent bond counsel stating that interest received under the loan is exempt from Federal and State income taxes. The form of this opinion must be delivered to Funding Lender for approval at least 15 days prior to the Funding Date.

**Title Insurance:** Borrower must provide (i) a commitment for mortgagee title insurance and (ii) a proforma of the title policy to be issued that will be effective as of the Funding Date ("**Proforma**"), both of which satisfy all title insurance requirements of the Freddie Mac Program (a summary of which is included in Funding Lender's title insurance requirements supplied with this Application). The Proforma must include all endorsements required under the Freddie Mac Program that are issued in the state where the Property is located (including, without limitation, an ALTA 3.1 zoning endorsement and a usury endorsement if the Loan Amount is \$25,000,000 or greater).

Borrower will be required to pay all costs and expenses associated with obtaining mortgagee title insurance for Funding Lender, all recording and filing fees necessary to perfect Funding Lender's interest in the loan collateral and to record the assignment sale of the Loan to Freddie Mac, all note, mortgage or other taxes arising with respect to the Loan (if any), and all amounts necessary to discharge any liens, judgments, or unpaid real estate taxes or assessments which would be a lien on the Property prior to Funding Lender's security.

**Survey:** Borrower must provide an as-built ALTA survey of the Property acceptable to Funding Lender, which satisfies all survey requirements of the Freddie Mac Program (a summary of which is outlined in Funding Lender's survey requirements supplied with this Application), including, without limitation, the required surveyor's certification. The survey must be dated no more than ninety (90) days prior to the Funding Date.

**Termite Inspection:** Borrower must provide written certification from a licensed termite inspection company, dated no more than thirty (30) days prior to closing, which confirms that no active infestation by wood-destroying insects exists at the Property and all damage from any previous infestation has been repaired.

**Commercial Leases & Service Contracts – Tenant Estoppels & SNDAs:** Borrower must provide copies of all executed commercial leases for the Property (including laundry facility leases), and copies of all executed contracts for services provided to the Property. If applicable, any tenant estoppel certificates or lease subordination agreements required by Funding Lender following Funding Lender's review of this information must be delivered by Borrower for Funding Lender's review prior to closing, fully executed and in form acceptable to Funding Lender.

**Property Management Requirements:** Borrower must provide a copy of the executed property management agreement and such information about the property manager as Funding Lender may require. The property manager and property management agreement must be acceptable to Freddie Mac.

The management fee will be subordinate to the lien securing the Loan, as specified in the Loan Documents. The property management contract must contain a provision specifying that it may be terminated by Borrower on thirty (30) days notice, without payment of any penalty or premium.

#### **D. GENERAL TERMS AND CONDITIONS**

**Property Purchase:** Borrower must provide a complete copy of the fully-executed purchase contract for the Property. Borrower represents that (a) the copy of the purchase contract provided or to be provided by Borrower is or shall be a true and accurate copy of such agreement, (b) all preconditions under the purchase contract have been or will be satisfied or discharged in full prior to Loan closing, and (c) no facts or circumstances which adversely affect the condition or value of the Property have come to Borrower's attention in its due diligence of the Property that have not been fully disclosed to Funding Lender in writing in connection with this Application. Borrower agrees that Funding Lender and Freddie Mac will not be deemed to have knowledge of any hazardous conditions, zoning, environmental engineering or other issues merely by possession of the purchase contract for the Property.

**Borrowing Structure/ Principals:** Borrower must be structured in a manner acceptable to Funding Lender and Freddie Mac. Evidence satisfactory to Funding Lender of due organization and authority to perform the transaction will be required with respect to Borrower and each guarantor of the Loan, including acceptable legal opinions which satisfy the requirements for legal opinions under the Freddie Mac Loan Program.

BORROWER MUST BE A SINGLE PURPOSE, BANKRUPTCY-REMOTE ENTITY WHICH COMPLIES WITH THE SPE REQUIREMENTS SET FORTH ON SCHEDULE A, INCLUDING REQUIREMENTS FOR AN SPE EQUITY OWNER, IF APPLICABLE.

Furthermore, Borrower must disclose the substantive terms of any investor that intends to benefit from Section 42 tax credits.

**Guarantor(s) / Non-Recourse Liability/ Exceptions to Non-Recourse Liability:** The Loan will be non-recourse, except that Borrower and each party identified in the Loan Commitment to guarantee the Loan ("**Guarantors**") will be personally liable (jointly and severally) for all Freddie Mac standard exceptions to non-recourse liability and for environmental compliance and violations, all as set forth more fully in the Loan Documents (copies to be provided upon request.).

Subject to Freddie Mac approval, the anticipated Guarantor(s) will be Fairstead Affordable LLC

**Assumability:** In addition to any requirements contained in the any Regulatory Agreement concerning transfer of ownership as imposed by the local Governmental Agency, the Loan may be assumed by a qualified assignee acceptable to Freddie Mac, subject to satisfaction of all approval conditions (including delivery of any required guarantees, payment of an assumption fee, all related expenses and any required opinions in regards to the tax exemption of the loan).

**Exclusive Financing Opportunity; Brokers Involved in Loan:** Borrower intends this Application to be an exclusive Permanent Phase financing opportunity for Funding Lender and agrees that it will not revoke or terminate this Application and apply to any other lender for financing which will be secured, in whole or in part, by the Property or by any equity interests in Borrower so long as this Application remains in effect. Borrower also represents and warrants to Funding Lender that no other applications for a loan to be secured, in whole or in part, by the Property or any equity interests in Borrower is currently pending.

Borrower represents and warrants to Funding Lender that it has not dealt with any broker or other party who may claim a commission or other compensation for placing or originating this Loan. Borrower will be responsible for all compensation due to Broker (unless otherwise agreed by Funding Lender in writing) and indemnify Funding

Lender from and against any and all claims for a commission or other compensation relating to this Loan from Broker or any other party.

**OFAC Certification:** Borrower represents and warrants that neither Borrower, nor any of its general partners or managing members (as applicable) nor, to the best of its knowledge, any other principal of Borrower currently is (i) identified on the list ("**OFAC List**") of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control, nor (ii) a person/entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. Borrower acknowledges that it has a continuing obligation during the processing of this Application to notify Funding Lender promptly if it knows or has reason to believe that the foregoing representation is no longer correct. The OFAC List is accessible through [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

**Accurate Information:** Borrower agrees to provide, in a timely manner, all information requested by Funding Lender to underwrite the Loan, Borrower and its principals and agrees to provide access to the Property for inspection by Funding Lender and due diligence consultants engaged by Funding Lender. Borrower represents and warrants to Funding Lender that all information supplied to date in furtherance of this Application by or on behalf of Borrower or in respect of any principal is true, accurate and complete in all material respects. Borrower acknowledges that Funding Lender and Freddie Mac will rely on all information, statements and reports provided by or on behalf of Borrower and each

principal in furtherance of this Application, and Borrower has an obligation to notify Funding Lender promptly if any new information or change of condition arises that would make materially inaccurate, false or misleading any information, statement or report previously provided by or on behalf of Borrower or in respect of any principal.

**Advertising:** Borrower's submission of this Application constitutes Borrower's authorization for Funding Lender and Freddie Mac to use publicly, at their respective discretion, the name of the Property, photographs of the Property, and basic transaction information (for example, the number of units in the Property, the Loan Amount, interest rate etc.) relating to the Loan.

**Miscellaneous:** This Application is not a commitment or binding offer by Funding Lender, express or implied, to make a loan or to issue a Loan Commitment. Only a written Loan Commitment issued by Funding Lender, and timely accepted by Borrower, will constitute Funding Lender's commitment to make the Loan to Borrower. This Application supersedes and replaces all prior understandings and representations (verbal or written) regarding Borrower's application to Funding Lender for the Loan. The Loan Documents executed at closing will control if any terms conflict with this Application or the Loan Commitment issued by Funding Lender.

All capitalized/defined terms used in this Application have the meaning specified in this Application. This Application is governed by Delaware law (without application of its rules governing conflicts of law). All decisions made by Funding Lender and Freddie Mac with respect to this Application are made in their respective sole discretion. Modifications or waivers to this Application will be effective only if made by a written agreement signed by Funding Lender and Borrower. No third party is a beneficiary (express or implied) of this Application or of the Loan proceeds. Borrower may not assign this Application or the Loan proceeds. A "business day" is any day other than Saturday, Sunday or legal holidays recognized by Funding Lender. Unless otherwise expressly provided in this Application or required by governing law, Borrower will not earn interest on any funds held by Funding Lender during the processing of this Application or the Loan Term. Time is of the essence with respect to Borrower's timely performance of its obligations under this Application. Funding Lender shall be entitled to recover legal fees to enforce its rights and the performance of Borrower's obligations under this Application and the Loan Commitment.

## **E. SPECIAL CONDITIONS**

1. **Additional Loan scenario, all Financial Terms and Special Conditions apply to this scenario unless otherwise noted:** If Section 8 mark up to market rents are not in place at Loan closing, the Loan will be structured with a holdback. The total Loan Amount will be equal to \$38,108,000 with a holdback of \$4,970,000 (see Special Condition #2), spread will be equal to 1.95% (includes index lock adder of 7 bps).
2. As-Is and As-Stabilized proformas required. As-Is proforma to be based on proforma at loan funding. As Stabilized proforma to be based on post-renovation operations.

If the as-is DCR is below the greater of 1.15x or the priced DCR, Borrower must post collateral for gap in supportable proceeds based on As-Is NOI versus As-Stabilized NOI. Acceptable forms of collateral include:

- Cash escrow, known as the Preservation Rehabilitation Escrow (Rehabilitation Escrow)
  - Letter of Credit from a bank that is on the Multifamily Approved Counterparty List. The Letter of Credit cannot be secured by a lien on the Property and cannot expire earlier than 60 days after the term of the Preservation Rehabilitation period.
3. In addition to any holdback calculated per Special Condition #1, the Borrower must enter into a Preservation Rehabilitation Escrow Agreement with the Berkadia based on a scope of work approved by Freddie Mac (This escrow applies to both Loan scenarios.) The agreement must include all the following:
    - Establish requirements for the release of loan proceeds during rehabilitation.
    - Specify Third Party reports and documentation.
    - Include Borrower obligations.
    - Allow for monitoring by Berkadia and Freddie Mac during rehabilitation.
    - Provide terms for release of the Rehabilitation Escrow in the Loan Agreement or Continuing Covenant Agreement (CCA).
  4. **Spread Hold:** Freddie Mac will hold the spread quoted herein through November 27, 2023, however if the spread for the Freddie Mac 10yr securitizations specifically, WI K-000 Series Class A-2 Certificates ("WI K-000 Series Class A-2 spread") moves more than 25 basis points above the current WI K-000 Series Class A-2 spread of 74 basis points per the June 20, 2023 publication, Freddie Mac reserves the right to increase the quoted spread in its sole discretion. The K-Series spread can be tracked by Berkadia via Freddie Mac's website.
  5. The Tax-Exempt Loan Program for acquisition rehabilitation requires a cooperative Governmental

Lender to enter into a Project Loan Agreement and Funding Loan Agreement (and other ancillary documents, certificates, etc). The Project Loan Agreement is between the Governmental Entity, a Fiscal Agent (e.g. a trustee) and the Borrower where the Governmental Entity is making a mortgage loan to the Borrower with the proceeds the Governmental Entity is receiving from the Funding Loan from Berkadia (the Funding Lender) who ultimately assigns the Funding Loan to Freddie Mac. As required in the Freddie Mac form documents, interest payments per the mortgage loan will be exempt from federal and state income taxes and, as such, an unqualified tax-exempt opinion from nationally recognized bond counsel will be required. Any additional requirements that may be imposed by the Governmental Entity must be approved and documented by Freddie Mac.

6. The Property will be subject to one (or more) Regulatory Agreements or Land Use Restriction Agreements ("Regulatory Agreement"), which shall be subject to review and approval by Funding Lender and Freddie Mac in their sole discretion and which, in all events, will terminate upon foreclosure of the Security Instrument or upon a transfer of the Property by instrument in lieu of foreclosure. To the extent required by Freddie Mac, the Regulatory Agreement shall be subordinated to the mortgage/deed of trust/deed to secure debt securing the Loan.
7. The Funding Lender has assumed that the Property will benefit from a Section 8 Housing Assistance Payment Contract ("HAP Contract") that will be in place at Loan Closing. Funding Lender shall have the right to approve the form of the HAP Contract, the number of subsidized units, the contract rents, and the term of the HAP Contract, all of which shall be acceptable to Funding Lender and Freddie Mac in their sole discretion. The HAP Contract shall be collaterally assigned to Lender pursuant to the standard form of Consent to Assignment of HAP Contract, which shall be delivered to Funding Lender prior to rate lock. Any Regulatory Agreement associated with the HAP Contract shall be subject to review and approval by Funding Lender and Freddie Mac in their sole discretion. In the event that any portion of the HAP Contract is illegible or the HAP Contract submitted to Funding Lender is not a complete contract (i.e., includes all amendments and renewals since the date of the original HAP Contract), there shall be additional recourse under the Loan Documents relating to losses suffered by Funding Lender on account of any reduction in payment made under the HAP Contract as a result of conditions, requirements, limitations, or other information contained in, or required by, any portion of the HAP Contract that is either (i) illegible or (ii) not delivered to the Funding Lender prior to the Closing Deadline.
8. Developer fee payable at closing limited to 30% of total developer fee (minimum 70% may not be paid to developer before Borrower completes all repairs required by to the Loan Documents)
9. Renovation work must cost no more than \$60,000/unit. Renovation work may exceed \$60,000/unit if a long-term HAP Contract is in place at Loan closing.
10. Monitoring of construction by a licensed architect/engineer is required and may be done by Seller/Service staff or by their third-party contractor.
11. A tenant relocation plan required at final underwriting. No disruption to cash flow permitted.
12. Tax credit equity plus any applicable bridge loan at closing will be  $\geq 20\%$ .
13. Satisfactory review of construction documents by Freddie Mac.
14. The Borrower must provide Freddie Mac with a Guaranty of Completion for the rehabilitation work to be done and an Operating Deficit Guaranty for the term of rehabilitation plus lease up.
15. Freddie Mac approved LIHTC syndicator and satisfactory review of documentation including Form 1115 and summary of track record, experience, and recapture history over the past 5-years.
16. All renovation work must be completed, and the Property must reach stabilization within 24 months of the Funding Date.
17. Section 8 HAP Contract must be in place prior to Loan closing.
18. HAP rents must be underwritten to the lower market rents or contract rents. No HAP overhang will be underwritten.
19. Expenses and economic vacancy to be supported by appraisal, and comps.
20. Aged receivables report and payroll schedule must be provided at full underwriting.

21. Budgeted expenses must be supported by appraisal and borrower/manager comps for similar properties in the same market.
22. Satisfactory analysis will also be required at final underwriting to support how sponsor plans to effectively cut expenses as compared to historical statements including line-item analysis of what will be removed from the operating statement/budget. Specifically, Borrower must show support for nonrecurring capex at full underwriting in order to underwrite the R&M expense reduction.
23. Freddie Mac compliant borrower structure.
24. Freddie Mac compliant infinite tax abatement.
25. Quoted spread contemplates no ground lease, subordinate debt, or preferred equity.
26. Extensive crime mitigation plan required; subject to Freddie Mac review and approval at final underwriting.
27. 3 years of historical operating statements must be evaluated at final underwriting.
28. 3% economic vacancy must be supported by 3 months of economic vacancy at or below 3%.
29. As-Is economic vacancy must be underwritten to the higher of T-1 or T-3 normalized economic vacancy.
30. As-is net rental income must be underwritten to normalized T-1 or T-3 economic vacancy, whichever results in a lower net rental income.
31. Issuer and TEL related fees should be included in the underwritten miscellaneous expenses.
32. Satisfactory Freddie Mac site inspection prior to Rate Lock.
33. Quote assumes policy compliant insurance.
34. Quote assumes no preferred equity. Use of preferred equity may affect pricing and/or credit parameters.
35. Quote assumes standard documents will be used; any document modifications or deviations from standard requirements, unless stated herein, may affect pricing.
36. Minimum Net Worth and Liquidity Requirements for Guarantor:  
Net Worth: \$15,000,000    Liquidity: \$4,000,000
37. Guarantor must meet Freddie Mac's NW and Liquidity requirements for an entity.
38. Additional Pricing Option:  
Section 8 Mark up to market rents in place at Loan closing:
  - 210-day hold period index lock included: spread equal to 1.97%
  - Taxable Tail: 210-day hold period scenario (all loan parameters must match the TEL) spread equal to 2.37%  
Section 8 mark up to market rents in place post rehab/post Loan closing:
  - 210-day hold period, index lock included: spread equal to 2.09%

All information required by Funding Lender under this Application or required under the Freddie Mac Program is to be delivered to Funding Lender's attention at the mailing address stated below.

Evaluation and processing of this Application will not begin until Borrower has (a) submitted this Application by executing and returning a copy to Funding Lender (by original, email or facsimile) at the address shown below and (b) wired funds for the Due Diligence Deposit and the Freddie Mac Application Fee in the amount of **\$72,999** (\$40,499 Freddie Mac Application Fee + \$25,000 Due Diligence Deposit + \$7,500 Legal Fee Deposit) in accordance with the wire instructions shown below. Funding Lender can accept DOCUSIGN signature so long as the signed document is returned to the Funding Lender using email of the person signing. Funding Lender will not commence evaluation of this Application, and the terms outlined in this Application will have no effect, unless this Application is submitted and the Due Diligence Deposit and the Freddie Mac Application Fee are paid in full prior to 5:00 pm eastern time on **June 28, 2023**. Time is of the essence.

**FUNDING LENDER ADDRESS:**

Address: Berkadia Commercial Mortgage LLC  
Matthew Napoleon  
6555 Longshore Street  
Suite 280  
Dublin, OH 43017  
614-468-5805  
Phone:  
Email: Matthew.napoleon@berkadia.com

**WIRE INSTRUCTIONS TO BERKADIA:**

Bank: TD Bank, N.A.  
Wilmington, Delaware  
ABA Number: 031101266  
Account Number: 4394297498  
Account Name: Berkadia Commercial Mortgage LLC  
Property: add Property Name

On behalf of Berkadia Commercial Mortgage LLC, we appreciate the opportunity to service your financial needs and look forward to working with you.

Berkadia Commercial Mortgage LLC

By: \_\_\_\_\_  
Matthew Napoleon  
Authorized Representative

**BORROWER / SPONSOR AUTHORIZATION & SIGNATURE**

By signing below, the undersigned authorize Funding Lender to process and evaluate this Application and agree that a Loan substantially on the terms and conditions described in this Application will be acceptable. The undersigned (i) make the representations of Borrower stated in this Application, (ii) agree to perform or cause to be performed all obligations of Borrower stated in this Application and (iii) jointly and severally agree to pay all fees, expenses and liabilities contemplated as an obligation of Borrower under this Application. Each person signing below represents that he/she has proper authority to execute this Application.

APPLICANT: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Brett Meringoff  
Title: Authorized Signatory  
Date: 6/28/2022

**SCHEDULE A**  
**SPE Requirements**

Generally, each Borrower and each SPE Equity Owner (if applicable) must be a Single Purpose Entity (SPE). If the Borrower is a TIC, each tenant must be an SPE.

**FOR LOANS LESS THAN \$5,000,000:**

Borrower must be a single asset entity, but is not required to be a SPE, bankruptcy-remote entity. The Property must be Borrower's sole asset and its operation Borrower's sole business.

**FOR LOANS BETWEEN \$5,000,000 AND \$100,000,000 OR LESS:**

1. Borrower must be a bankruptcy-remote **SPE** which complies with Rating Agency requirements. The Property must be Borrower's sole asset and its operation must be Borrower's sole business.
2. The Property must be held by a newly-formed SPE Borrower; however, a recycled SPE may be acceptable if Funding Lender requirements are met. If a recycled SPE is contemplated, contact Funding Lender.
3. Reserved.
4. For loans of \$25,000,000.00 or more (or loans in pools totaling such amount), Borrower must have an SPE Equity Owner (i.e., its managing member or general partner must be an SPE), unless Borrower is structured as a corporation or a Delaware single member limited liability company ("**DESM LLC**"). [Note: If Borrower or any SPE Equity Owner is a single member limited liability company, that entity must be formed in Delaware.] If Borrower is a limited partnership, all general partners must be SPEs.
5. The organizational documents of Borrower and any SPE Equity Owner must contain separateness covenants which are substantively compatible with those in the Loan Documents.
6. For loans of \$40,000,000.00 or more, a substantive non-consolidation opinion is required; that opinion will be reviewed by Freddie Mac's outside counsel.
  - "Rating Agency" means Fitch, Inc., Moody's Investors Service, Inc. or Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc., any successor to the same, or any other nationally recognized statistical rating organization.
  - This Exhibit summarizes limited aspects of Rating Agency SPE requirements, as supplemented by CME Program requirements. Borrower should confirm that the counsel it retains to represent it for the Loan is familiar with Rating Agency requirements and commercial mortgaged-backed securitization programs. Retaining counsel who lacks that expertise will result in a commensurate increase in the fees of Funding Lender's counsel and, for loans of \$40,000,000.00 or more, Freddie Mac's outside counsel retained for review of the non-consolidation opinion



**EXHIBIT A**  
**Calculation of the Borrower Breakage Fee**

**(Revised 10-11-2021)**

1. **Determination of Breakage Fee.** Notwithstanding anything in the *Guide* to the contrary, the Breakage Fee will be the greater of (A) or (B) below, but will in no event exceed 3.0% of the Rate Locked Funding Loan Amount:
- (A) 0.5% of the Rate Locked Funding Loan Amount; or
  - (B) the product obtained by multiplying:
    - (1) the Rate Locked Funding Loan Amount
    - by**
    - (2) the value obtained by subtracting
      - a. the Monthly Yield Rate at Breakage
      - from**
      - b. the Monthly Applicable Yield Rate at Rate Lock
      - by**
      - (3) the Present Value Factor

For purposes of this Section the following definitions will apply:

**Breakage Date:** the earliest to occur of (i) the date the Borrower notifies Funding Lender or Freddie Mac in writing that the Origination Date (as defined in the Freddie Mac Commitment) will not occur, (ii) the date Funding Lender notifies Freddie Mac in writing of its inability to deliver the Funding Loan, or (iii) the Mandatory Delivery Date

**Rate Locked Funding Loan Amount:** the amount of the Funding Loan set forth in Exhibit A to the Freddie Mac Commitment

**Yield Rate at Breakage:** as of the close of the trading session on the Breakage Date, the yield rate with a maturity equal to the term of the Index set forth in Exhibit A to the Freddie Mac Commitment, found among the Daily Treasury Yield Curve Rates, commonly known as the Constant Maturity Treasury (CMT) rates, as reported on the U.S. Department of the Treasury website.

The Yield Rate at Breakage will be expressed as a decimal to two digits.

If no published CMT maturity matches the term of the Index, Freddie Mac will interpolate as a decimal to two digits the yield rate between (i) the CMT with a maturity closest to, but shorter than, the term of the Index, and (ii) the CMT with a maturity closest to, but longer than, the term of the Index, as follows:

$$\left[ \left( \frac{(B-A)}{(D-C)} \right) \times (E-C) \right] + A$$

- A = yield rate for the CMT with a maturity shorter than the term of the Index
- B = yield rate for the CMT with a maturity longer than the term of the Index
- C = number of months to maturity for the CMT maturity shorter than the term of the Index
- D = number of months to maturity for the CMT maturity longer than the term of the Index
- E = number of months in the term of the Index

In the event the U.S. Department of the Treasury ceases publication of the CMT rates, the Yield Rate at Breakage will equal the yield rate on the U.S Treasury security which is not callable or indexed to inflation and which has a maturity closest to (but not shorter than) the term of the Index.

The selection of an alternate security pursuant to this Section will be made in Freddie Mac's discretion.

**Monthly Yield Rate at Breakage:** the Yield Rate at Breakage divided by 12

**Applicable Yield Rate at Rate Lock:** with respect to the Index-Locked Portion, the "Applicable Yield Rate at Rate Lock" will be the "Yield on Index at Index Lock" set forth in Exhibit A to the Index Lock Agreement. With respect to the Non Index-Locked Portion (if any), the "Applicable Yield Rate at Rate Lock" will be the "Actual Index Rate at Rate Lock" set forth in Exhibit A to the Freddie Mac Commitment

**Monthly Applicable Yield Rate at Rate Lock:** the Applicable Yield Rate at Rate Lock divided by 12

**Present Value Factor:** the factor that discounts to present value the costs resulting to Freddie Mac from the difference in the Applicable Yield Rate at Rate Lock and the Yield Rate at Breakage calculated using the following formula:

$$\frac{1 - (1 + r)^{-n}}{(r)}$$

r = Monthly Yield Rate at Breakage

n = the number of months in the Mortgage term (set forth in Exhibit B)

2. Obligation to Pay Breakage Fee; Joint and Several Liability

If there is a Default or if the Breakage Fee is otherwise due and payable ("**Breakage Fee Event**"), Funding Lender will be liable to Freddie Mac, and Borrower and Breakage Obligor will be liable to Funding Lender, for the Breakage Fee. The liability of each person and/or entity constituting Borrower and Breakage Obligor for the Breakage Fee will be joint and several.

3. Payment of GFD; Assignment to Freddie Mac of Obligation to Pay Remaining Breakage Fee

Upon a Breakage Fee Event, Funding Lender will (a) pay the GFD to Freddie Mac, who will credit the GFD, less any portion of the Application Fee that is still owed to Freddie Mac, towards the Breakage Fee and (b) effectuate the Assignment, pursuant to which Borrower and Breakage Obligor will be obligated to pay to Freddie Mac any portion of the Breakage Fee that exceeds the GFD. Borrower and Breakage Obligor each consents to the Assignment and the delivery of the GFD to Freddie Mac. Borrower and Breakage Obligor each acknowledges that the Assignment will in no way alter or diminish Borrower's or Breakage Obligor's other obligations to Funding Lender under the Funding Lender Commitment; provided, however, to the extent that Borrower and/or Breakage Obligor has paid the Breakage Fee to Freddie Mac directly, Funding Lender will not be entitled to collect the Breakage Fee. Borrower and Breakage Obligor each confirms and acknowledges that if the Breakage Fee becomes due, pursuant to the Assignment, Freddie Mac may demand that Borrower and Breakage Obligor pay the Breakage Fee directly to Freddie Mac and Freddie Mac will not be required to pursue its remedies first against Funding Lender.

4. Waiver of Right to Assert Defenses

Upon execution of the Funding Lender Commitment, Borrower and Breakage Obligor each waives, to the fullest extent permitted by applicable law, the right to assert against Freddie Mac as assignee of Funding Lender, any claim or defense to the claim assigned that arises out of transactions or relationships between Borrower and Funding Lender and/or between Breakage Obligor and Funding Lender, including claims or defenses for fraud or set-off. Upon execution of the Funding Lender Commitment, Borrower and Breakage Obligor each acknowledges and agrees that this waiver is entered into knowingly and voluntarily with the benefit of competent legal counsel.

5. Waiver of Right to Contest Liquidated Damages

Upon execution of the Funding Lender Commitment, Borrower and Breakage Obligor each waives, to the fullest extent permitted by applicable law, any defense as to the validity of any liquidated damages set forth in the Funding Lender Commitment on the grounds that such liquidated damages are void as penalties or are not reasonably related to the actual damages. Upon execution of the Funding Lender Commitment, Borrower and Breakage Obligor each acknowledges and agrees that this waiver is entered into knowingly and voluntarily with the benefit of competent legal counsel.



**CARES ACT BORROWER REMINDER NOTICE**  
**(Revised 8-3-21)**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("**CARES Act**"), was signed into law. You are receiving this reminder notice because your loan will be secured by a "covered property" as defined in the CARES Act.

Section 4024 of the CARES Act prohibits the lessor of a covered property from requiring a tenant to vacate its dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with notice to vacate ("**30-Day Notice Requirement**").

This letter is a reminder that you have a strict obligation to adhere to the terms of your loan documents, which include your covenant to comply with all laws, ordinances, rules, regulations and requirements of any Governmental Authority having jurisdiction over the Mortgaged Property.

Failure to comply with the 30-Day Notice Requirement of the CARES Act or any other law related to tenant protections may result in a default under your loan terms. Under the terms of your loan documents, the Funding Lender may request, from time to time, confirmation from you that you are fully complying with all terms of the loan documents.

Furthermore, the Funding Lender is requesting that you promptly provide the notice located at [https://mf.freddie.mac.com/docs/covid19\\_emergency\\_rental\\_assistance\\_flyer.pdf](https://mf.freddie.mac.com/docs/covid19_emergency_rental_assistance_flyer.pdf) to each of your tenants to direct them to available renter counseling and financial resources and advise them of the 30-Day Notice Requirement.

Finally, the Consolidated Appropriations Act of 2021 included a provision for Emergency Rental Assistance available to the tenant or a landlord on behalf of the tenant who meets minimum pre-set requirements. The CFPB's "Help for Landlords" page can help you take action to assist your eligible tenants. (<https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-landlords/>). We urge you to exhaust all available federal and state rental assistance programs before resorting to seeking tenant evictions.

Please contact Lisa Maloney at 215-328-1419 or via email at [Lisa.Maloney@berkadia.com](mailto:Lisa.Maloney@berkadia.com) should you have any questions.



Exhibit A

Index Lock Confirmation Sheet

Property: Lauderhill Point

Lender Loan Number: 325962

Lender: *Berkadia Commercial Mortgage LLC*

INDEX LOCK CONFIRMATION SHEET	
Date of Index Lock	July 14, 2023
Index-Locked Mortgage Amount	\$500,000
<b>Term of Proposed Mortgage</b>	204 months
<b>Index</b>	10-year US Treasury Note
<b>Treasury Floor Date</b>	June 20, 2023
<b>Treasury Floor</b>	3.38%
Yield on Index at Index Lock	3.80%
Index-Locked Yield Rate	3.80%
<i>The Index-Locked Yield Rate will be the greater of (a) the Yield on Index at Index Lock and (b) the Treasury Floor.</i>	
<b>Delivery Path</b>	Standard Delivery
<b>Underwriting Package Delivery Date</b>	October 13, 2023
<b>Index Lock Expiration Date</b>	November 27, 2023

**INDEX LOCK AGREED TO AND ACCEPTED BY PROPOSED BORROWER**

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

**LAUDERHILL PRESERVATION LP,**  
a Florida limited partnership

By: LAUDERHILL GP LLC,  
a Delaware limited liability company,  
its General Partner

By:   
**Brett Meringoff, Authorized Signatory**



Exhibit A

Index Lock Confirmation Sheet

Property: Lauderhill Point

Lender Loan Number: 290042

Lender: *Berkadia Commercial Mortgage LLC*

INDEX LOCK CONFIRMATION SHEET	
Date of Index Lock	July 14, 2023
Index-Locked Mortgage Amount	\$ 39,600,000
<b>Term of Proposed Mortgage</b>	204 months
<b>Index</b>	10-year US Treasury Note
<b>Treasury Floor Date</b>	June 20, 2023
<b>Treasury Floor</b>	3.38%
Yield on Index at Index Lock	3.80%
Index-Locked Yield Rate	3.80%
<i>The Index-Locked Yield Rate will be the greater of (a) the Yield on Index at Index Lock and (b) the Treasury Floor.</i>	
<b>Delivery Path</b>	Standard Delivery
<b>Underwriting Package Delivery Date</b>	October 13, 2023
<b>Index Lock Expiration Date</b>	November 27, 2023

**INDEX LOCK AGREED TO AND ACCEPTED BY PROPOSED BORROWER**

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

**LAUDERHILL PRESERVATION LP,**  
a Florida limited partnership

By: LAUDERHILL GP LLC,  
a Delaware limited liability company,  
its General Partner

  
**Brett Meringoff, Authorized Signatory**

# **ITEM 6**



**Housing Finance HFA of Broward County (“HFA”)  
October 18, 2024 – Board Meeting**

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

**MOTION TO ADOPT** resolution authorizing: 1) staff to take any action necessary to carry forward 2023 Private Activity Bond (“PAB”) allocation, 2) staff to request 2024 PAB allocation, 3) approval of a Plan of Finance, 4) staff to publish a TEFRA Notice and hold a hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (“TEFRA Hearing”), 5) the use of state awarded PAB allocation for Mortgage Credit Certificate programs or multifamily carry forward, 6) authorizing proper officers, the Executive Director and the employees and agents of the HFA to do all things necessary in connection with the Plan of Finance, the issuance of single family bonds and carry forward of allocation, 7) ratifying prior actions regarding same, and 8) providing an effective date.

**Background**

1. Annually PAB allocation is available based on a statutory calculation. The Housing Finance HFA received PAB allocation in 2023 totaling \$113,670,629.50. The 2023 PAB allocation was distributed as follows: multifamily \$0 - and single-family - \$113,670,629.50. The 2024 available PAB allocation is anticipated to be approximately \$115,000,000.
2. The HFA applied for an additional \$136,329,370.50 of PAB allocation and is currently on the waitlist with the Florida Division of Bond Finance. Notice of any additional PAB allocation will be released in November 2023.
3. Pursuant to a memorandum dated October 2, 2020, the HFA was provided additional direction from Bryant Miller Olive P.A. regarding allocation procedures for any project in the amount of \$50 million or more. Specifically, the HFA was advised that allocation requests in excess of \$50 million do not expire and there is nothing for the HFA to do until the allocation is carried forward at the end of the year. (Attachment 1) The HFA’s current PAB allocation procedures are consistent with this direction.
4. The HFA annually requests PAB allocation from the State for financing single family or multifamily transactions.
5. Presently the HFA has \$113,670,629.50 in available single-family allocation. The HFA has \$175,449,565.32 of multifamily allocation, of which \$0.00 will expire on December 31, 2023, if not used for existing transactions. (Attachment 2).
6. The HFA has \$241,200,000 in pending PAB allocation requests for eleven (11) multifamily developments, two (2) of which are on the waitlist.

**Present Situation**

1. The HFA’s single-family allocation may be used to issue tax exempt bonds (“Bonds”) to finance mortgages or issue mortgage credit certificates (“MCC”) to qualifying households. If carried forward, the single-family allocation may be designated as single family, multifamily or a combination of single-family and multifamily.
2. The HFA has eleven (11) pending multifamily applications with six (6) transactions in the pipeline to close prior to year-end. The remaining applications are expected to close in 2024 or 2025. The HFA has received inquiries regarding additional multifamily transactions. As carry forward allocation is not project specific, multifamily carry forward must be used on a first come first served basis for approved transactions. Assuming all

2023 pipeline closings occur as scheduled, the remaining multifamily allocation will equal \$30,249,565.32 plus any additional allocation received in November 2023.

3. On January 1 of each year, a designated percentage of the State's allocation is allocated to a "regional pool" consisting of seventeen (17) geographic regions of which Broward County is one. Certain steps must be taken for the HFA to obtain allocation from the Broward regional pool ("Region 10 PAB").
4. The current single family TEFRA expires on February 15, 2024. Staff requests authorization to publish any required notices and to hold a TEFRA Hearing prior to the expiration of the current TEFRA. The TEFRA Notice will specify an amount not to exceed \$250,000,000 and will be used in conjunction with the HFA's Plan of Finance for single family transactions (including Bonds and MCCs) over a three (3) year period. (Attachment 3)
5. TEFRA Hearings for multifamily transactions are project specific and are held once the applicant has submitted an application, paid all applicable fees and the transaction has been approved by the Board with notice to the appropriate local government contacts.
6. HFA Staff and financial advisor recommend carrying forward the 2023 PAB allocation as multifamily allocation and/or single-family allocation in such amounts as determined necessary by the Executive Director of the HFA.
7. The cost of the TEFRA Notice, which will be published in the Sun-Sentinel, is not expected to exceed \$500.00.
8. The HFA Resolution will provide Staff authorization to take necessary actions regarding 2023 and 2024 PAB allocation. (Attachment 3)
9. The procedures to carry forward 2023 PAB allocation and request 2024 PAB allocation from the State are an administrative function of the HFA and therefore BOCC authorization is not required for these actions.

### **Recommendation**

MOTION TO ADOPT Resolution authorizing:

- 1) staff to take any action necessary to carry forward 2023 Private Activity Bond ("PAB") allocation,
- 2) staff to request 2024 PAB allocation,
- 3) approval of a Plan of Finance,
- 4) staff to publish a TEFRA Notice and hold a hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended ("TEFRA Hearing"),
- 5) the use of state awarded PAB allocation for Mortgage Credit Certificate programs or multifamily carry forward,
- 6) authorizing proper officers, the Executive Director and the employees and agents of the HFA to do all things necessary in connection with the Plan of Finance, the issuance of single family bonds and carry forward of allocation,
- 7) ratifying prior actions regarding same, and
- 8) providing an effective date.

### **Attachments**

1. Bond Counsel Memorandum – October 2, 2020
2. Allocation Matrix – October 1, 2023
3. HFA Resolution

# **ATTACHMENT 1**

## MEMORANDUM

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

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

**DATE:** October 2, 2020

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

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

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

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

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

## **ATTACHMENT 2**

Housing Finance Authority of Broward County, Florida  
Private Activity Bond Allocation - As of October 1, 2023

**Sources of Allocation**

**Carry Forward & Current Year Allocation**

<u>Year</u>	<u>Multifamily</u>	<u>Single Family</u>	<u>Total</u>	<u>Douglas Gardens</u>	<u>Captiva Cove III</u>	<u>St. Joseph Manor II</u>	<u>Issued 2023 MCC</u>	<u>Pinnacle 441 Phase 2</u>	<u>Federation Plaza</u>	<u>Description</u>	<u>Balance</u>
2020	97,647,789.10	0.00	97,647,789.10	-77,000,000.00	-20,647,789.100	0.00	0.00	0.00	0.00	0.00	0.00
2021	176,327,678.22	0.00	176,327,678.22	0.00	-352,210.90	-34,000,000.00	0.00	-22,000,000.00	-32,140,000.00	0.00	87,835,467.32
2022	87,614,098.00	15,000,000.00	102,614,098.00	0.00	0.00	0.00	-15,000,000.00	0.00	0.00	0.00	87,614,098.00
2023	0.00	113,670,629.50	113,670,629.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	113,670,629.50
November 16th Allocation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>2022 Allocation Uses &amp; Pending Requests</b>											
January 2023 Pending Request	0.00	136,329,370.50	136,329,370.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Description	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>Line of Credit</b>											
							0	0	0		0.00
<b>Total</b>	<b>175,449,565.32</b>	<b>113,670,629.50</b>	<b>626,589,565.32</b>	<b>-77,000,000.00</b>	<b>-21,000,000.00</b>	<b>-34,000,000.00</b>	<b>-15,000,000.00</b>	<b>-22,000,000.00</b>	<b>-32,140,000.00</b>		<b>289,120,194.82</b>
Pending Allocation	0	136,329,370.50									0.00
Available Allocation	175,449,565.32	113,670,629.50									289,120,194.82

**Current Allocation Balances Adjusted for MF Applications -**

**Confirmed with the Division of Bond Finance**

Kristy Mock or Kelsey Manno - (850) 413-1312

Whitney Fason

	<u>Multifamily</u>	<u>Single Family</u>	<u>Total</u>	
2020	0.00	0.00	0.00	
2021	87,835,467.32	0.00	87,835,467.32	Expires 12/31/2024
2022	87,614,098.00	0.00	87,614,098.00	Expires 12/31/2025
2023	0.00	113,670,629.50	113,670,629.50	
November 16th Allocation	0.00	0.00	0.00	
Description	0.00	0.00	0.00	
	<b>175,449,565.32</b>	<b>113,670,629.50</b>	<b>289,120,194.82</b>	

**Carryforward & Allocation Details**

Total Carryforward, CY Allocation & Closings 175,449,565.32 113,670,629.50

Other -

Other -

**Remaining Allocation/Commitments**

**Pending Bond Closings & Allocation**

Pembroke Towers II - Additional Bonds	(6,200,000.00)	-	
Avaline	(20,000,000.00)	-	
Residences @ Sunset Place	(35,000,000.00)	-	
Tequesta a/k/a Griffin Gardens II	(25,000,000.00)	-	
Sistrunk Avenue Apartments	(18,000,000.00)	-	
Pinnacle 441 Phase 2 - Closed	-	-	
Lauderhill Point Apartments	(40,000,000.00)	-	
Pine Island Park	(24,000,000.00)	W	
Federation Plaza - Closed	-	-	
Tallman Pines - Phase I	(18,000,000.00)	-	
Driftwood Terrace	(16,000,000.00)	W	
Provident Place a/k/a Golden Acres	(20,000,000.00)	-	
Palms of Deerfield Beach Townhomes	(19,000,000.00)	-	

**Closing Projection**

	<u>2023 Closing</u>	<u>Units</u>	<u>2024/2025 Closing</u>	<u>Units</u>
New Construction	-6,200,000			
New Construction	0		-20,000,000	108
New Construction	-35,000,000	144	0	0
New Construction	-25,000,000	76	0	0
New Construction	0		-18,000,000	72
New Construction	0	0	0	0
Acquisition /Rehab	-40,000,000	176	0	0
New Construction	0		-24,000,000	120
Acquisition /Rehab	0	0	0	0
New Construction	0	0	-18,000,000	80
Acquisition /Rehab	0	0	-16,000,000	90
New Construction	-20,000,000	100	0	0
Acquisition /Rehab	-19,000,000	56	0	0

<u>City</u>	<u>Developer</u>
Pembroke Pines	Southport
Pompano Beach	Cornerstone
Lauderhill	Tarpon Housing Partners/Nu
Davie	Building Better Communities
Fl. Lauderdale	Sistrunk Apatrments Develo
Hollywood	Pinnacle Communities
Fl. Lauderdale	Lauderhill Developer LLC
Sunrise	Centennial Man. Corp.
Hollywood	Related Affordable, LLC
Deerfield Beach	Tallman Pines Villas, Ltd/
Hollywood	Newstar Development
Pompano Beach	AMBAR3 LLC & HA Pompa
Deerfield Beach	SHAG

Allocation Detail				
2020 Multifamily	-	-	Expires 12/31/2023	2020 MF Carryforward
2021 Multifamily	87,835,467.32	-	Expires 12/31/2024	2021 MF Carryforward
2022 Multifamily	87,614,098.00	-	Expires 12/31/2025	2022 MF Carryforward
2023 Single Family	-	113,670,629.50		
Other	-	-		
<b>Total (Avail. Alloc. Less Applications)</b>	<b>(65,750,434.68)</b>	<b>113,670,629.50</b>		

	0	0.00		
	87,835,467	0.00		
	87,614,098	30,249,565.32		
	0	0.00		
	0	0.00		
	30,249,565.32	552	-65,750,434.68	580



## **ATTACHMENT 3**

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 which was considered:

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF BROWARD COUNTY, FLORIDA ("HFA") AUTHORIZING STAFF TO CARRY FORWARD 2023 PRIVATE ACTIVITY BOND ALLOCATION; AUTHORIZING STAFF TO REQUEST 2024 PRIVATE ACTIVITY BOND ALLOCATION; APPROVING A PLAN OF FINANCE INVOLVING THE ISSUANCE BY THE HFA OF ITS SINGLE FAMILY MORTGAGE REVENUE BONDS ("SINGLE FAMILY BONDS") IN AN AGGREGATE FACE AMOUNT OF NOT TO EXCEED \$250,000,000 IN ONE OR MORE SERIES; APPROVAL OF THE SINGLE FAMILY BONDS AS REQUIRED BY SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AUTHORIZING STAFF TO PUBLISH A NOTICE AND HOLD A PUBLIC HEARING IN ACCORDANCE WITH SECTION 147(f) OF THE INTERNAL REVENUE CODE OF 1986; APPROVING THE USE OF STATE AWARDED ALLOCATION FOR MORTGAGE CREDIT CERTIFICATE PROGRAMS OR MULTIFAMILY CARRY FORWARD; AUTHORIZING THE PROPER OFFICERS, THE EXECUTIVE DIRECTOR AND THE EMPLOYEES AND AGENTS OF THE HFA TO DO ALL THINGS NECESSARY IN CONNECTION WITH THE PLAN OF FINANCE, THE ISSUANCE OF SINGLE FAMILY BONDS AND CARRY-FORWARD OF ALLOCATION; RATIFYING PRIOR ACTIONS REGARDING SAME; AND PROVIDING AN EFFECTIVE DATE FOR THIS RESOLUTION.**

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

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

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

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

**WHEREAS**, the HFA desires to apply for additional allocation in an amount up to the amount allocated to Broward County for calendar year 2024 by the Division of Bond Finance (the "Division") to assure that the HFA has all resources available to respond to any initiatives addressing the housing needs of the citizens of the County; and

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

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

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

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

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

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

**Section 1. Carry-forward Allocation.** The HFA hereby authorizes staff to take all action required to carry forward allocation for the Single Family Bonds, which was allocated to the County for calendar year 2023 by the Division, as allocation for multifamily housing mortgage revenue bonds and/or single family mortgage revenue bonds, in such amounts as determined necessary by the Executive Director of the HFA. The HFA hereby approves the execution by the Chair, Vice Chair, any member of the HFA or the Executive Director of the HFA of all documents, certificates and/or forms required to enable the HFA to carry forward the allocation received in calendar year 2023.

**Section 2. Execution of Allocation Request.** The HFA hereby approves the execution by the Chair, Vice Chair, and any member of the HFA or the Executive Director of the HFA of a request for allocation for the Single Family Bonds in an amount up to the amount allocated to the County for calendar year 2024 by the Division. Such request shall be made on the forms promulgated by the Division. If it is determined by Bond Counsel that a public hearing is required, the Executive Director is authorized to publish such notice and hold such hearing.

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

liability, pecuniary or otherwise, in connection with the issuance of the Single Family Bonds or the Plan of Finance and/or the decision not to issue all or any portion of the Single Family Bonds.

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

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

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

the Executive Director, officers, agents and employees of the HFA with respect to the Single Family Bonds and/or Plan of Finance are hereby authorized and ratified.

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

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

the foregoing Resolution was adopted by the following votes:

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

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

Approved on October \_\_\_\_, 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 carry forward of 2023 private activity bond allocation, the Plan of Finance, and the Single Family Bonds.

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

WITNESS my hand and the corporate seal of said Housing Finance Authority, this \_\_\_\_\_ day of October, 2023.

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

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

(SEAL)



# ITEM 7

**Housing Finance HFA of Broward County**  
**October 18, 2023 – Board Meeting**

**Multifamily Bonds – Informational Item - *Final Credit Underwriting Report for The Gallery at FATVillage.***

**Background**

1. On February 24, 2021, the HFA received a multifamily bond application from Related FATVillage, LLC (the “Developer”) pertaining to a 195-unit new construction development, known as The Gallery at FATVillage (the “Development”). The Development will be located at 600 N. Andrews Avenue, Fort Lauderdale, FL 33311.
2. At its March 21, 2021, meeting, the HFA adopted an Inducement Resolution for the Development in an amount not to exceed \$35,900,000. The Developer subsequently requested that the Note amount be increased to \$42,850,000. At its January 19, 2022, meeting the HFA adopted an amendment to the Inducement Resolution providing for an amount not to exceed \$42,850,000.
3. The TEFRA hearing was held on March 22, 2022, and the Mayor and City Manager of the City of Fort Lauderdale were provided notice regarding the potential construction of the Development prior to the HFA holding a TEFRA hearing.
4. The HFA adopted Resolution No. 2022-009 at its April 20, 2022, meeting (“Authorizing Resolution”). At its August 17, 2022, the HFA approved an amendment to the Authorizing Resolution allowing for subordinate financing and updated Term Sheets.
5. A TEFRA hearing for a Note amount not to exceed \$62,000,000, was held on November 8, 2022, and the Mayor and City Manager of the City of Fort Lauderdale were provided notice regarding the potential construction of the Development prior to the HFA holding a TEFRA hearing.
6. The HFA adopted Resolution No. 2022-024 at its November 16, 2022, meeting (“Amending and Restated Authorizing Resolution”) which among other matters, authorized an increase in the Note amount not to exceed \$62,000,000 and number of units from 195 to 263. The transaction closed in escrow on December 21, 2022.
7. The HFA adopted Resolution No. 2023-013 at its August 16, 2023, meeting (“2023 Amending and Restated Authorizing Resolution”) which among other matters, authorized an (i) increase in the amount of subordinate debt, (ii) amendment and restatement of the Project Note, and (iii) approval of an amendment to the legal description of the subject property of the Project.

**Present Situation**

1. It is anticipated that the Developer will break escrow within October 2023.
2. The Final Credit Underwriting Report is attached.

**Exhibit**

1. Final Credit Underwriting Report

# **ATTACHMENT 1**

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**HOUSING FINANCE AUTHORITY OF BROWARD  
COUNTY**

**Credit Underwriting Report**

**Tax Exempt Multifamily Mortgage Revenue Note (“MMRN” or “Note”)**

**The Gallery at FATVillage**

**Section A: Report Summary**

**Section B: Supporting Information and Schedules**

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**Prepared by**

**First Housing Development Corporation of Florida**

**Final Report**

**September 11, 2023**

**The Gallery at FATVillage**

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

### Recommendation

First Housing Development Corporation of Florida (“First Housing” or “FHDC”) recommends a Tax-Exempt MMRN in the amount of \$55,700,000 to finance the construction and permanent financing of The Gallery at FATVillage Apartments (“Development”).

DEVELOPMENT & SET-ASIDES															
Development Name:		<u>The Gallery at FATVillage</u>													
Address:		<u>600 North Andrews Avenue</u>													
City:	<u>Fort Lauderdale</u>	Zip Code:	<u>33311</u>	County:	<u>Broward</u>	County Size:	<u>Large</u>								
Development Category:				<u>New Construction</u>		Development Type:								<u>High Rise</u>	
Construction Type:		<u>Masonry</u>													
Demographic Commitment:		Primary: <u>Family</u> for <u>100%</u> of the Units													

Broward County (Fort Lauderdale HMFA)

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
0	1.0	10	499	50%			\$840	\$103	\$ 737		\$ 737	\$ 737	\$ 737	\$ 88,440
0	1.0	17	499	120%			\$2,016		\$ 2,016		\$ 2,016	\$ 2,016	\$ 2,016	\$ 411,264
0	1.0	19	499	MKT							\$ 2,150	\$ 2,150	\$ 2,150	\$ 490,200
1	1.0	28	684	50%			\$900	\$126	\$ 774		\$ 774	\$ 774	\$ 774	\$ 260,064
1	1.0	51	684	120%			\$2,160		\$ 2,160		\$ 2,160	\$ 2,160	\$ 2,160	\$ 1,321,920
1	1.0	59	684	MKT							\$ 2,600	\$ 2,600	\$ 2,600	\$ 1,840,800
2	2.0	15	1,075	50%			\$1,080	\$175	\$ 905		\$ 905	\$ 905	\$ 905	\$ 162,900
2	2.0	29	1,075	120%			\$2,592		\$ 2,592		\$ 2,592	\$ 2,592	\$ 2,592	\$ 902,016
2	2.0	35	1,075	MKT							\$ 3,400	\$ 3,400	\$ 3,400	\$ 1,428,000
		263	202,271											\$ 6,905,604

The utility allowances are based on an Energy Consumption Model Estimate for electricity prepared by KN Consultants, LLC (“KN Consultants”) on June 12, 2023 and approved on June 28, 2023 by Florida Housing Finance Corporation (“Florida Housing” or “FHFC”) for credit underwriting purposes only.

Buildings: Residential - 1 Non-Residential - 0  
 Parking: Parking Spaces - 273 Accessible Spaces - 12

Set Asides:

Program	% of Units	# of Units	% AMI	Term (Years)
MMRN	20.2%	53	50%	15
HC	20.2%	53	50%	30
City Loan	14.8%	39	50%	30
City Loan	42.2%	111	120%	30
County Loan	20.2%	53	50%	30
County Loan	36.9%	97	120%	30
County Loan	43.0%	113	120%+	30

Absorption Rate 40 units per month for 6.6 months.

Occupancy Rate at Stabilization: Physical Occupancy 96.00% Economic Occupancy 95.00%  
 Occupancy Comments N/A New Construction

DDA: No QCT: No Multi-Phase Boost: No QAP Boost: No  
 Site Acreage: 1.171 Density: 224.6327 Flood Zone Designation: AH  
 Zoning: RAC-UV, Regional Activity Center - Urban Flood Insurance Required?: No

- The property is located within Zones “AH” and “X”.
- 10 of the 273 parking spaces will be allocated to retail.

DEVELOPMENT TEAM		
Applicant/Borrower:	Related FATVillage, LLC	% Ownership
Manager	Related FATVillage Manager, LLC	0.0100%
Member	TCC Gallery at FATVillage, LLC	99.9900%
Special Member	CDC Special Limited Partner LLC.	0.0000%
Construction Completion Guarantor(s):		
CC Guarantor 1:	Related FATVillage, LLC	
CC Guarantor 2:	Related FATVillage Manager, LLC	
CC Guarantor 3:	JMPFT Affordable, LLC	
CC Guarantor 4:	PRH Investments, LLC	
CC Guarantor 5:	Nicholas Perez	
CC Guarantor 6:	Related FATVillage Developer, LLC	
Operating Deficit Guarantor(s):		
OD Guarantor 1:	Related FATVillage, LLC	
OD Guarantor 2:	Related FATVillage Manager, LLC	
OD Guarantor 3:	JMPFT Affordable, LLC	
OD Guarantor 4:	PRH Investments, LLC	
OD Guarantor 5:	Nicholas Perez	
OD Guarantor 6:	Related FATVillage Developer, LLC	
Note Purchaser	JPMorgan Chase ("Chase") (Construction)/Grandbridge Real Estate Capital, LLC ("Grandbridge")(Permanent) and Freddie Mac	
Developer:	Related FATVillage Developer, LLC	
General Contractor 1:	Fortune Related Construction LLC	
Management Company:	TRG Management Company LLP	
Syndicator:	Truist	
Note Issuer:	Housing Finance Authority of Broward County ("HFABC")	
Architect:	Cohen, Freedman Encinosa & Associates - Architects, P.A.	
Market Study Provider:	Meridian Appraisal Group, Inc. ("Meridian")	
Appraiser:	Walter Duke and Associates ("Walter Duke")	



PERMANENT FINANCING INFORMATION				
	1st Source	2nd Source	3rd Source	4th Source
Lien Position	First	Second	Third	Fourth
Lender/Grantor	HFABC/Chase/Grandbridge/ Freddie Mac	Grandbrige	Broward County	City of Fort Lauderdale
Amount	\$55,700,000	\$3,816,000	\$2,500,000	\$2,500,000
Underwritten Interest Rate	5.71%	6.11%	0.00%	0.00%
All In Interest Rate	5.71%	6.11%	0.00%	0.00%
Loan Term	15	15	30	30
Amortization	40	40	0	0
Market Rate/Market Financing LTV	41%	44%	46%	48%
Restricted Market Financing LTV	56%	60%	62%	65%
Loan to Cost - Cumulative	60%	64%	67%	70%
Debt Service Coverage	1.25	1.17	1.17	1.17
Operating Deficit & Debt Service Reserves	\$583,731			
# of Months covered by the Reserves	1.1			

Deferred Developer Fee	\$13,533,153
As-Is Land Value	\$4,090,000
Market Rent/Market Financing Stabilized Value	\$134,660,000
Rent Restricted Market Financing Stabilized Value	\$99,630,000
Projected Net Operating Income (NOI) - Year 1	\$4,572,387
Projected Net Operating Income (NOI) - 15 Year	\$5,617,822
Year 15 Pro Forma Income Escalation Rate	2.00%
Year 15 Pro Forma Expense Escalation Rate	3.00%
Note Structure	Private Placement
Housing Credit (HC) Syndication Price	\$0.92
HC Annual Allocation - Equity Letter of Interest	\$606,749

CONSTRUCTION/PERMANENT SOURCES:				
Source	Lender	Construction	Permanent	Perm Loan/Unit
Local HFA Note	HFABC/Chase /Grandbridge/ Freddie Mac	\$55,700,000	\$55,700,000	\$211,787
Regulated Mortgage	Chase	\$6,600,000	\$3,816,000	\$14,510
Local Government	Broward County	\$2,000,000	\$2,500,000	\$9,506
Local Government	City of Fort Lauderdale	\$2,000,000	\$2,500,000	\$9,506
Affiliate / Principal	Related FATVillage, LLC	\$8,661,925	\$8,661,925	\$32,935
HC Equity	Truist Community Capital, LLC	\$2,790,767	\$5,581,534	\$21,223
Deferred Developer Fee	Related FATVillage Developer, LLC	\$13,568,066	\$13,533,153	\$51,457
Operating Deficit Reserve	Truist	\$583,731	\$0	\$0
Deferred Costs - Other	N/A	\$388,123	\$0	\$0
<b>TOTAL</b>		<b>\$92,292,612</b>	<b>\$92,292,612</b>	<b>\$350,922</b>

**Strengths:**

1. The Principals, and Development Team, as well as the General Contractor, and Management Group are experienced in this field.
2. Meridian concluded to a capture rate of 2.7% for the 50% Area Median Income (“AMI”) set-aside units and 4.9% for the 120% AMI set aside units.

**Other Concerns:**

1. None

**Mitigating Factors:**

1. None

**Additional Information:**

1. The Applicant has applied to Grandbridge to provide permanent funding (“Funding Loan”) pursuant to the Freddie Mac Tax-Exempt Loan Program. The Funding Loan is requested pursuant to any Federal, State or Local requirements concerning the proposed tax-exempt private activity allocation and/or Low-Income Housing Tax Credit requirements. The Funding Loan will be originated by Chase on behalf of HFABC (“Government Lender”) for subsequent purchase by and delivery to Freddie Mac, shortly after conversion. The proceeds of the Funding Loan will be used by HFABC to fund a mortgage loan with matching economic terms (“Project Loan”) to the Applicant to finance the construction and permanent financing of the Development. The Funding Loan will be a non-recourse obligation of HFABC secured solely by receipts and revenues from the Project Loan and the collateral pledged (including a first mortgage lien with respect to the Development). Under the MMRN structure, the Funding Loan replaces the purchase by Freddie Mac of the tax-exempt bonds.
2. The Development will have 2,500 square feet of ground floor retail space available for lease. At this time it is unknown what tenants will be occupying the space.

**Recommendation:**

First Housing recommends a Tax-Exempt MMRN in the amount of \$55,700,000 to finance the construction and permanent financing of the Development.

This Recommendation is based upon the assumptions detailed in the Report Summary (Section A) and Supporting Information and Schedules (Section B). This Recommendation is conditioned upon the following:

1. First Housing recommends that the loan documents be compared to the CUR in order to verify loan terms and equity payments prior to closing.
2. Receipt of Final Ground Lease with all amendments.
3. Verification of loan terms for County and City Loans consistent with terms used in this report.

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

The reader is cautioned to refer to these sections for complete information.

Prepared by:

Reviewed by:



Eileen Jones-Yarish  
Senior Credit Underwriter

Edward Busansky  
Senior Vice President

## OVERVIEW

**Construction Financing Sources:**

Construction Sources	Lender	Application	Revised Applicant	Underwriter	Construction Interest Rate	Annual Construction Debt Service
Local HFA Note	HFABC/Chase	\$38,900,000	\$55,700,000	\$55,700,000	5.09%	\$2,836,244
Regulated Mortgage Lender	Chase	\$0	\$6,600,000	\$6,600,000	8.31%	\$548,460
Local Government Subsidy	Broward County	\$2,500,000	\$2,000,000	\$2,000,000	0.00%	\$0
Local Government Subsidy	City of Fort Lauderdale	\$2,500,000	\$2,000,000	\$2,000,000	N/A	N/A
Affiliate / Principal	Related FATVillage, LLC	\$11,619,995	\$8,661,925	\$8,661,925	0.00%	\$0
HC Equity	Truist Community Capital, LLC	\$2,228,780	\$2,790,709	\$2,790,767	N/A	N/A
Deferred Developer Fee	Related FATVillage Developer, LLC	\$10,210,437	\$13,350,672	\$13,568,066	N/A	N/A
Operating Deficit Reserve	Truist	\$437,862	\$583,731	\$583,731	N/A	N/A
Deferred Costs - Other	N/A	\$0	\$388,123	\$388,123	N/A	N/A
<b>Total</b>		<b>\$68,397,074</b>	<b>\$92,075,160</b>	<b>\$92,292,612</b>		<b>\$3,384,704</b>

Tax Exempt Construction Loan:

First Housing reviewed a term sheet, dated June 9, 2023, from Chase indicating they would purchase a Tax-Exempt Note in the amount of \$55,700,000. The construction loan will have a term of 30 months with two, conditional, six-month extension for a fee of 0.125%. The construction loan interest rate on the Tax-exempt Facility will be fixed at closing at the 3 year Secured Overnight Financing Rate (“SOFR”) (4.042% as of 6/9/2023) plus a 1.05% spread for an all-in rate of 5.092%.

The Annual HFABC Issuer Fee of 18 basis points (“bp”) of the amount of the outstanding Note and the annual Fiscal Financial Agent Fee of \$3,750 have been included in the Uses section of the report.

Taxable Loan:

Chase will also provide a Taxable Note in the amount of \$6,600,000 at a floating interest rate of the one-month SOFR (5.06% as of 6/9/2023) plus a spread of 2.25%, and underwriting cushion of 1.00% for an all-in rate of 8.31%.

Broward County Loan:

According to a letter from the Broward County Housing Finance Authority, dated August 10, 2022, Broward County will provide gap financing of up to \$2,500,000 for a term of 30 years. Per the Developer, only \$2,000,000 will be available during construction. The interest rate will be

0% payable upon maturity of the loan or upon sale, transfer or refinancing of the project, subject to the discretion of Broward County. Verification of loan terms is a condition of this report.

City of Fort Lauderdale Loan:

According to a Resolution provided by the Applicant, the Community Redevelopment Agency (“CRA”) will provide a loan from the City of Fort Lauderdale in the amount of \$1,900,000. According to the Developer the loan will be for a term of 30 years at a 0% interest rate. This Loan will be subordinated to the First Mortgage. Verification of loan terms is a condition of this report.

Additionally, the City of Fort Lauderdale will provide a Loan in the amount of \$600,000. Per the Developer the loan will be for a term of 30 years at a 0% interest rate. This Loan will be subordinated to the First Mortgage. Verification of loan terms is a condition of this report.

Affiliate Note:

First Housing reviewed a Promissory Note, dated December 21, 2022, between Related FATVillage, LLC (“Maker”) and Related FATVillage Investor, LLC (“Payee”). The current Note is in an amount up to \$1,003,956.24. The Note will be Amended and Restated (A&R) in an estimated amount of \$8,661,925. The Note shall bear interest at a rate of zero percent (0%) per annum on the outstanding principal balance. The principal balance and all outstanding interest may be repaid in whole or in part at any time without penalty, with payments to be made out of available cash flow pursuant to and in the order of priority set forth in the A&R Operating Agreement. Any outstanding principal shall be unconditionally due and payable on the Maturity Date.

Housing Credit Equity:

First Housing reviewed a Letter of Intent (“LOI”) dated June 10, 2023, indicating Truist will acquire 99.99% ownership interest in the Applicant. The syndication rate is anticipated to be \$0.92 per dollar. Truist anticipates a net capital contribution of \$5,581,534 and has committed to make available 50% or \$2,790,767 of the total net equity during the construction period. An additional \$2,790,767 will be available at completion and Form 8609. The first installment, in the amount of \$1,116,307 or 20%, meets the FHFC’s requirement that at least 15% of the total equity must be contributed at or prior to the closing.

Deferred Operating Deficit Reserves (“ODR”):

Based on the LOI, dated June 10, 2023, from Truist the ODR in the amount of \$583,731 will be funded from the third capital contribution, which is after construction completion.

**Deferred Costs:**

First Housing has shown the Applicant will defer Tax and Insurance Escrows in the amount of \$388,123 until construction completion.

**Deferred Developer Fee:**

In order to balance the sources and uses of funds during the construction period, the Developer is required to defer \$13,568,066 or 98.15% of allowable Developer Fee during construction.

**Permanent Financing Sources:**

Permanent Sources	Lender	Application	Revised Applicant	Underwriter	Term Yrs.	Amort. Yrs.	Interest Rate	Annual Debt Service
Local HFA Note	HFABC/Grandbridge/Freddie Mac	\$37,470,000	\$55,700,000	\$55,700,000	15	40	5.71%	\$3,543,420
Regulated Mortgage Lender	Grandbridge	\$0	\$5,581,418	\$3,816,000	15	40	6.11%	\$255,474
Local Government Subsidy	Broward County	\$2,500,000	\$2,500,000	\$2,500,000	30	0	0.00%	\$0
Local Government Subsidy	City of Fort Lauderdale	\$2,500,000	\$2,500,000	\$2,500,000	N/A	N/A	N/A	N/A
Affiliate / Principal	Related FATVillage, LLC	\$11,619,995	\$8,661,925	\$8,661,925	0	0	0.00%	\$0
HC Equity	Truist Community Capital, LLC	\$4,457,559	\$5,581,418	\$5,581,534	N/A	N/A	N/A	N/A
Deferred Developer Fee	Related FATVillage Developer, LLC	\$9,849,520	\$11,550,399	\$13,533,153	N/A	N/A	N/A	N/A
<b>Total</b>		<b>\$68,397,074</b>	<b>\$92,075,160</b>	<b>\$92,292,612</b>				<b>\$3,798,894</b>

**First Mortgage:**

First Housing has reviewed an application letter from Grandbridge, dated June 12, 2023, to provide a permanent loan through the Freddie Mac Tax-Exempt Loan Program. The Loan amount is \$55,700,000 and has a term of 15 years with a 40-year amortization period. Per an Index Lock Agreement, dated April 13, 2023, the interest rate on the Tax-Exempt Loan is based on an index lock of 3.41% plus a spread of 2.30% for an all-in rate of 5.71%.

Annual fees related to the Note include; an annual Fiscal Agent fee of \$3,750. The Issuer Fee is based on 18bp until the Note is paid in full at which time the fee will be \$25 per unit per year for the remaining qualified period.

**Taxable Loan:**

Grandbridge will also be providing a Taxable Loan in the amount of \$3,816,000 or such amount authorized by the Lender not to exceed \$6,642,000. The Loan has a term of 15 years and an amortization of 40 years. Per an Index Lock Agreement, dated April 11, 2023, the interest on the Taxable Loan is based on an index lock of 3.41% plus a spread of 2.70% for an all-in rate of 6.11%.

**Broward County Loan:**

According to a letter from the Broward County Housing Finance Authority, dated August 10, 2022, Broward County (“Broward Loan”) will provide gap financing of up to \$2,500,000 for a term of 30 years. The interest rate will be 0% payable upon maturity of the loan or upon sale, transfer, or refinancing of the project, subject to the discretion of Broward County. Verification of loan terms is a condition of this report.

**City of Fort Lauderdale Loan:**

According to a Resolution provided by the Applicant, the Community Redevelopment Agency (“CRA”) will provide a loan from the City of Fort Lauderdale in the amount of \$1,900,000. According to the Developer the loan will be for a term of 30 years at a 0% interest rate. This Loan will be subordinated to the First Mortgage. Verification of loan terms is a condition of this report.

Additionally, the City of Fort Lauderdale will provide a Loan in the amount of \$600,000. Per the Developer the loan will be for a term of 30 years at a 0% interest rate. This Loan will be subordinated to the First Mortgage. Verification of loan terms is a condition of this report.

**Affiliate Note:**

First Housing reviewed a Promissory Note, dated December 21, 2022, between Related FATVillage, LLC (“Maker”) and Related FATVillage Investor, LLC (“Payee”). The current Note is in an amount up to \$1,003,956.24. The Note will be Amended and Restated (A&R) in an estimated amount of \$8,661,925. The Note shall bear interest at a rate of zero percent (0%) per annum on the outstanding principal balance. The principal balance and all outstanding interest may be repaid in whole or in part at any time without penalty, with payments to be made out of available cash flow pursuant to and in the order of priority set forth in the A&R Operating Agreement. Any outstanding principal shall be unconditionally due and payable on the Maturity Date.

**Housing Credit Equity:**

First Housing reviewed a LOI, dated June 10, 2023, which indicates that Truist will be admitted as the Investor Member with 99.99% ownership interest. Based on a syndication rate of \$0.92 for each \$1.00, Truist anticipates a net capital contribution of \$5,581,534 paid in of four (4) installments, as follow;



**Syndication Contributions**

Capital Contributions	Amount	Percentage of Total	When Due
1st Installment	\$1,116,307	20.00%	Will be paid at closing which shall be predicated upon admission of the Investor and Special Limited Member to the Partnership, the closing and initial funding of the loans, and receipt and approval of all due diligence requested by TCC including, without limitation, evidence of the Project's eligibility for LIHTC. In the event that any portion of Capital Contribution #1 is not needed at closing, the excess will be disbursed via a monthly draw process.
2nd Installment	\$1,674,460	30.00%	Will be paid upon 75% completion as evidenced by an architect's certification that the Project has reached the stated completion in accordance with the plans and specifications and has incurred the stated percentage of hard costs, as confirmed by TCC's construction inspector.
3rd Installment	\$2,615,910	46.87%	Will be paid upon the latest to occur of 1) 100% completion (as certified by the architect and confirmed by TCC's construction inspector), 2) receipt of all requisite certificates of occupancy, 3) receipt of a satisfactory ALTA as-built survey, 4) satisfactory radon testing, 5) evidence that the Partnership has submitted a complete application for IRS Forms 8609, 6) receipt of a copy of the final cost certification prepared by the accountants including an opinion that not less than 50% of the aggregate basis of the building and land was financed with the proceeds of tax-exempt bonds and determination of the amount of LIHTC, 7) occupancy of 93% of the units by qualified tenants (the "Qualified Occupancy Date"), 8) final closing which is inclusive of, as applicable, achievement of construction completion, repayment of construction financing in full, permanent loan closing/conversion, permanent COs, final lien waivers, cost certification, payment of all development costs, and funding of all required reserves ("Final Closing"), and 9) achievement of a debt service coverage ratio of 115% for each of three (3) consecutive calendar months immediately preceding Final Closing based on the higher of actual or underwritten expenses (as adjusted for the actual costs of insurance and taxes) and assuming a vacancy rate of equal to the greater of 7% or the actual vacancy rate (the "Stabilization Date"). This Capital Contribution #3 is sometimes referred to herein as the "Stabilization Installment". A portion of this capital contribution will be used to pay down the outstanding Construction Loan.
4th Installment	\$174,857	3.13%	Upon the later to occur of: 1) receipt of properly completed and signed IRS Forms 8609 for all buildings in the Project and 2) recording of an "extended low-income housing commitment".
<b>Total</b>	<b>\$5,581,534</b>	<b>100.00%</b>	

Annual Credit Per Syndication Agreement	▲	\$606,749
Calculated HC Exchange Rate		\$0.92
Limited Partner Ownership Percentage		99.99%
Proceeds Available During Construction	▲	\$2,790,767

Deferred Developer Fee:

In order to balance the sources and uses of funds during the permanent funding period, the Developer is required to defer \$13,533,153 or approximately 97.90% of the total Developer Fee of \$13,823,505.

## Uses of Funds

CONSTRUCTION COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
New Rental Units	\$33,263,659	\$43,838,279	\$43,838,279	\$166,685
Off-Site Work	\$4,900,000	\$8,321,722	\$8,321,722	\$31,642
Constr. Contr. Costs subject to GC Fee	\$38,163,659	\$52,160,001	\$52,160,001	\$198,327
General Conditions	\$2,289,820	\$3,129,600	\$3,129,600	\$11,900
Overhead	\$763,272	\$1,043,200	\$1,043,200	\$3,967
Profit	\$2,289,820	\$3,129,600	\$3,129,600	\$11,900
Total Construction Contract/Costs	\$43,506,571	\$59,462,400	\$59,462,400	\$226,093
Hard Cost Contingency	\$2,175,328	\$2,973,120	\$2,973,120	\$11,305
PnP Bond paid outside Constr. Contr.	\$211,244	\$445,968	\$445,968	\$1,696
FF&E paid outside Constr. Contr.	\$250,000	\$250,000	\$250,000	\$951
Other: GC Liability Insurance	\$80,000	\$0	\$0	\$0
<b>Total Construction Costs:</b>	<b>\$46,223,143</b>	<b>\$63,131,488</b>	<b>\$63,131,488</b>	<b>\$240,044</b>

### Notes to Construction Costs:

1. The Applicant has provided an executed construction contract, dated August 24, 2022 with a total amount of \$43,506,571. This is a Standard Form of Agreement between Related FATVillage, LLC (“Owner”) and Fortune Related Construction LLC (“Contractor”) where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price. Per the contract, substantial completion is to be achieved by no later than 22 months (670 calendar days) from the date of commencement. The Contract specifies retainage of 10% until 50% complete at which time the retainage may be reduced to 5%. An addendum, dated November 28, 2022 was also provided for review which included a change order that increased the construction contract to \$59,462,400.
2. The General Contractor’s Fee is equal to 14% of hard costs less the hard costs contingency. The GC fee stated herein is for credit underwriting purposes only, and the final GC fee will be determined pursuant to the final cost certification process.
3. Hard cost contingency is 5% of total construction costs, which is the maximum allowed for new construction developments.
4. The Applicant has budgeted for the cost of a Payment and Performance Bond to secure the construction contract.

GENERAL DEVELOPMENT COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit
	Accounting Fees	\$50,000	\$50,000	\$50,000	
Appraisal	\$15,000	\$15,000	\$15,000		\$57
Architect's Fee - Site/Building Design	\$807,500	\$1,107,500	\$1,107,500		\$4,211
Architect's Fee - Supervision	\$142,500	\$142,500	\$142,500		\$542
Building Permits	\$667,864	\$912,800	\$912,800		\$3,471
Builder's Risk Insurance	\$349,752	\$751,177	\$751,177		\$2,856
Engineering Fees	\$100,000	\$100,000	\$100,000		\$380
Environmental Report	\$20,000	\$20,000	\$20,000		\$76
FHFC Administrative Fees	\$43,611	\$54,607	\$54,607		\$208
FHFC Application Fee	\$3,000	\$3,000	\$3,000		\$11
FHFC Credit Underwriting Fee	\$13,455	\$13,455	\$13,455		\$51
FHFC Compliance Fee	\$122,414	\$107,000	\$125,493		\$477
Impact Fee	\$585,000	\$789,000	\$789,000		\$3,000
Lender Inspection Fees / Const Admin	\$45,000	\$45,000	\$45,000		\$171
Green Building Cert. (LEED, FGBC, NAHB)	\$50,000	\$50,000	\$50,000		\$190
Insurance	\$543,832	\$743,280	\$743,280		\$2,826
Legal Fees - Organizational Costs	\$405,000	\$405,000	\$405,000		\$1,540
Market Study	\$10,400	\$15,000	\$14,900		\$57
Marketing and Advertising	\$250,000	\$250,000	\$250,000		\$951
Plan and Cost Review Analysis	\$4,400	\$15,000	\$4,400		\$17
Survey	\$35,000	\$35,000	\$35,000		\$133
Title Insurance and Recording Fees	\$286,227	\$466,900	\$466,900		\$1,775
Utility Connection Fees	\$390,000	\$526,000	\$526,000		\$2,000
Soft Cost Contingency	\$246,997	\$334,221	\$331,250		\$1,260
<b>Total General Development Costs:</b>	<b>\$5,186,952</b>	<b>\$6,951,440</b>	<b>\$6,956,262</b>		<b>\$26,450</b>

## Notes to the General Development Costs:

1. General Development Costs are the Applicant's updated estimates, which appear reasonable.
2. First Housing has utilized actual costs for: FHFC Credit Underwriting, Market Study, and Plan and Cost Review ("PCR").
3. The FHFC Compliance Fee of \$125,493 is based on the compliance fee calculator spread sheet provided by FHFC.
4. The FHFC Administrative Fee is based on 9% of the expected annual housing credit allocation.
5. First Housing adjusted the Soft Cost Contingency to be 5% of the General Development Costs less the soft cost contingency.

FINANCIAL COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
Construction Loan Origination Fee	\$194,500	\$251,026	\$278,500	\$1,059
Construction Loan Interest	\$3,790,416	\$4,248,390	\$4,334,498	\$16,481
Permanent Loan Application Fee	\$0	\$55,700	\$55,700	\$212
Permanent Loan Commitment Fee	\$131,145	\$626,625	\$626,625	\$2,383
Permanent Loan Origination Fee	\$281,025	\$278,500	\$278,500	\$1,059
Local HFA Note Application Fee	\$500	\$500	\$500	\$2
Local HFA Note Underwriting Fee	\$16,009	\$16,545	\$33,009	\$126
Local HFA Note Fiscal Agent Fee	\$25,375	\$12,250	\$9,375	\$36
Local HFA Note Cost of Issuance	\$263,400	\$368,500	\$538,575	\$2,048
Local HFA Legal - Issuer's Counsel	\$98,625	\$127,500	\$0	\$0
Local HFA Legal - Lender's Counsel	\$192,500	\$0	\$0	\$0
Legal Fees - Financing Costs		\$247,500	\$247,500	\$941
Placement Agent/Underwriter Fee	\$35,000	\$35,000	\$0	\$0
Other: Annual Administrative Fee	\$236,061	\$200,520	\$250,650	\$953
Other: Syndicator Due Diligence	\$50,000	\$50,000	\$50,000	\$190
Other: Lender Mis. Costs	\$0	\$11,500	\$11,500	\$44
<b>Total Financial Costs:</b>	<b>\$5,314,556</b>	<b>\$6,530,056</b>	<b>\$6,714,932</b>	<b>\$25,532</b>
<b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b>	<b>\$56,724,651</b>	<b>\$76,612,984</b>	<b>\$76,802,682</b>	<b>\$292,025</b>

## Notes to the Financial Costs:

1. The Construction Loan Origination Fee is based on 0.50% of the construction loan amount according to the Chase term sheet, dated June 9, 2023.
2. First Housing's estimated Construction Loan Interest is based on an interest rate of 5.09% on the Tax-Exempt Loan based on a 2.5 year term and 8.31% for the Taxable Loan based on a 14 month term both based on an outstanding balance of 56%.
3. Permanent Loan Commitment Fee is based on 0.10% of the loan amount per year for the period of the construction term as outlined in the letter from Grandbridge, dated June 12, 2023.
4. Permanent Loan Origination Fee is based on the 0.50% of the Loan amount as outlined in the letter from Grandbridge, dated June 12, 2023.
5. First Housing included an Annual Issuer Fee of 0.18% of the MMRN, for 2.5 years.

NON LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
<b>Total Non-Land Acquisition Costs:</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## Notes to the Non-Land Acquisition Costs:

- The Development is new construction, non-land acquisition costs do not apply.

DEVELOPER FEE ON NON ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
Developer Fee - Unapportioned	\$10,210,437	\$13,790,337	\$13,824,482	\$52,565
<b>Total Other Development Costs:</b>	<b>\$10,210,437</b>	<b>\$13,790,337</b>	<b>\$13,824,482</b>	<b>\$52,565</b>

## Notes to the Other Development Costs:

- The recommended Developer's Fee is equal to the maximum 18% of total development cost before Developer Fee, Operating Reserves and land costs.

LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
Land Lease Payment	\$300,000	\$300,000	\$300,000	\$1,538
Other: <a href="#">predevelopment Lease Payment</a>	\$0	\$150,000	\$150,000	\$769
<b>Total Acquisition Costs:</b>	<b>\$300,000</b>	<b>\$450,000</b>	<b>\$450,000</b>	<b>\$2,308</b>

## Notes to the Land Acquisition Costs:

- WHEREAS**, Landlord and Tenant entered into that certain Ground Lease Agreement dated as of December 12, 2017, as amended by that certain First Amendment to Ground Lease Agreement dated February 11, 2020, as modified by that certain Second Agreement to Extend Ground Lease Commencement Date dated December 29, 2020, as further amended by that certain Second Amendment to Ground Lease Agreement dated March 9, 2021, as further amended by that certain Third Agreement to Extend Ground Lease Commencement Date dated October 12, 2021, as further amended by that certain Fourth Agreement to Extend Ground Lease Commencement Date dated August 17, 2022, as further amended by that certain Fifth Agreement to Extend Ground Lease Commencement Date dated October 18, 2022, as further amended by that certain Third Amendment to Ground Lease dated December 21, 2022 (as amended, collectively, the "Lease") as evidenced by that certain Memorandum of Ground Lease dated December 21, 2022 and recorded December 22, 2022 as Instrument No. 118588614 of the Public Records of Broward County, Florida (the "Memorandum of Lease"), for premises located 600 North Andrews Avenue, Fort Lauderdale, Broward County, Florida, on which Tenant will design, develop, construct and operate a mixed-use development (the "Project". The base rent payment of \$100,000 per annum, increasing 3% each year, will become payable out of available cash flow after the payment of debt service under the first mortgage. Any base payments, or portion thereof, not made each year will be added to the base payments due the following year but will remain payable out of available cash flow. The additional rent payment of 25% of net cash flow payable each

year, less the base rent payment will not be due until the partnership equity contributed to capitalize the deal has been repaid in full. This does not apply to the tax credit equity contributions.

2. Predevelopment Lease Payment of \$150,000 is comprised of lease payments of \$50,000 to be made for the 3 years through stabilization.

RESERVE ACCOUNTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
Operating Deficit Reserve (Syndicator)	\$437,862	\$583,716	\$583,731	\$2,220
Replacement Reserves (Syndicator)	\$58,500	\$0	\$0	\$0
Reserves - Working Capital	\$250,000	\$250,000	\$250,000	\$951
Other: <u>Tax and Insurance Escrow</u>	\$265,624	\$388,123	\$388,123	\$1,476
<b>Total Reserve Accounts:</b>	<b>\$1,011,986</b>	<b>\$1,221,839</b>	<b>\$1,221,854</b>	<b>\$4,646</b>

#### Notes to Reserve Accounts:

1. According to the LOI, dated June 10, 2023 from Truist the syndicator will be requiring an ODR in the amount of \$583,731 to be funded from the third capital contribution. At the end of the Compliance Period, any remaining balance of the Operating Reserve less amounts that may be permitted to be drawn (which includes Deferred Developer Fee and reimbursements for authorized member/partner and guarantor loan(s) pursuant to the operating/partnership agreement), will be used to pay County Loan debt; if there is no County Loan debt on the proposed Development at the end of the Compliance Period, any remaining balance shall be used to pay any outstanding County Loan fees. If any balance is remaining in the Operating Reserve after the payments above, the amount should be placed in a Replacement Reserve account for the Development. In no event shall the payments of amounts to the Applicant or the Developer from the Reserve Accounts cause the Developer Fee or General Contractor Fee to exceed the applicable percentage limitations provided for in the Rule. Any and all terms and conditions of the Operating Reserve must be acceptable to Broward County, its Servicer and its Legal Counsel.
2. A lease up reserve was budgeted by the Developer to cover operating cash flow shortfalls during lease-up.

TOTAL DEVELOPMENT COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit
<b>TOTAL DEVELOPMENT COSTS:</b>	<b>\$68,397,074</b>	<b>\$92,075,160</b>	<b>\$92,299,018</b>	<b>\$350,947</b>

#### Notes to Total Development Costs:

1. Total Development Costs have increased a total of \$23,901,944 from \$68,397,074 to \$92,299,018 or 34.9% since the Application. This change is mainly due to an increase construction costs, financial costs and the number of units increasing from 195 residential units to 263 units.



## Operating Pro Forma - The Gallery at FATVillage

FINANCIAL COSTS:				Year 1	Year 1 Per Unit
<b>OPERATING PRO FORMA</b>					
INCOME:	Gross Potential Rental Income			\$6,905,604	\$26,257
	Other Income				
	Miscellaneous			\$466,326	\$1,773
	Gross Potential Income			\$7,371,930	\$28,030
	Less:				
	Physical Vac. Loss	Percentage:	4.00%	\$294,877	\$1,121
	Collection Loss	Percentage:	1.00%	\$73,719	\$280
<b>Total Effective Gross Income</b>			<b>\$7,003,334</b>	<b>\$26,629</b>	
EXPENSES:	Real Estate Taxes			\$750,338	\$2,853
	Insurance			\$401,075	\$1,525
	Variable:				
	Management Fee	Percentage:	4.00%	\$280,133	\$1,065
	General and Administrative			\$92,050	\$350
	Payroll Expenses			\$368,200	\$1,400
	Utilities			\$105,200	\$400
	Marketing and Advertising			\$131,500	\$500
	Maintenance and Repairs/Pest Control			\$223,550	\$850
	Reserve for Replacements			\$78,900	\$300
<b>Total Expenses</b>			<b>\$2,430,946</b>	<b>\$9,243</b>	
<b>Net Operating Income</b>			<b>\$4,572,387</b>	<b>\$17,386</b>	
<b>Debt Service Payments</b>					
First Mortgage -HFABC/ Grandbridge/Freddie Mac			\$3,543,420	\$13,473	
Second Mortgage - Grandbridge			\$255,474	\$971	
Third Mortgage - Broward County			\$0	\$0	
Fourth Mortgage - City of Ft. Lauderdale			\$0	\$0	
First Mortgage Fees -HFABC/Grandbridge/Freddie Mac			\$103,650	\$394	
Total Debt Service Payments			\$3,902,544	\$14,839	
Cash Flow after Debt Service			\$669,844	\$2,547	
<b>Debt Service Coverage Ratios</b>					
DSC - First Mortgage plus Fees			1.25x		
DSC - Second Mortgage plus Fees			1.17x		
DSC - Third Mortgage plus Fees			1.17x		
DSC - Fourth Mortgage plus Fee			1.17x		
<b>Financial Ratios</b>					
Operating Expense Ratio			34.71%		
Break-even Economic Occupancy Ratio (all debt)			86.11%		

\*Ground lease payments have not been added to the proforma as rent payments are payable out of available cash flow after the payment of debt service under the first mortgage. Any base payments, or portion thereof, not made each year will be added to the base payments due the following year but will remain payable out of available cash flow. The additional rent payment of 25% of net cash flow payable each year, less the base rent payment will not be due until the

partnership equity contributed to capitalize the deal has been repaid in full. This does not apply to the tax credit equity contributions. All deferred developer fees paid will be treated as repayment of equity.

Notes to the Operating Pro Forma and Ratios:

- Below is the rent roll for the Development. The rent levels are based on the 2023 maximum LIHTC rents published on FHFC’s website for Broward County less the applicable utility allowances. Below is the rent roll for the Development:

Broward County (Fort Lauderdale HMFA)

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
0	1.0	10	499	50%			\$840	\$103	\$ 737		\$ 737	\$ 737	\$ 737	\$ 88,440
0	1.0	17	499	120%			\$2,016		\$ 2,016		\$ 2,016	\$ 2,016	\$ 2,016	\$ 411,264
0	1.0	19	499	MKT							\$ 2,150	\$ 2,150	\$ 2,150	\$ 490,200
1	1.0	28	684	50%			\$900	\$126	\$ 774		\$ 774	\$ 774	\$ 774	\$ 260,064
1	1.0	51	684	120%			\$2,160		\$ 2,160		\$ 2,160	\$ 2,160	\$ 2,160	\$ 1,321,920
1	1.0	59	684	MKT							\$ 2,600	\$ 2,600	\$ 2,600	\$ 1,840,800
2	2.0	15	1,075	50%			\$1,080	\$175	\$ 905		\$ 905	\$ 905	\$ 905	\$ 162,900
2	2.0	29	1,075	120%			\$2,592		\$ 2,592		\$ 2,592	\$ 2,592	\$ 2,592	\$ 902,016
2	2.0	35	1,075	MKT							\$ 3,400	\$ 3,400	\$ 3,400	\$ 1,428,000
		263	202,271											\$ 6,905,604

- First Housing has included vacancy and collection loss at a total of 5.00%, which is more conservative than the Appraisal which used a vacancy and collection loss rate of 4.5%.
- The Ancillary Income category includes parking of \$315,600 (263 spaces at \$100 per month) and Miscellaneous Income includes application fees, storage rental, cable, telephone, late fees, damage income, cancellation fees, bad debt recoveries, pet fees, and NSF fees. Also included in Miscellaneous income is \$50,000 for retail income, which equates to \$20.00 per square foot (2,500 square foot of ground floor retail space). The Appraiser considers this achievable and market oriented.
- Based upon operating data from comparable properties, third-party reports (Market Study) and the Credit Underwriter's independent due diligence, First Housing represents that, in its professional opinion, estimates for Rental Income, Vacancy, Other Income, and Operating Expenses fall within a band of reasonableness.
- The Applicant has submitted a Property Management Agreement, which reflects a management fee of 3% with a minimum of \$5,000 per month. Additionally, a compliance reporting fee of \$5 per unit per month will be paid from available cash flow. First Housing has based the management fee on 4% which is supported by the Appraisal.
- The Owner will be responsible for common area electric, water, sewer and trash collection, with tenants responsible for in-unit electric and cable.

7. Replacement Reserves of \$300 per unit per year are required by FHFC. Based on the LOI, dated June 10, 2023 from Truist the Replacement Reserve deposits will increase at 3% annually.
8. First Mortgage Fees include Issuer Fee of 18bp of the principal balance of the Note and a Fiscal Agent Fee of \$3,750.
9. Refer to Exhibit 1, Page 1 for a 15-Year Pro Forma, which reflects rental income increasing at an annual rate of 2%, and expenses increasing at an annual rate of 3%.

**Section B**

**Supporting Information & Schedules**

## **Additional Development & Third Party Supplemental Information**

Site Inspection: First Housing completed a site inspection on April 29, 2022. The Development is surrounded by apartments. The Development is located on the east side of North Andrews Avenue, the north side of NE 6<sup>th</sup> Street, and the west side of NE 1<sup>st</sup> Avenue. The Development is located within close proximity to the downtown Fort Lauderdale with access to roads and commercial services.

Appraisal: First Housing has reviewed an Appraisal Report for the Development, dated August 8, 2023, with an effective date of April 24, 2023. The Appraisal was prepared by Walter Duke. Based on the report, the Market Value (“As Is”) leasehold value was \$4,090,000. The hypothetical leasehold market value “As If Stabilized” as is market is \$134,660,000. The hypothetical leasehold market value “As If Stabilized” restricted is \$99,630,000. The Appraisal was executed by Walter Bryan Duke, III State Certified General Real Estate Appraiser Florida License Number RZ375, which expires November 30, 2024.

Market Study: Meridian prepared a Market Study for The Gallery at FATVillage, dated July 24, 2023. Upon completion, the Development will offer two hundred sixty-three (263) apartment units within one 12 story apartment building with structured garage parking. The proposed Development will be on a 1.171-acre site. Unit amenities will include full appliance package with stainless steel appliances, balconies and high-speed internet. Common area amenities will include swimming pool, gym, sun deck, gathering room, elevators, and leasing offices. The unit mix is typical of other recently constructed affordable high-rise towers. The development will offer a competitive mix of project and unit amenities and should be well received in the market.

The Development is located at 600 North Andrews Avenue, Fort Lauderdale, Broward County, Florida. The Development has access from one point along the north side of NE 6<sup>th</sup> Street. The Development has frontage along the east side of North Andrews Avenue and the north side of NE 6<sup>th</sup> Street and the west side of NE 1<sup>st</sup> Avenue. The layout of the site and improvements provide for good access and visibility and is well suited for multi-family development.

The Development’s site is located in Broward County in the South

Florida Regional Area in the southern portion of Florida. The region has a total population of 6,246,181 people, 2,381,370 total households and has an average household size of 2.59 people. The region is comprised of the City of Fort Lauderdale Apartment Market and has a total a 2023 population of 152,209 with 70,200 households and an average household size of 2.13 people. The average household income is \$112,518. As of June 2023, the unemployment rate was 3.9% for the nation, 3.6% in Florida, and 2.9% in Broward County.

The Region is served by three international airports, the Miami International Airport located in Miami/Dade County, the Palm Beach County and the Fort Lauderdale/Hollywood International Airport in Broward County and Miami International Airport located in Palm Beach County. The region also has three ports including the Port of Miami, the Port of Palm Beach and Port Everglades next to the Fort Lauderdale/Hollywood International Airport.

The Fort Lauderdale multi-family vacancy rate has trended lower over the past few quarters, as demand has surged throughout the region. The Central Fort Lauderdale apartment submarket has improved dramatically over the past few quarters.

The Development is located in downtown Fort Lauderdale with an excellent network of roads and commercial services. Employment centers are nearby, and significant development has been recently completed, under construction and proposed within the neighborhood. Throughout the neighborhood is Interstate 95 a 10 lane divided highway with interchanges at Interstate 595, Sterling Road, Sheridan Street, Hollywood Pines Boulevard and Pembroke Road. Surrounding development including multifamily uses, primarily low-income housing for senior and family residents.

The Primary Market Area (“PMA”) is defined as a 10-mile radius surrounding the Development. The Market Analyst surveyed and analyzed both family LIHTC developments and market rate developments.

The Development’s CMA, or sub-market, for the purpose of determining a like-kind inventory of competitive units in the Occupancy Analysis, consists of six like-kind existing properties with a total of 836 units. These properties are Progresso Point, Wisdom

Village Crossing, Eclipse West, Dixie Court, Northwest Gardens III and Venice Cove. Meridian is of the opinion that due to the current occupancy rates and shadow market supply from condo and single family rentals that demand in Broward County apartment market is limited to sub-markets with high occupancy rates. Occupancy rates in the like kind properties in the CMA ranged from 97% - 100%. The Development will offer a competitive mix of unit and project amenities and should be well received in the market.

The Development's Capture Rates ("CR") within a 3-mile radius for the 50% AMI income band is 2.7% and for the over 120% AMI it is 4.9%. The Development's 3-mile Capture Rates suggests the size of the Development is appropriate relative to the number of income-qualified renter households.

The Market Analyst anticipates an average absorption of 40 units per month. This equates to a total absorption period of approximately 4.9 months.

Meridian performed a search for Guarantee Funded developments. As of the effective date of the Market Study, there are no Guarantee Fund projects located within the PMA or CMA.

The weighted average occupancy within the Development's Competitive Market Area for like kind properties is 99.6%, which meets the FHFC requirement that the submarket must have an average physical occupancy rate of 92% or greater.

Based on FHDC's calculations, the Development's average market rents (according to the market study) will have a rent averaging 239% when compared to the Development's gross 60% AMI 2023 LIHTC rents.

Environmental Report: Global Realty Services Group ("GRS") prepared a Phase I Environmental Site Assessment ("ESA"), dated June 26, 2023. The Phase I ESA was completed in conformance with the scope and limitations of ASTM Practice E 1527-13.

The ESA revealed no evidence of recognized environmental conditions in connection with the site. GRS did identify three monitoring wells in the southwest portion of the property. The wells

appear to be temporary groundwater monitoring wells. GRS recommends that these wells be abandoned. Per the Developer this will be done as part of construction.

Soil Test Report:

First Housing reviewed a Geotechnical Engineering Report, dated January 12, 2022 from NV5, Inc. for the foundation design and construction of The Gallery at FATVillage. The site will be developed with a mixed-use structure comprising a 12-level residential tower. The tower will be L-shaped and will rise above the podium along North Andrews Avenue and NE 6<sup>th</sup> Street for the entire length of those site borders, having a width of about 60 feet on both legs of the “L” shaped structure. No basements are planned for the project.

The subsurface conditions were explored with 15 engineering test borings performed in two mobilizations. Sampling was performed using a Standard Penetration Test split-spoon sampler (SPT) in accordance with ASTM D-1586. It was determined that the layers of sand were considered within the parameters pertinent to the design of project foundations.

The engineer recommended for footings in the northwestern and southwestern corners of the site, the treatment should extend to the top of the Layer 3 limestone, but should in no case be less than 43 feet below the currently existing grade. For the balance of the project, one probe should extend 43 feet for every isolated footing and one probe for every 50 linear feet of wall footing.

Footings should bear at a minimum depth of 24 inches below lowest adjacent grade. NV5 recommended performing a load test after VSC. The test should be performed in either the northwestern or southwestern corner of the site. The test footing should be at least 6 feet square, and should be tested to twice the allowable bearing capacity. The footing should not be installed in a production footing location. NV5 should review and approve the contractor’s load testing submittal with respect to test location, test footing installation, and load testing equipment and procedures. NV5 should also monitor and report the results of footing installation and load testing.



Plan and Cost Review: First Housing reviewed a Plan and Cost Review (“PCA”), dated December 12, 2022 by GRS. The proposed Development includes one 16-story high-rise residential apartment building with a total of 422,482 GSF. The apartment includes 46 studio/one-bath units, 138 one-bedroom/one-bathroom units, and 79 two-bedroom/two-bathroom units, with a total of 202,287 NRA. The total project will provide a total of 263 dwelling units plus a leasing office, mail room, package room, club room, health club, swimming pool, bicycle storage and retail which will be built on a site of approximately 1.1708 acres. A total of 273 parking spaces will be provided including 12 ADA spaces.

GRS was provided with a Standard Form of Agreement between Owner and Contractor (AIA Document A102-2017), dated August 24, 2022, (and Addendum, dated November 28, 2022) where the basis of payment is the Cost of Work Plus a Fee with a Guaranteed Maximum Price (“GMP”) of \$59,462,400, which reflects a cost of \$194.98 per square foot. The Contractor’s Schedule of Values does not include a hard cost contingency; however, the Developer’s proforma was provided and includes a five percent (5%) hard cost contingency. It is GRS’s opinion that the Developer’s overall project budget is comparable to similar multi-family development construction renovation costs and can be representative of expected costs for a property development in the given geographic location.

According to the provided schedule plan, 22 months are being allowed for completion of the Development construction to Substantial Completion. It is GRS Group’s opinion that the 22-month construction period allocation is considered realistic and achievable for construction of the new residential apartment development.

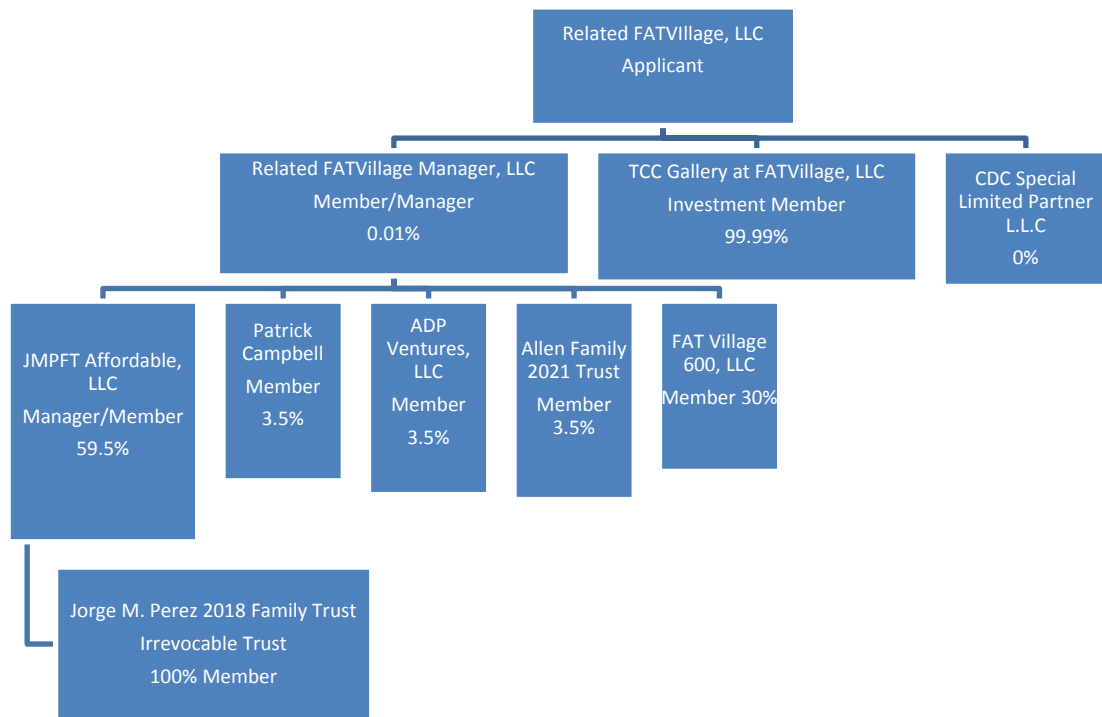
First Housing received an email, dated June 12, 2023, confirming the pool will contain a chair lift or ramp.

ADA Accessibility Review: Executed Florida Housing Fair Housing, Section 504 and ADA Design Certification Forms 121, 126, and 128 certifying that the plans for the Development comply with these requirements have been received.

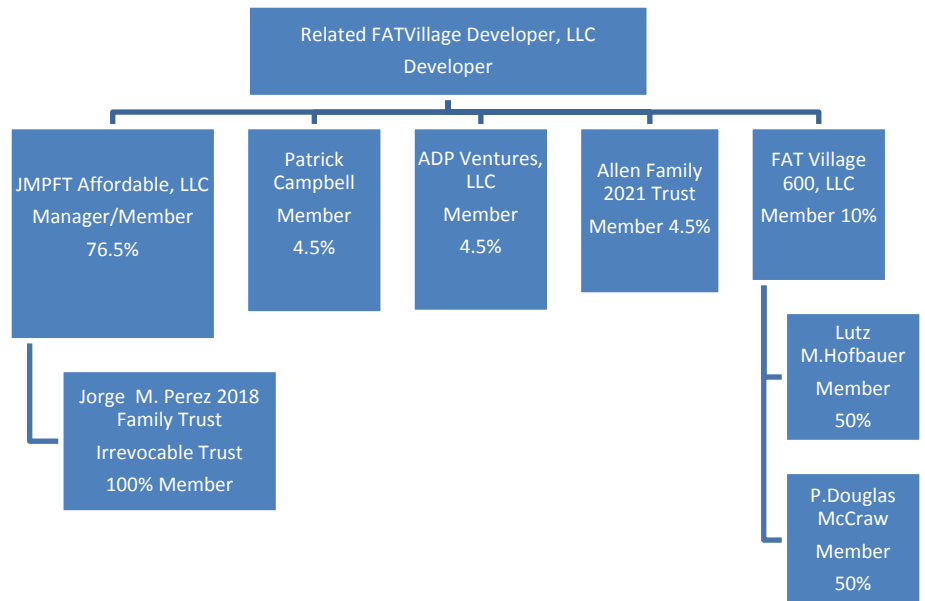
**Applicant Information**

Applicant: Related FATVillage, LLC  
Type: A Florida Limited Liability Company  
FEI#: 37-1833012

**Ownership Structure:**



Developer  
Structure:



The Applicant was formed on July 20, 2016, to construct, own and operate the Development. First Housing verified that the Applicant and Manager have active status in Sunbiz. The Developer is Related FATVillage Developer, LLC.

Contact Person: Tony Del Pozzo  
The Related Group  
2850 Tigertail Avenue Suite 800  
Miami, Florida 33133  
(305) 460-9900 Telephone  
[tony@relatedgroup.com](mailto:tony@relatedgroup.com)

Experience: The Applicant, Manager, and Developer were created to construct, own, and operate the Development, but have no development experience. The development experience lies within the principals of the Applicant/Developer.

The Related Group (“Related”) is one of the country’s premier multifamily real estate development firms. For more than 30 years, Related has created innovative residential developments that have dramatically changed Florida’s urban landscape. While The Related Group is best known for its luxury high-rise developments and

visionary mixed-use urban centers, the company has been at the forefront of affordable housing development and the revitalization of urban communities since its inception. Making his mark initially in the rehabilitation of multifamily properties in Little Havana and the HUD Section 8 programs, Mr. Perez and The Related Group went on to become one of the nation's leading developers of low income rental properties with financing attained through tax exempt bonds and low income housing tax credits. His attention to detail and commitment to creating quality living environments distinguished him within the marketplace. Through his ownership in Related Affordable Housing, The Related Companies of Florida and The Related Group of Florida, Mr. Perez has developed rehabilitated and managed over 15,000 affordable housing units in his illustrious career. Though he has been a successful developer of mixed-use and condominium developments, Mr. Perez never lost his passion to provide high quality affordable housing.

Prior to joining Related, Nicholas Perez lived in New York and spent eight years establishing his career in real estate development. From 2013-2017 he has been involved with the Related Companies where he focused on rental and condominium development across a wide spectrum of properties in the New York area including 261 Hudson and 15 Hudson Yards. Nicholas has been involved in all facets of the firm, including the condominium, international development, market-rate rental and affordable housing divisions. His responsibilities include overseeing the day-to-day operations of various marquee rental and condominium developments throughout South Florida, as well as working alongside senior executives to identify new business opportunities, partnerships, development techniques and more. In addition, Nicholas sits on the Executive Committee and takes part in its monthly board meetings at which various heads discuss all aspects of the company, including the 70+ projects currently under development worldwide.

Credit Evaluation: First Housing reviewed a satisfactory Dun and Bradstreet (“D&B”) reports for PRH Investments, LLC, dated April 28, 2023. First Housing also reviewed satisfactory D&B reports for JMPFT Affordable, LLC, Related FATVillage, LLC, Related FATVillage Developer, LLC and Related FATVillage Manager, LLC, dated May 17, 2023. First Housing reviewed a satisfactory D&B report for FATVillage 600, LLC, dated May 17, 2023.

First Housing reviewed a satisfactory credit report for Nicholas Perez, dated May 4, 2023.

Bank and Trade References: First Housing received statements indicating Related FATVillage, LLC, Related FATVillage Manager, LLC, Related FATVillage Developer, and FAT Village 600, LLC are single-purpose entities and at this time do not have any bank or trade references. First Housing received a statement that JMPFT Affordable, LLC is a newly formed entity and at this time does not have any bank or trade references.

Financial Statements  
and Contingent  
Liabilities:

The Applicant, Manager, Developer are all single purpose entities; therefore, tax returns and financials were not available. First Housing received a statement that JMPFT Affordable LLC is a newly formed entity and at this time does not have any financials or tax returns available. First Housing received a statement that FAT Village 600, LLC is a newly formed entity and at this time does not have any financials or tax returns available. First Housing received reviewed the following satisfactory financial statements:

PRH Investments, LLC and Subsidiaries Consolidated Statements of Financial Position September 30, 2022	
Cash & Cash Equivalents	\$37,223,000
Total Assets	\$1,280,747,000
Total Liabilities	\$875,582,000
Total Equity	\$407,165,000

First Housing also received a statement, dated March 16, 2023, confirming that the financials dated September 30, 2022 for PRH Investments, LLC are the most recently prepared statements available. Additionally, the letter certifies that there have been no material adverse change in the condition of affairs of PRH Investments, LLC. First Housing received a statement indicating PRH Investments, LLC is a tax disregarded, as it is ultimately owned by Perez Ross Holdings LLC. Based on a schedule, dated as of December 31, 2021, PRH Investments, LLC has contingent liabilities in the amount of approximately \$331,667,475. First Housing received a statement of no material adverse change dated April 11, 2023.

Nicholas Perez Unaudited Statement of Financial Condition March 31, 2023	
Cash	\$778,000
Total Assets	\$3,715,000
Total Liabilities	\$1,080,000
Total Equity	\$2,635,000

First Housing received 2020 and 2021 joint tax returns for Nicholas Perez and Kastyn Perez.

Summary: Based upon its review of the Financial Statements, Schedule of Contingent Liabilities, and provided Real Estate Owned Schedules, First Housing concludes that the principals of the Applicant and Developer have the requisite financial strength to construct and operate the Development.

## Syndication Information

Syndicator Name: Truist Community Capital, LLC

Contact Person: Lauren Kew  
 Vice President  
 303 Peachtree St. Suite 2200  
 Atlanta, GA 30303  
 (678) 793-6397 Telephone  
[Lauren.kew@truist.com](mailto:Lauren.kew@truist.com)

Experience: Truist is a wholly owned subsidiary of Truist Bank. Truist specializes in financing the development and preservation of affordable housing and community development initiatives. Truist works with for-profit and not-for-profit affordable housing developers and organizations focused on community development and job creation, as well as tax credit syndicators, community development entities, small business investment companies, housing authorities, housing finance agencies and other community improvement focused entities. The team of Truist bankers brings financial and industry expertise, along with the banking players of Truist Bank and its cash management solutions, capital markets advice and interest-rate-hedging.

Financial Statements: First Housing reviewed a Form 10-K for Truist Financial Corporation which is summarized below. Truist Community Capital, LLC is a subsidiary of Truist Financial Corporation.

Truist Financial Corporation and Subsidiaries Consolidated Balance Sheet (Dollars in millions) December 31, 2022	
Cash and Cash Equivalents	\$5,379
Total Assets	\$555,255
Total Liabilities	\$494,718
Equity	\$60,537

Summary: Truist has the experience and financial strength to serve as the syndicator for this Development.



## General Contractor Information

General Contractor: Fortune Related Construction, LLC

Type: A Florida Limited Liability Company

Contact: Steven Arcamonte  
(Florida Certified General Contractor  
License Number CGC1506188, valid through August 31, 2024)  
2850 Tigertail Avenue  
Miami, Florida 33133  
(305) 460-9900  
[George.lage@relatedgroup.com](mailto:George.lage@relatedgroup.com)

Experience: Fortune Related Construction is a general contracting and construction management company that specializes in multifamily residential and mixed-use projects. Fortune Related Construction was formed in 2021 and is the successor entity to Fortune Construction Company (“Fortune”). The experience of this newly formed entity is based in Fortune Urban Construction which was established in December 1992 and has been involved with the development of more than 5,000 units throughout the State of Florida.

Credit Evaluation: A credit report has been received for Fortune Related Construction LLC, dated May 17, 2023, which shows a PAYDEX score of 62 for paying 21 days beyond terms.

### Bank and Trade

References: First Housing has received a satisfactory bank statement for Fortune Related Construction LLC. Trade references were received for Fortune Urban Construction LLC.

### Financial

Statements: First Housing has received and reviewed unaudited financial statements as summarized below. Receipt of updated financials is a condition of this report.

Fortune Construction Company LLP and Fortune Related Construction, LLC Combined Balance Sheet December 31, 2022	
Cash and Cash Equivalents	\$3,865,702
Total Assets	\$35,506,654
Total Liabilities	\$31,010,325
Total Equity	\$4,496,329

## Summary:

FHDC recommends that Fortune Related Construction, LLC be accepted as the General Contractor for the construction of this Development based on its experience and financial strength. Additionally, a 100% Payment and Performance Bond will be provided.

## Property Manager Information

Management Company:	TRG Management Company LLP
FEI:	65-0740253
Contact:	Marilyn Pascual Division President 2200 North Commerce Parkway, Suite 100 Weston, FL 33326 (305) 442-8628 Telephone Mpascual@relatedgroup.com
Experience:	<p>TRG was formed in 1984 to primarily manage various forms of multi-family housing. Since its inception, the company has been identified as a leader in the real estate management business in Florida having managed more than 70,000 units.</p> <p>Currently, TRG Management has more than 80 properties in the company's portfolio and has become a fully integrated organization. Efficient operational systems and a decentralized organizational structure allow for fast and efficient decision making with maximum upper management control. TRG's innovative management programs and effective support system have made the firm a recognized industry leader.</p>
Management Agreement:	Per a Management Agreement, a management fee of 3% per month with a minimum of \$5,000 will be collected. Additionally, a compliance reporting fee of \$5.00 per unit per month for affordable units (39), which is payable out of available cash flow.
Management Plan:	The Applicant has submitted a Management Plan which outlines the various policies and procedures to be implemented in managing the subject Development.
Summary:	TRG Management has an acceptable amount of experience in the management of affordable multifamily housing.

**TAX-EXEMPT MMRN CREDIT UNDERWRITING REVIEW**

**15 Year Pro Forma – The Gallery at FATVillage**

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>															
Gross Potential Rental Income	\$6,905,604	\$7,043,716	\$7,184,590	\$7,328,282	\$7,474,848	\$7,624,345	\$7,776,832	\$7,932,368	\$8,091,016	\$8,252,836	\$8,417,893	\$8,586,251	\$8,757,976	\$8,933,135	\$9,111,798
Other Income															
Miscellaneous	\$466,326	\$475,653	\$485,166	\$494,869	\$504,766	\$514,862	\$525,159	\$535,662	\$546,375	\$557,303	\$568,449	\$579,818	\$591,414	\$603,242	\$615,307
Gross Potential Income	\$7,371,930	\$7,519,369	\$7,669,756	\$7,823,151	\$7,979,614	\$8,139,206	\$8,301,991	\$8,468,030	\$8,637,391	\$8,810,139	\$8,986,342	\$9,166,068	\$9,349,390	\$9,536,378	\$9,727,105
Less:															
Physical Vac. Loss Percentage: 4.00%	\$294,877	\$300,775	\$306,790	\$312,926	\$319,185	\$325,568	\$332,080	\$338,721	\$345,496	\$352,406	\$359,454	\$366,643	\$373,976	\$381,455	\$389,084
Collection Loss Percentage: 1.00%	\$73,719	\$75,194	\$76,698	\$78,232	\$79,796	\$81,392	\$83,020	\$84,680	\$86,374	\$88,101	\$89,863	\$91,661	\$93,494	\$95,364	\$97,271
<b>Total Effective Gross Income</b>	<b>\$7,003,334</b>	<b>\$7,143,400</b>	<b>\$7,286,268</b>	<b>\$7,431,994</b>	<b>\$7,580,633</b>	<b>\$7,732,246</b>	<b>\$7,886,891</b>	<b>\$8,044,629</b>	<b>\$8,205,521</b>	<b>\$8,369,632</b>	<b>\$8,537,024</b>	<b>\$8,707,765</b>	<b>\$8,881,920</b>	<b>\$9,059,559</b>	<b>\$9,240,750</b>
Fixed:															
Real Estate Taxes	\$750,338	\$772,848	\$796,034	\$819,915	\$844,512	\$869,847	\$895,943	\$922,821	\$950,506	\$979,021	\$1,008,392	\$1,038,643	\$1,069,803	\$1,101,897	\$1,134,954
Insurance	\$401,075	\$413,107	\$425,500	\$438,265	\$451,413	\$464,956	\$478,905	\$493,272	\$508,070	\$523,312	\$539,011	\$555,182	\$571,837	\$588,992	\$606,662
Variable:															
Management Fee Percentage: 4.00%	\$280,133	\$285,736	\$291,451	\$297,280	\$303,225	\$309,290	\$315,476	\$321,785	\$328,221	\$334,785	\$341,481	\$348,311	\$355,277	\$362,382	\$369,630
General and Administrative	\$92,050	\$94,812	\$97,656	\$100,586	\$103,603	\$106,711	\$109,913	\$113,210	\$116,606	\$120,104	\$123,708	\$127,419	\$131,241	\$135,179	\$139,234
Payroll Expenses	\$368,200	\$379,246	\$390,623	\$402,342	\$414,412	\$426,845	\$439,650	\$452,840	\$466,425	\$480,417	\$494,830	\$509,675	\$524,965	\$540,714	\$556,936
Utilities	\$105,200	\$108,356	\$111,607	\$114,955	\$118,404	\$121,956	\$125,614	\$129,383	\$133,264	\$137,262	\$141,380	\$145,621	\$149,990	\$154,490	\$159,124
Marketing and Advertising	\$131,500	\$135,445	\$139,508	\$143,694	\$148,004	\$152,445	\$157,018	\$161,728	\$166,580	\$171,578	\$176,725	\$182,027	\$187,489	\$193,112	\$198,906
Maintenance and Repairs/Pest Control	\$223,550	\$230,257	\$237,164	\$244,279	\$251,607	\$259,156	\$266,930	\$274,938	\$283,186	\$291,682	\$300,433	\$309,445	\$318,729	\$328,291	\$338,139
Reserve for Replacements	\$78,900	\$81,267	\$83,705	\$86,216	\$88,803	\$91,467	\$94,211	\$97,037	\$99,948	\$102,947	\$106,035	\$109,216	\$112,493	\$115,867	\$119,343
<b>Total Expenses</b>	<b>\$2,430,946</b>	<b>\$2,501,073</b>	<b>\$2,573,248</b>	<b>\$2,647,531</b>	<b>\$2,723,984</b>	<b>\$2,802,672</b>	<b>\$2,883,659</b>	<b>\$2,967,014</b>	<b>\$3,052,806</b>	<b>\$3,141,108</b>	<b>\$3,231,994</b>	<b>\$3,325,539</b>	<b>\$3,421,822</b>	<b>\$3,520,924</b>	<b>\$3,622,928</b>
<b>Net Operating Income</b>	<b>\$4,572,387</b>	<b>\$4,642,327</b>	<b>\$4,713,020</b>	<b>\$4,784,462</b>	<b>\$4,856,649</b>	<b>\$4,929,574</b>	<b>\$5,003,232</b>	<b>\$5,077,615</b>	<b>\$5,152,715</b>	<b>\$5,228,523</b>	<b>\$5,305,031</b>	<b>\$5,382,226</b>	<b>\$5,460,098</b>	<b>\$5,538,635</b>	<b>\$5,617,822</b>
<b>Debt Service Payments</b>															
First Mortgage - HFABC/ Grandbridge/Freddie Mac	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420	\$3,543,420
Second Mortgage - Grandbridge	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474	\$255,474
Third Mortgage - Broward County	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Fourth Mortgage - City of Ft. Lauderdale	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
First Mortgage Fees - HFABC/Grandbridge/Freddie Mac	\$103,650	\$102,958	\$102,226	\$101,450	\$100,630	\$99,761	\$98,841	\$97,868	\$96,837	\$95,746	\$94,590	\$93,368	\$92,073	\$90,703	\$89,252
Total Debt Service Payments	\$3,902,544	\$3,901,852	\$3,901,119	\$3,900,344	\$3,899,524	\$3,898,655	\$3,897,735	\$3,896,761	\$3,895,731	\$3,894,639	\$3,893,484	\$3,892,261	\$3,890,967	\$3,889,596	\$3,888,146
Cash Flow after Debt Service	\$669,844	\$740,475	\$811,900	\$884,118	\$957,126	\$1,030,920	\$1,105,497	\$1,180,854	\$1,256,984	\$1,333,884	\$1,411,546	\$1,489,965	\$1,569,132	\$1,649,038	\$1,729,676
<b>Debt Service Coverage Ratios</b>															
DSC - First Mortgage plus Fees	1.25	1.27	1.29	1.31	1.33	1.35	1.37	1.39	1.42	1.44	1.46	1.48	1.50	1.52	1.55
DSC - Second Mortgage plus Fees	1.17	1.19	1.21	1.23	1.25	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40	1.42	1.44
DSC - Third Mortgage plus Fees	1.17	1.19	1.21	1.23	1.25	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40	1.42	1.44
DSC - Fourth Mortgage plus Fee	1.17	1.19	1.21	1.23	1.25	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40	1.42	1.44
DSC - All Mortgages and Fees	1.17	1.19	1.21	1.23	1.25	1.26	1.28	1.30	1.32	1.34	1.36	1.38	1.40	1.42	1.44
<b>Financial Ratios</b>															
Operating Expense Ratio	34.71%	35.01%	35.32%	35.62%	35.93%	36.25%	36.56%	36.88%	37.20%	37.53%	37.86%	38.19%	38.53%	38.86%	39.21%
Break-even Economic Occupancy Ratio (all debt)	86.11%	85.35%	84.61%	83.90%	83.21%	82.53%	81.88%	81.26%	80.65%	80.06%	79.49%	78.94%	78.42%	77.91%	77.42%

FHDC

**50% Test**

Tax Exempt Note Amount	\$55,700,000
Less: Debt Service Reserve Funded with Tax Exempt Note Proceeds	\$0
Other:	\$0
Other:	\$0
Equals Net Tax Exempt Note Amount	\$55,700,000
Total Depreciable Cost	\$79,084,712
Plus Land Cost	\$450,000
Aggregate Basis	\$79,534,712
Net Tax Exempt Note to Aggregate Basis Ratio	70.03%

1. Based on the budget, the Development appears to meet the 50% test for 4% Housing Credits.

**DEVELOPMENT**

**NAME: The Gallery at FATVillage**

**DATE: September 11, 2023**

In accordance with the applicable Program Rule(s), the applicant 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 ("FHFC"). The following items must be satisfactorily addressed. "Satisfactorily" means that the Credit Underwriter has received assurances from third parties unrelated to the applicant that the transaction can close within the allowed time frame. Unsatisfactory items, if any, are noted below in the "Issues and Concerns" section of the Executive Summary.

FINAL REVIEW REQUIRED ITEMS:	STATUS	NOTE
	Satis. / Unsatis.	
1. The development’s final “as submitted for permitting” plans and specifications. 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.	UnSatis.	1.
4. Pre-construction analysis (“PCA”). a. No construction costs exceeding 20% is subcontracted to any one entity with the exception of a subcontractor contracted to deliver the building shell of a building of at least 5 stories which may not have more than 31% of the construction cost in a subcontract. b. No construction costs is subcontracted to any entity that has common ownership or is an affiliate of the general contractor of the developer.	Satis.  Satis.  Satis.	
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 the 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 Rule for credit enhancers, applicant, general partner, principals, guarantors and general contractor.	Satis.	
11. Resumes and experience of applicant, general contractor and management agent. Confirmed active status on Sunbiz for Applicant, Developer, and GC entities.	Satis.	
12. Credit authorizations; verifications of deposits and mortgage loans.	Satis.	
13. Management Agreement and Management Plan.	Satis.	
14. Firm commitment from the credit enhancer or private placement purchaser, if any.	N/A	

15. Firm commitment letter from the syndicator, if any.	Satis.	
16. Firm commitment letter(s) for any other financing sources.	Satis.	2.
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.	N/A	
19. Fifteen-year income, expense, and occupancy projection.	Satis.	
20. Executed general construction contract with "not to exceed" costs.	Satis.	
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.	
23. Receipt of executed Florida Housing Fair Housing, Section 504 and ADA Design Certification Forms 121, 126, and 128.	Satis.	
24. If the owner has a HAP Contract or ACC with HUD, then receipt of HUD approval for an owner-adopted preference or limited preference specifically for individuals or families who are referred by a designated Referral Agency serving the county where the Development is located.	N/A	
25. Receipt of Tenant Eligibility and Selection Plan	N/A	
26. Receipt of GC Certification	Satis.	
27. Reliance for FHDC as agent for FHFC is include in all applicable third party reports: Appraisal, Market Study, PCA, CNA, and Phase I.	Satis.	

**NOTES AND DEVELOPER RESPONSES:**

1. Acceptable permits or a permit ready letter is a condition to close.
2. Firm commitment for construction financing from Chase and permanent financing from Grandbridge as well as a commitment from the Developer to contribute funds to the project. Additionally, final commitments from County and City Loans. Receipt of Amended and Restated Operating Agreement.

# ITEM 8



**Housing Finance HFA of Broward County**  
**October 18, 2023 – Board Meeting**

**Multifamily Bonds – Informational Item - *Final Credit Underwriting Report for Pembroke Tower II.***

**Background**

1. On December 23, 2021, the Housing Finance Authority of Broward County (“Authority”) made a project loan to the Borrower (SP Broward, LLC, a Florida limited liability company) in the amount of \$16,300,000, in connection with the sale by the Authority of its Multifamily Housing Revenue Note (Pembroke Tower II), Series 2021 (“Series 2021 Project Loan”) for the purpose of financing in part, the acquisition, construction, and equipping of an eighty-eight (88) unit multifamily residential rental housing development in Pembroke Pines, Florida known as Pembroke Tower II (“Project”)
2. In addition to the Series 2021 Project Loan, on December 23, 2021, the Borrower closed on subordinate financing, which included a loan from Broward County (“County”) in the amount of \$3,860,000.
3. On February 9, 2023, the HFA received correspondence from the Borrower (i) advising the Authority of substantial increases to the construction budget for the Project resulting from increased materials and labor costs, and (ii) requesting the Authority issue an additional multifamily housing revenue note in an amount not to exceed \$6,200,000.
4. On June 8, 2023, the Borrower advised the Authority that the development would be receiving a \$4,300,000 Florida Housing Finance Corporation (“FHFC”) Viability Loan.
5. On September 20, 2023, the Authority approved Resolution 2023-016 authorizing the form of documents other actions necessary to close on the \$6,200,000 Multifamily Housing Revenue Note, Series 2023 (Pembroke Tower II).

**Present Situation**

1. The Credit Underwriting Report is attached.
2. Closing for the financing of this Project is presently scheduled for the fourth quarter of 2023.

**Exhibit**

1. Final Credit Underwriting Report

# **ATTACHMENT 1**

September 27, 2023

Mr. Ralph Stone  
Executive Director  
Housing Finance Authority of Broward County  
110 NE 3<sup>rd</sup> Street, Suite 300  
Fort Lauderdale, FL 33301

Re: Pembroke Tower II – SAIL, ELI & NHTF RFA 2019-116 (2020-382SN) / 4% HC 2019-548C  
Construction Inflation Response Viability RFA 2023-211 (2023-249V)

Credit Underwriting Report Update Letter (“CUR Update Letter”) – Changes to the Final Credit Underwriting Report (“CUR”), dated May 21, 2021, and MMRN First Mortgage Construction Loan Increase Letter (“MMRN Increase Letter”), dated November 29, 2021, to include an additional MMRN First Mortgage Construction Loan Increase (Truist Bank Tax-Exempt Loan), addition of a subordinate Viability Loan, a Change in General Contractor, a Change in Set-Asides to the Average Income Test and a Recommended Annual 4% Housing Credit Allocation of \$2,113,829

Dear Mr. Kennedy:

Seltzer Management Group, Inc. (“SMG” or “Seltzer”) is in receipt of correspondence from SP Broward LLC (“Borrower”) requesting the Housing Finance Authority of Broward County’s (“HFABC”) consent to an increase of the proposed first mortgage construction period loan for the above referenced transaction to \$22,500,000. The CUR dated May 21, 2021, was approved at the HFABC’s June 15, 2021, Board meeting and closed on December 22, 2021, with a first mortgage construction loan in the amount of \$16,300,000.

Seltzer reviewed a notice of preliminary award dated June 14, 2023, from Florida Housing Finance Corporation (“Florida Housing”), with a preliminary Viability loan in the amount of \$4,300,000.

On June 25, 2021, the Borrower accepted a firm commitment letter dated June 21, 2021, for a \$2,000,000 State Apartment Incentive Loan (“SAIL”), a \$600,000 Extremely Low Income (“ELI”) loan and a \$1,041,200 National Housing Trust Fund (“NHTF”) loan. Per Chapter 67-48.010(15) (“Rule”), after accepting a preliminary commitment, the Borrower shall not refinance, increase the principal amount, or alter any terms or conditions of any mortgage superior or inferior to the SAIL mortgage without prior approval of Florida Housing’s Board of Directors. At your direction, SMG has reviewed the request and formulated a recommendation, presented below.

Seltzer reviewed the request, performed certain due diligence and formulated an analysis for the HFABC’s consideration. For purposes of this analysis, Seltzer reviewed the following due diligence:

- Rules 67-21 and 67-48 (“Rules”)
- RFA 2023-211 Application for Viability Funding
- Request for MMRN Increase from Borrower to the HFABC dated February 9, 2023
- Pembroke Tower II Final CUR dated May 21, 2021
- Pembroke Tower II Final MMRN Increase Letter dated November 29, 2021
- Correspondence from the Borrower

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- Construction Loan Agreement, dated December 23, 2021, from STI Institutional & Government, Inc. ("STI") in the amount of \$16,300,000
- Promissory Note, dated December 23, 2021, from FHFC for a SAIL Loan in the amount of \$2,000,000
- Promissory Note, dated December 23, 2021, from FHFC for an ELI Loan in the amount of \$600,000
- Promissory Note, dated December 23, 2021, from FHFC for a NHTF Loan in the amount of \$1,041,200
- Amendments one through seven to the SAIL, ELI and NHTF Construction Loan Agreements
- Final Closing Letter and Final Sources and Uses / Construction Draw Schedule dated December 22, 2021
- Special Warranty Deed dated December 23, 2021, and accompanying Settlement Statement
- Updated Sources and Uses of Funds / Pro Forma provided by the Borrower
- Request for change in set-aside to Average Income from Borrower to Florida Housing dated September 18, 2023
- Truist Commercial Equity, Inc. ("Truist") Term Sheet dated September 5, 2023, for the additional \$6,200,000 in tax-exempt financing
- Grandbridge email correspondence confirming that the loan terms and conditions are unchanged from the closing on December 23, 2021, and approval of the change to average income set-asides
- Raymond James Tax Credit Funds, Inc. ("RJTCF") updated projections dated September 12, 2023, and approval of average income set-asides
- A Standard Form Agreement between Owner and JWR Construction Services, Inc. ("JWR") with a Guaranteed Maximum Price of \$28,615,305 dated January 12, 2023
- A Plan and Cost Analysis ("PCA") dated August 1, 2023, completed by GLE Associates, Inc. ("GLE")
- An Appraisal Report dated June 14, 2023, completed by CBRE, Inc. ("CBRE")

#### Background Summary

The Development is to be located at 2201 North University Drive in Pembroke Pines, Broward County, Florida. The Development will consist of 88 units within 1 residential mid-rise building.

The Borrower is a Florida Limited Liability Company registered with the State of Florida on August 12, 2019. The members of the Borrower are SP Broward Manager LLC ("Broward Manager") with a 0.01% ownership interest and J. David Page with a 99.99% ownership interest. The sole member of SP Broward Manager is SP and MS LLC ("SP and MS") and the members of SP and MS are J. David Page with 60.00% ownership, Stephen W. Page with 10.00% ownership, Paul W. Page with 10.00% ownership, Scott Seckinger with 10.00% ownership and Michael Molinari with 10.00% ownership. RJTCF, or an affiliate, will purchase the 99.99% ownership interest prior to or concurrent with the closing of the construction/permanent loan.

Along with the previously noted MMRN, the financing is to include a Viability loan, SAIL, ELI loan, NHTF loan, 4% Housing Credit equity and deferred Developer Fee.

#### Change in set-aside to Average Income

Borrower made a request to FHFC on September 18, 2023, to change the set-asides of the Subject Development from what was committed to in the Application to Average Income. Seltzer has engaged an updated market study to support Average Income and received an appraisal that supports Average Income. Average Income was approved by the Permanent Lender and Syndicator. Seltzer recommends that the change in set-aside from 40% of the units at 60% AMI as selected in the Application to Average

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Income. This recommendation will be subject to FHFC Staff approval and submission of a petition for rule waiver. The set-asides changed as follows:

Previous

10% (9 units) at or below 28% AMI  
90% (79 units) at or below 60% AMI

Current

15.909% (14 units) at or below 30% AMI  
52.273% (46 units) at or below 60% AMI  
15.909% (14 units) at or below 70% AMI  
15.909% (14 units) at or below 80% AMI

Set Asides:

Program	% of Units	# of Units	% AMI	Term (Years)
MMRB	40.00%	36	60%	50
SAIL / ELI / HC	15.909%	14	30%	50
SAIL / HC	52.273%	46	60%	50
SAIL / HC	15.909%	14	70%	50
SAIL / HC	15.909%	14	80%	50
NHTF	4.55%	4	22%	50

PERMANENT FINANCING INFORMATION						
	1st Source	2nd Source	3rd Source	4th Source	5th Source	Other
Lender/Grantor	HFABC / Grandbridge	FHFC - Viability	FHFC - SAIL	Broward County	FHFC - SAIL ELI	FHFC - NHTF
Amount	\$6,750,000	\$4,300,000	\$2,000,000	\$3,860,000	\$600,000	\$1,041,200
Underwritten Interest Rate	3.77%	1.00%	1.00%	0.00%	0.00%	0.00%
Loan Term	15.0	15.0	15.0	30.0	15.0	30.0
Amortization	35.0	N/A	N/A	N/A	N/A	N/A
Market Rate/Market Financing LTV	33.1%	54.1%	63.9%	82.8%	85.7%	90.8%
Restricted Market Financing LTV	87.3%	142.9%	168.8%	218.8%	226.5%	240.0%
Loan to Cost - Cumulative	15.1%	24.8%	29.3%	37.9%	39.3%	41.6%
Loan to Cost - SAIL Only			4.5%			
Debt Service Coverage	1.301	1.134	1.067	1.067	1.058	1.050
Operating Deficit & Debt Service Reserves	\$236,500					
# of Months covered by the Reserves	4.4					

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Deferred Developer Fee	\$6,414,207
As-Is Land Value	\$3,080,000
Market Rent/Market Financing Stabilized Value	\$20,420,000
Rent Restricted Market Financing Stabilized Value	\$7,730,000
Projected Net Operating Income (NOI) - Year 1	\$472,782
Projected Net Operating Income (NOI) - 15 Year	\$510,893
Year 15 Pro Forma Income Escalation Rate	2.00%
Year 15 Pro Forma Expense Escalation Rate	3.00%
Bond Structure	Tax-Exempt Loan
Housing Credit (HC) Syndication Price	\$0.905
HC Annual Allocation - Qualified in CUR	\$2,113,829
HC Annual Allocation - Equity Letter of Interest	\$2,169,009

CONSTRUCTION/PERMANENT SOURCES:				
Source	Lender	Construction	Permanent	Perm Loan/Unit
Local HFA Bonds	HFABC / STI	\$16,300,000	\$0	\$0.00
Local HFA Bonds	HFABC / STI	\$6,200,000	\$0	\$0.00
Local HFA Bonds	HFABC / Grandbridge	\$0	\$6,750,000	\$76,704.55
FHFC - Viability	FHFC	\$4,300,000	\$4,300,000	\$48,863.64
FHFC - SAIL	FHFC	\$2,000,000	\$2,000,000	\$22,727.27
Other	Broward County	\$3,088,000	\$3,860,000	\$43,863.64
FHFC - SAIL ELI	FHFC	\$600,000	\$600,000	\$6,818.18
FHFC - NHTF	FHFC	\$1,041,200	\$1,041,200	\$11,831.82
HC Equity	RJTCF	\$5,141,068	\$19,627,568	\$223,040.55
Deferred Developer Fee	Developer	\$5,686,207	\$6,414,207	\$72,888.72
Operating Deficit Reserve	RJTCF	\$236,500	\$0	\$0.00
<b>TOTAL</b>		\$44,592,975	\$44,592,975	\$506,738.35
<b>Cash Collateral Source(s):</b>				
Local HFA Bonds	HFABC / STI	\$16,300,000		
Local HFA Bonds	HFABC / STI	\$6,200,000		
<b>GRAND TOTAL</b>		\$67,092,975		

### Financing Summary

Borrower closed on \$16,300,000 in Tax-Exempt Bonds issued by HFABC for the acquisition and construction of Pembroke Tower II. On January 30, 2023, the Borrower submitted a request to HFABC to increase the Bonds to \$22,500,000.

Seltzer has received a Truist term sheet reflecting an additional construction loan amount of \$6,200,000. An affiliate of Truist, STI, will loan \$6,200,000 to the HFABC through a Tax-Exempt Loan (“TEL”) in connection with the construction financing. This loan, along with the previously closed loan of \$16,300,000, will collateralize the bond amount of \$22,500,000.

Upon Conversion to the permanent period, the STI TEL(s) will be satisfied and Grandbridge Real Estate Capital, LLC (“Grandbridge”) shall provide a loan to the HFABC in the amount of \$6,750,000.

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**Construction Financing Sources**

*Please note the Applicant column is based on Seltzer’s conclusions in the Final Closing Sources and Uses / Construction Draw Schedule. The Revised Applicant column is based on the Borrower’s updated Development Summary as of September 14, 2023.*

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Construction Debt Service
First Mortgage	HFABC / STI	\$16,300,000	\$16,300,000	\$16,300,000	6.79%	\$1,500,347
Second Mortgage	HFABC / STI	\$0	\$6,200,000	\$6,200,000	6.79%	\$570,684
Third Mortgage	FHFC - Viability	\$0	\$4,300,000	\$4,300,000	1.00%	\$58,265
Fourth Mortgage	FHFC - SAIL	\$2,000,000	\$2,000,000	\$2,000,000	1.00%	\$27,100
Fifth Mortgage	Broward County	\$3,088,000	\$3,088,000	\$3,088,000	0.00%	\$0
Sixth Mortgage	FHFC - SAIL ELI	\$600,000	\$600,000	\$600,000	0.00%	\$0
Seventh Mortgage	FHFC - NHTF	\$1,041,200	\$1,041,200	\$1,041,200	0.00%	\$0
HC Equity	RJTCF	\$3,963,214	\$5,141,068	\$5,141,068		
Deferred Developer Fee	Developer	\$4,194,468	\$5,611,925	\$5,686,207		
Deferred Oper Resv	RJTCF	\$236,500	\$236,500	\$236,500		
<b>Total</b>		<b>\$31,423,382</b>	<b>\$44,518,693</b>	<b>\$44,592,975</b>		<b>\$2,156,396</b>

**Tax Exempt Construction Loan**

Borrower closed on \$16,300,000 in Tax-Exempt Bonds issued by HFABC for the acquisition and construction of Pembroke Tower II as evidenced in the Construction Loan Agreement dated December 23, 2021.

The maturity date noted in the Construction Loan Agreement is to be the earlier of July 1, 2039; outside conversion date (stated to be June 23, 2024 subject to any extensions); or date on which principal amount has become due and payable. Monthly interest only payments will be made on a floating interest rate based upon the Term Secured Overnight Financing Rate (“SOFR”) plus a margin of 3.30%, divided by a tax factor of 1.266. As of September 12, 2023, the SOFR rate was 5.30%, resulting in an all-in rate of 6.79%.

**Tax Exempt Construction Loan**

On January 30, 2023, the Borrower submitted a request to HFABC to increase the Bonds to \$22,500,000.

Borrower provided a term sheet from Truist dated September 5, 2023, for the purchase of \$6,200,000 of Tax-Exempt Bonds by a Truist affiliate, STI, the proceeds of which will fund a construction loan to the Borrower. The term of the loan shall be up to 32 months. Monthly interest only payments will be made on a floating interest rate based upon the Term Secured Overnight Financing Rate (“SOFR”) plus a margin of 3.30%, divided by a tax factor of 1.266. As of September 12, 2023, the SOFR rate was 5.30%, resulting in an all-in rate of 6.79%.

An origination fee of 1.00% of the maximum construction loan amount will be payable at loan closing.

**Other Construction Sources of Funds**

Additional sources of funds for this Development during construction consist of a Viability loan in the amount of \$4,300,000, a SAIL in the amount of \$2,000,000, a Broward County loan in the amount of \$3,088,000, an ELI loan in the amount of \$600,000, a NHTF loan in the amount of \$1,041,200, Housing Credit equity of \$5,141,068, deferred Developer Fees of \$5,686,207 and deferred funding of the Operating Reserves of \$236,500. See the Permanent Financing section below for details.

Mr. Ralph Stone  
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**Permanent Financing Sources**

***Please note the Applicant column is based on Seltzer's conclusions in the Final Closing Sources and Uses / Construction Draw Schedule. The Revised Applicant column is based on the Borrower's updated Development Summary as of September 14, 2023.***

Source	Lender	Applicant	Revised Applicant	Underwriter	Interest Rate	Amort. Yrs.	Term Yrs.	Annual Debt
First Mortgage	HFABC / Grandbridge	\$6,750,000	\$6,750,000	\$6,750,000	3.77%	35	15	\$347,559
Second Mortgage	FHFC - Viability	\$0	\$4,300,000	\$4,300,000	1.00%	N/A	15	\$43,000
Third Mortgage	FHFC - SAIL	\$2,000,000	\$2,000,000	\$2,000,000	1.00%	N/A	15	\$20,000
Fourth Mortgage	Broward County	\$3,860,000	\$3,860,000	\$3,860,000	0.00%	N/A	30	\$0
Fifth Mortgage	FHFC - SAIL ELI	\$600,000	\$600,000	\$600,000	0.00%	N/A	15	\$0
Sixth Mortgage	FHFC - NHTF	\$1,041,200	\$1,041,200	\$1,041,200	0.00%	N/A	30	\$0
HC Equity	RJTCF	\$13,210,710	\$19,627,568	\$19,627,568				
Def. Developer Fee	Developer	\$3,961,472	\$6,339,925	\$6,414,207				
<b>Total</b>		<b>\$31,423,382</b>	<b>\$44,518,693</b>	<b>\$44,592,975</b>				<b>\$410,559</b>

**Tax Exempt Permanent Loan**

The permanent first mortgage amount of \$6,750,000 was confirmed by Grandbridge via email on September 7, 2023.

Per the email correspondence with Grandbridge, the interest rate was locked as of December 22, 2021, based on a treasury rate of 1.46% and a spread of 2.31%, resulting in an overall rate of 3.77%. The term of the loan is fifteen (15) years with monthly principal and interest payments due to fully amortize the loan over a thirty-five (35) year schedule. Grandbridge has confirmed that a Rate Lock Extension will be executed for the permanent loan.

The annual HFABC Issuer Fee of 18 basis points ("bps") and the annual Trustee Fee of \$3,750 are included in the operating pro forma section of this report.

**FHFC Viability Loan**

Borrower applied to FHFC under RFA 2023-211 for Viability funds in the amount of \$4,300,000. The Viability loan shall be non-amortizing and shall have an interest rate of 1.00%. The Viability loan will have a total term of 18 years, of which 3 years is for the construction/stabilization period and 15 years is for the permanent period. Closing of the Viability loan funding will be simultaneous with the closing of other Corporation funding. Annual payments of all applicable fees will be required. Any unpaid interest will be deferred until cash flow is available. However, at maturity of the Viability Loan, all principal and unpaid interest will be due. The Annual Permanent Loan Servicing Fee is based on 25 bps of the outstanding loan amount with a maximum of \$936 per month, subject to a minimum of \$236 per month.

**FHFC SAIL**

Seltzer received a SAIL Promissory Note, dated December 22, 2021, in the amount of \$2,000,000. SAIL will have a total term of 18 years, of which 3 years is for the construction/stabilization period and as requested by the Housing Credit syndicator, the SAIL term will be co-terminus with the first mortgage as allowed by the Rule. The SAIL will be non-amortizing and will bear 1.00% simple interest per annum. Any unpaid interest will be deferred until cash flow is available. At the maturity of the SAIL, however, all principal and unpaid interest is due.



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Annual payments of all applicable fees will be required. The Annual Permanent Loan Servicing Fee is based on 25 bps of the outstanding loan amount with a maximum of \$936 per month, subject to a minimum of \$236 per month. The Compliance Monitoring Fee is based on an annual multiple program fee of \$1,023.

#### Broward County Loan

Per a November 6, 2019, Gap Financing Funding Award Notification letter, Broward County will provide a loan in the amount of \$3,860,000. This loan is made through the Broward County Affordable Housing Development Program. Terms of the loan include a 30 year term following the construction period and stabilized operations. According to a draft Loan Agreement between Broward County and SP Broward, LLC, no interest shall be paid or accrued on this loan or on the unpaid principal balance of the loan so long as there is no event of default. The entire loan shall be due and payable in full upon the first to occur: (1) upon maturity of the loan by an event of default; (2) upon the 30<sup>th</sup> anniversary date of the closing date, plus construction period if applicable; or (3) upon the sale, transfer, conveyance or refinancing unless approved by Broward County. There will be no application fee or origination fee for the loan.

Based on the loan amount of \$3,860,000, no more than eighty percent (80%), as shown in the construction sources above, will be disbursed during construction. The additional twenty percent (20%) remaining will be disbursed once the HFA has been provided evidence of the final development source and use and subject to achievement of stabilized operations and release of the RJTCF stabilization capital contribution. The release of the final 20% will be subject to a reduction if the disbursement will result in a deferred Developer Fee less than 50% of the total Developer Fee. The county disbursement will be reduced to an amount that will result in a Deferred Developer Fee equal to 50% of the Developer Fee.

#### FHFC ELI Loan

Seltzer received an ELI Promissory Note, dated December 22, 2021, in the amount of \$600,000. The ELI Loan is in the form of a forgivable.

The ELI AMI for Broward County is 28%. Through the Average Income Test, the Borrower committed to set aside at least 15 percent of the units (14 units) at or below 30% of AMI for ELI. The ELI Loan is non-amortizing at 0.00% simple interest per annum. The principal is forgivable at maturity provided the units for which the ELI Loan amount is awarded are targeted to ELI Households for the first 15 years of the 50 year Compliance Period. However, after 15 years, all of the ELI set aside units may convert to serve residents at or below 60% AMI. The Persons with Special Needs set-aside requirement must be maintained through the entire 50 year Compliance Period. The ELI Loan will have a total term of 18 years, of which 3 years is for the construction/stabilization period and as requested by the Housing Credit syndicator, the ELI loan term will be co-terminus with the first mortgage.

Annual payments of all applicable fees will be required. The Annual Permanent Loan Servicing Fee is based on 25 bps of the outstanding loan amount with a maximum of \$936 per month, subject to a minimum of \$236 per month and the Compliance Monitoring Fee is based on an annual multiple program fee of \$1,023.

#### FHFC NHTF Loan

Seltzer received a NHTF Promissory Note dated December 22, 2021, in an amount of \$1,041,200. The Borrower was selected to receive an NHTF Loan in the form of a forgivable loan and is required to designate 4 units as NHTF units targeted for Persons with Special Needs at or below 22% of AMI. This set-aside requirement is in addition to the ELI set-aside commitments.

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The NHTF Loan shall be a non-amortizing loan at 0.00% simple interest per annum. The principal is forgivable at maturity provided the units for which the NHTF Loan amount is awarded are targeted as NHTF Link units for the first 30 years of the 50 year Compliance Period. After 30 years, all of the NHTF Link units may convert to serve residents at or below 60% of AMI; however, the Persons with Special Needs set-aside commitment must be maintained throughout the entire 50-year Compliance Period. The NHTF Loan will have a total term of 30 years, of which 3 years is for the construction/stabilization period. The Annual Permanent Loan Servicing Fee is based on 25 bps of the outstanding loan amount with a maximum of \$936 per month, subject to a minimum of \$236 per month and the Compliance Monitoring Fee is based on an annual multiple program fee of \$1,023.

Housing Credit Equity Investment

The HC syndicator, RJTCF, will provide a net equity investment of \$19,627,568 in exchange for 99.99% ownership interest in the Borrower.

The following equity installments are based on the RJTCF projections dated September 12, 2023:

Capital Contributions	Amount	Percent of Total	When Due
1st Installment	\$2,944,135	15.00%	At closing
2nd Installment	\$696,933	3.55%	At 75% construction completion
3rd Installment	\$1,500,000	7.64%	At 99% construction completion
4th Installment	\$8,313,784	42.36%	At 100% construction completion
5th Installment	\$4,936,216	25.15%	At loan pay-down
6th Installment	\$1,136,500	5.79%	At stabilization
7th Installment	\$100,000	0.51%	At 8609
Total	\$19,627,568	100.00%	

Annual Tax Credits per Syndication Agreement: \$2,169,009  
Total HC Available to Syndicator (10 years): \$21,687,921  
Syndication Percentage (investor member interest): 99.990%  
Calculated HC Exchange Rate (per dollar): \$0.905  
Proceeds Available During Construction: \$5,141,068

Pembroke Tower II was required to close in 2021 to avoid losing the \$16,300,000 of Broward County carry-forward Bond allocation that was used. An RFA waiver was approved at the January 21, 2022, FHFC Board meeting to waive the 15 percent equity requirement at closing. Based upon the updated equity investment, at least 15 percent of the total equity will be provided prior to or simultaneous with the closing of the construction financing, which meets the RFA requirement.

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**Use of Funds**

**Please note the Applicant column is based on Seltzer's conclusions in the Final Closing Sources and Uses / Construction Draw Schedule. The Revised Applicant column is based on the Borrower's updated Development Summary as of September 14, 2023.**

CONSTRUCTION COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit	HC Ineligible Costs	CUR
Demolition					\$0	\$0	
New Rental Units	\$15,248,042.00	\$25,101,145	\$21,443,674		\$243,678		
Off-Site Work					\$0	\$0	
Recreational Amenities					\$0		
Site Work	\$1,761,150.00		\$3,657,471		\$41,562	\$548,621	
Swimming Pool					\$0		
Furniture, Fixture, & Equipment					\$0		
Hard Cost Contingency - in Constr. Cont.					\$0		
Constr. Contr. Costs subject to GC Fee	\$17,009,192	\$25,101,145	\$25,101,145		\$285,240	\$548,621	
General Conditions	\$1,020,551.52	\$3,514,160	\$1,506,069		\$17,114		
Overhead	\$340,183.84		\$502,022		\$5,705		
Profit	\$1,020,551.52		\$1,506,069		\$17,114		
Builder's Risk Insurance					\$0		
General Liability Insurance					\$0		
Payment and Performance Bonds					\$0		
Contract Costs not subject to GC Fee					\$0		
Total Construction Contract/Costs	\$19,390,479	\$28,615,305	\$28,615,305		\$325,174	\$548,621	
Hard Cost Contingency	\$850,459.60	\$1,255,057	\$1,255,057		\$14,262		
PnP Bond paid outside Constr. Contr.	\$208,671.00				\$0		
Fees for LOC used as Constr. Surety					\$0		
Demolition paid outside Constr. Contr.					\$0		
FF&E paid outside Constr. Contr.	\$20,000.00	\$20,000	\$20,000		\$227		
Other: Contractor GL and P&P Bond	\$274,253.00	\$592,334	\$592,334		\$6,731		
Other: BDA Design and Submittal	\$87,761.25	\$87,761	\$87,761		\$997		
Other:					\$0		
<b>Total Construction Costs:</b>	<b>\$20,831,624</b>	<b>\$30,570,457</b>	<b>\$30,570,457</b>		<b>\$347,392</b>	<b>\$548,621</b>	

**Notes to Construction Costs:**

- The Borrower has provided an executed AIA A102 Standard Form of Agreement between Owner and JWR dated January 12, 2023, in the amount of \$28,615,305, an increase of \$9,224,826 from the previous contract described in the CUR. The contract provides for a commencement date on February 20, 2023, and achievement of substantial completion no later than 546 calendar days (approximately 18 months from the date of commencement). Ten percent (10%) retainage will be withheld on all work performed up to 50% completion and at 50% completion, retainage shall be reduced to five percent (5%).

**Allowances in the GMP Agreement**

- Irrigation - \$30,000
- Additional sod repair due to R-Tank operations - \$12,318
- Seismic monitoring of adjacent building due to VC operations - \$20,000
- Dumpster enclosure - \$5,250
- Additional ramps and stairs in garage - \$32,100
- Additional railings in garage - \$14,900
- Millwork based on specifications - \$356,537

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- Counter tops based on specifications - \$106,382
- Rood for porte cochere - \$27,000
- Overhead doors - \$6,000
- Unit signage - \$150 per unit (88 units x \$150 = \$13,200)
- Buildings letters/numbers - \$2,500
- Common area and way finding signage - \$17,500
- Toilet accessories package - \$78,562
- Fire extinguishers package - \$9,570
- Closet adjustment shelving - \$123,715
- Common area appliances - \$5,000
- Total - \$860,534

GLE is of the opinion that several of the items indicated as allowances should not be provided as an allowance. Sufficient detail has been provided on the drawings and in the specifications for JWR to complete accurate takeoffs and provide lump sum pricing based on those takeoffs.

General Contractor fees stated are within the 14% maximum per the RFA and Rules.

The hard cost contingency is within the 5% allowed by the RFA and Rules and is not included within the GC Contract or schedule of values.

2. Seltzer reviewed a PCA from GLE dated August 1, 2023, related to the updated construction contract and budget. The PCA stated the estimated value of the projected hard construction costs for the site work is \$3,657,471 or approximately \$20.99 per square foot. The estimated value of the projected hard construction costs for the vertical construction is \$21,443,693 or approximately \$145.09 per square foot. GLE is of the opinion that the costs per square foot for site work is within an acceptable range for the scope of work indicated while the vertical construction is at the high end of an acceptable range. Individual line item costs generally appear appropriate.

GLE notes that contract indicates the Contractor will achieve Substantial Completion 546 days from the date of commencement and that the proposed construction schedule indicates completion in 512 days. GLE is of the opinion that the project duration appears appropriate.

3. BDA Design and Submittal reflects the costs associated with recent fire code and other requirements of the City of Pembroke Pines. This cost is handled directly through the Owner and is not included in the GC Contract.

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GENERAL DEVELOPMENT COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit	HC Ineligible Costs	CUR
	Accounting Fees	\$30,000.00	\$20,000	\$20,000		\$227	\$10,000
Appraisal	\$4,500.00	\$4,500	\$4,500		\$51		
Architect's Fee - Landscape					\$0		
Architect's Fee - Site/Building Design	\$342,000.00	\$321,822	\$321,822		\$3,657		
Architect's Fee - Supervision	\$25,000.00	\$25,000	\$25,000		\$284		
Building Permits	\$303,614.08	\$696,081	\$696,081		\$7,910		
Builder's Risk Insurance	\$207,065.15	\$150,000	\$150,000		\$1,705		
Capital Needs Assessment/Rehab					\$0		
Engineering Fees	\$190,000.00	\$221,560	\$221,560		\$2,518		
Environmental Report	\$2,500.00	\$2,500	\$2,500		\$28		
Federal Labor Standards Monitoring					\$0		
FHFC Administrative Fees	\$128,167.00	\$128,167	\$190,245		\$2,162	\$190,245	
FHFC Application Fee	\$3,000.00	\$3,000	\$3,500		\$40	\$3,500	
FHFC Credit Underwriting Fee	\$56,457.50	\$33,832	\$32,757		\$372	\$32,757	
FHFC Compliance Fee	\$198,244.00	\$198,244	\$198,244		\$2,253	\$198,244	
FHFC Other Processing Fee(s)	\$36,412.00				\$0		
Impact Fee	\$183,791.36	\$183,791	\$183,791		\$2,089		
Lender Inspection Fees / Const Admin	\$37,200.00	\$49,289	\$49,289		\$560		
Green Building Cert. (LEED, FGBC, NGBS)	\$17,800.00	\$17,800	\$17,800		\$202		
Home Energy Rating System (HERS)					\$0		
Insurance	\$81,600.00	\$62,200	\$62,200		\$707	\$20,000	
Legal Fees - Organizational Costs	\$254,695.50	\$226,697	\$226,697		\$2,576	\$226,697	
Local Subsidy Underwriting Fee					\$0		
Market Study	\$5,000.00	\$5,000	\$5,000		\$57	\$5,000	
Marketing and Advertising	\$15,000.00	\$15,000	\$15,000		\$170	\$15,000	
Plan and Cost Review Analysis	\$3,500.00	\$7,600	\$7,600		\$86		
Property Taxes	\$40,000.00	\$20,000	\$20,000		\$227	\$5,000	
Soil Test	\$18,050.00	\$10,050	\$10,050		\$114		
Survey	\$50,000.00	\$20,000	\$20,000		\$227	\$10,000	
Tenant Relocation Costs					\$0		
Title Insurance and Recording Fees	\$129,436.21	\$129,436	\$129,436		\$1,471	\$64,718	
Traffic Study					\$0		
Utility Connection Fees	\$296,165.76	\$296,166	\$296,166		\$3,366		
Soft Cost Contingency	\$100,000.00	\$100,000	\$100,000		\$1,136		
Other: Misc	\$5,000.00	\$5,000	\$5,000		\$57		
Other:					\$0		
<b>Total General Development Costs:</b>	<b>\$2,764,199</b>	<b>\$2,952,735</b>	<b>\$3,014,238</b>		<b>\$34,253</b>	<b>\$781,161</b>	

*Notes to General Development Costs:*

1. The FHFC Administrative Fee is based on 9% of the recommended annual allocation of HC.
2. The FHFC Application Fee has increased by \$500 to include the Viability Loan application fee of \$500.
3. The FHFC Credit Underwriting Fee includes \$23,891 for the SAIL, ELI, NHTF and HC underwriting, \$3,720 for the MMRN Increase and \$5,146 for the Viability loan underwriting.
4. Soft Cost Contingency is within the 5% as allowed per the RFA and Rules.

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FINANCIAL COSTS:	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs	CUR	Cost Per Unit	HC Ineligible Costs	CUR
	Construction Loan Application Fee					\$0	
Construction Loan Underwriting Fee					\$0		
Construction Loan Origination Fee		\$393,168	\$393,168		\$4,468		
Construction Loan Commitment Fee					\$0		
Construction Loan Closing Costs	\$31,500.00	\$166,500	\$122,500		\$1,392		
Construction Loan Interest	\$414,300.00	\$1,300,000	\$1,300,000		\$14,773		
Permanent Loan Application Fee					\$0	\$0	
Permanent Loan Underwriting Fee					\$0	\$0	
Permanent Loan Commitment Fee					\$0	\$0	
Permanent Loan Origination Fee		\$67,500	\$67,500		\$767	\$67,500	
Permanent Loan Closing Costs	\$150,287.50				\$0	\$0	
Permanent Loan Interest					\$0	\$0	
Local HFA Application Bond Fee	\$9,000.00	\$40,563	\$40,563		\$461	\$40,563	
Local HFA Bond Underwriting Fee		\$15,359	\$19,079		\$217	\$19,079	
Local HFA Bond Subsidy Layering Rev.					\$0	\$0	
Local HFA Bond Origination Fee		\$48,600	\$48,600		\$552	\$48,600	
Local HFA Bond Commitment Fee					\$0	\$0	
Local HFA Bond Trustee Fee					\$0	\$0	
Local HFA Bond Credit Enh. Fee					\$0	\$0	
Local HFA Bond Rating Fee					\$0	\$0	
Local HFA Bond Cost of Issuance	\$644,655.95	\$343,925	\$343,925		\$3,908	\$343,925	
Local HFA Bond Closing Costs					\$0	\$0	
Local HFA Bond Interest					\$0	\$0	
Local HFA Bond Servicing Fee					\$0	\$0	
Local HFA Legal - Bond Counsel					\$0	\$0	
Local HFA Legal - Borrower's Counsel					\$0	\$0	
Local HFA Legal - Issuer's Counsel					\$0	\$0	
Local HFA Legal - Lender's Counsel					\$0	\$0	
Local HFA Legal - U/W's Counsel					\$0	\$0	
SAIL Commitment Fee	\$20,000.00	\$62,412	\$20,000		\$227	\$20,000	
SAIL Closing Costs			\$12,500		\$142		
SAIL Interest					\$0		
SAIL-ELI Commitment Fee	\$6,000.00		\$6,000		\$68	\$6,000	
SAIL-ELI Closing Costs			\$6,500		\$74		
Misc Loan Origination Fee			\$43,000		\$489	\$43,000	
Misc Loan Closing Costs			\$12,500		\$142		
Misc Loan Interest					\$0		
NHTF Subsidy Layering Review			\$2,471		\$28	\$2,471	
NHTF Commitment Fee					\$0	\$0	
NHTF Closing Costs			\$12,500		\$142		
Legal Fees - Financing Costs					\$0		
Placement Agent/Underwriter Fee			0		\$0		
Initial TEFRA Fee					\$0	\$0	
Other: Construction Monitoring	\$15,000.00				\$0	\$0	
Other: Syndicator Legal	\$25,000.00	\$25,000	\$25,000		\$284	\$25,000	
Other: Truist Escrow	\$34,250.00				\$0		
Other: Truist/Grandbridge Third Parties		\$49,538	\$49,538		\$563		
<b>Total Financial Costs:</b>	<b>\$1,349,993</b>	<b>\$2,512,565</b>	<b>\$2,525,344</b>		<b>\$28,697</b>	<b>\$616,138</b>	
<b>Dev. Costs before Acq., Dev. Fee &amp; Reserves</b>	<b>\$24,945,816</b>	<b>\$36,035,757</b>	<b>\$36,110,039</b>		<b>\$410,341</b>	<b>\$1,945,920</b>	

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*Notes to Financial Costs:*

1. Construction Loan Origination Fee is based on the Borrower's estimate which includes fees associated with the original first mortgage from STI as well as additional fees associated with the new second mortgage from STI of \$6,200,000.
2. Construction Loan Interest is based on the Borrowers's estimate and appears reasonable.
3. Misc Loan Origination Fee consists of the 1% Viability commitment fee based on the Viability loan amount.
4. Misc Loan Closing Costs are \$12,500 for the Viability Loan.

DEVELOPER FEE ON NON ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Developer Fee - Unapportioned	\$4,431,066.61	\$6,436,436	\$6,436,436	\$73,141	
DF to fund Operating Debt Reserve				\$0	
DF to Brokerage Fees - Land				\$0	
DF to Excess Land Costs				\$0	
DF to Excess Bldg Acquisition Costs				\$0	
DF to Consultant Fees	\$50,000.00	\$50,000	\$50,000	\$568	
DF to Guaranty Fees				\$0	
Other:				\$0	
<b>Total Other Development Costs:</b>	<b>\$4,481,067</b>	<b>\$6,486,436</b>	<b>\$6,486,436</b>	<b>\$73,710</b>	<b>\$0</b>

*Notes to Other Development Costs:*

1. Developer Fee has been limited to 18% of the Development's construction cost, exclusive of land acquisition costs and reserves, as required per Rule.

LAND ACQUISITION COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Brokerage Fees - Land				\$0	\$0
Land Acquisition Cost				\$0	\$0
Land	\$1,760,000.00	\$1,760,000	\$1,760,000	\$20,000	\$1,760,000
Land Lease Payment				\$0	\$0
Land Carrying Costs				\$0	\$0
Other:				\$0	\$0
<b>Total Acquisition Costs:</b>	<b>\$1,760,000</b>	<b>\$1,760,000</b>	<b>\$1,760,000</b>	<b>\$20,000</b>	<b>\$1,760,000</b>

*Notes to Land Acquisition Costs:*

1. Per the Special Warranty Deed dated December 23, 2021, and accompanying Settlement Statement, reflected a purchase price of \$1,760,000.

RESERVE ACCOUNTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
Operating Deficit Reserve (FHFC)				\$0	\$0
Operating Deficit Reserve (Lender)				\$0	\$0
Operating Deficit Reserve (Syndicator)	\$236,500.00	\$236,500	\$236,500	\$2,688	\$236,500
Debt Service Coverage Reserve (FHFC)				\$0	\$0
Debt Service Coverage Reserve (Lender)				\$0	\$0
Debt Service Coverage Reserve (Syndicator)				\$0	\$0
Other:				\$0	\$0
<b>Total Reserve Accounts:</b>	<b>\$236,500</b>	<b>\$236,500</b>	<b>\$236,500</b>	<b>\$2,688</b>	<b>\$236,500</b>

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*Notes to Reserve Accounts:*

1. Operating Deficit Reserve (“ODR”) is in the amount required by the Syndicator, RJTCF, in the projections dated September 11, 2023.

TOTAL DEVELOPMENT COSTS	Applicant Costs	Revised Applicant Costs	Underwriters Total Costs CUR	Cost Per Unit	HC Ineligible Costs CUR
<b>TOTAL DEVELOPMENT COSTS:</b>	<b>\$31,423,382</b>	<b>\$44,518,693</b>	<b>\$44,592,975</b>	<b>\$506,738</b>	<b>\$3,942,420</b>

*Notes to the Total Development Costs:*

1. Total Development Costs have increased from \$31,423,382 to \$44,592,975, an increase of \$13,169,593, or 41.91%. The change in Total Development Costs is primarily due to increases in general development costs associated with construction such as building permit fees as well as increase in materials and financing costs.
2. Per RFA 2019-116, Total Development Cost (“TDC”) is limited on a per unit basis based on the construction type of the units as indicated by the Borrower. Based on the construction type of Mid-Rise – ESSC Construction, 5-6 stories, the maximum allowable per unit cost is \$465,995.59. Pembroke Tower II’s final TDC per unit is \$484,050.85. Per the TDC per Unit Template, Developer Fee would need to be reduced by \$851,433.

**Operating Pro forma**

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	4	793	22%			\$396	\$54	\$342		\$342	\$342	\$342	\$16,416
1	1.0	8	793	30%			\$540	\$54	\$486		\$486	\$486	\$486	\$46,656
1	1.0	22	793	60%			\$1,080	\$54	\$1,026		\$1,026	\$1,026	\$1,026	\$270,864
1	1.0	8	793	70%			\$1,260	\$54	\$1,206		\$1,206	\$1,206	\$1,206	\$115,776
1	1.0	8	793	80%			\$1,440	\$54	\$1,386		\$1,386	\$1,386	\$1,386	\$133,056
2	2.0	6	970	30%			\$648	\$59	\$589		\$589	\$589	\$589	\$42,408
2	2.0	20	970	60%			\$1,296	\$59	\$1,237		\$1,237	\$1,237	\$1,237	\$296,880
2	2.0	6	970	70%			\$1,512	\$59	\$1,453		\$1,453	\$1,453	\$1,453	\$104,616
2	2.0	6	970	80%			\$1,728	\$59	\$1,669		\$1,669	\$1,669	\$1,669	\$120,168
		88	76,510											\$1,146,840

Seltzer is in receipt of an appraisal from CBRE dated June 14, 2023, with an effective date of June 12, 2023. Pembroke Tower II is projected to achieve 2023 Maximum Allowable HC Rents published by Florida Housing on all units based on the appraiser’s estimate of achievable rents per comparable properties surveyed. The Borrower engaged Matern Professional Engineering, Inc. to prepare a UA Energy Consumption Model estimate. This model was approved by Florida Housing for underwriting on December 15, 2020. The Borrower has engaged Matern to provide an updated model and receipt of the updated model is a condition to close. The model reflects the residents paying for paying for water, sewer, pest control and trash pick-up and the Borrower paying for electricity. No manager/employee units are anticipated at this time.



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OPERATING PRO FORMA		ANNUAL	PER UNIT
INCOME	Gross Potential Rental Income	\$1,146,840	\$13,032
	Other Income:		
	Miscellaneous	\$25,000	\$284
	Washer/Dryer Rentals	\$0	\$0
	Cable/Satellite Income	\$0	\$0
	Gross Potential Income	\$1,171,840	\$13,316
	Less:		
Physical Vacancy Loss - Percentage: 4.0%	(\$46,874)	(\$533)	
Collection Loss - Percentage: 1.0%	(\$11,718)	(\$133)	
<b>Total Effective Gross Revenue</b>		\$1,113,248	\$12,651
EXPENSES	Fixed:		
	Real Estate Taxes	\$113,260	\$1,287
	Insurance	\$162,800	\$1,850
	Variable:		
	Management Fee - Percentage: 5.0%	\$55,662	\$633
	General and Administrative	\$40,000	\$455
	Payroll Expenses	\$110,000	\$1,250
	Utilities	\$82,344	\$936
	Marketing and Advertising	\$0	\$0
	Maintenance and Repairs	\$50,000	\$568
	Grounds Maintenance and Landscaping	\$0	\$0
	Resident Programs	\$0	\$0
	Reserve for Replacements	\$26,400	\$300
<b>Total Expenses</b>		\$640,466	\$7,278
<b>Net Operating Income</b>		\$472,782	\$5,373
<b>Debt Service Payments</b>			
DEBT SERVICE	First Mortgage - HFABC / Grandbridge	\$347,559	\$3,950
	Second Mortgage - FHFC - Viability	\$43,000	\$489
	Third Mortgage - FHFC - SAIL	\$20,000	\$227
	Fourth Mortgage - Broward County	\$0	\$0
	Fifth Mortgage - FHFC - SAIL ELI	\$0	\$0
	Sixth Mortgage - FHFC - NHTF	\$0	\$0
	First Mortgage Fees - HFABC / Grandbridge	\$15,900	\$181
	Second Mortgage Fees - FHFC - Viability	\$10,596	\$120
	Third Mortgage Fees - FHFC - SAIL	\$6,023	\$68
	Fourth Mortgage Fees - Broward County	\$0	\$0
	Fifth Mortgage Fees - FHFC - SAIL ELI	\$3,687	\$42
Sixth Mortgage Fees - FHFC - NHTF	\$3,687	\$42	
<b>Total Debt Service Payments</b>		\$450,452	\$5,119
<b>Cash Flow After Debt Service</b>		\$22,330	\$254

Debt Service Coverage Ratios	
DSC - First Mortgage plus Fees	1.301
DSC - Second Mortgage plus Fees	1.134
DSC - Third Mortgage plus Fees	1.067
DSC - Fourth Mortgage plus Fees	1.067
DSC - Fifth Mortgage plus Fees	1.058
DSC - Sixth Mortgage and Fees	1.050

Financial Ratios	
Operating Expense Ratio	57.5%
Break-Even Ratio	93.3%

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*Notes to the Operating Pro Forma and Ratios:*

1. As noted in the CUR, and subsequent MMRN Increase Letter, the Debt Service Coverage (“DSC”) for the first mortgage and SAIL was lower than the minimum of 1.10 to 1.00 as required by Rule 67-48. However, with the addition of the Viability loan second mortgage, the updated DSC for the first mortgage, Viability and SAIL is 1.067, which does not meet the Rule requirement. Per the Rule, the minimum DSC shall be 1.00 if the criteria is met. The Borrower met the criteria in the CUR, and subsequent MMRN Increase Letter, and since there are no changes in the permanent period MMRN terms and conditions, the Borrower still meets the criteria.
2. The Viability and SAIL will be repaid from available cash flow. The Break-Even Ratio would be 89.9% if the Viability interest payments were excluded. If the SAIL interest payments were excluded as well, the Break-Even Ratio would be 88.2%.
3. The Development will be utilizing Housing Credits, SAIL, ELI and NHTF which will impose rent restrictions. Pembroke Tower II is projected to achieve 2023 Maximum Allowable HC rents published by Florida Housing on all units based upon the Appraiser’s estimate of achievable rents per comparable properties surveyed. The Borrower engaged Matern Professional Engineering, Inc. (“Matern”) of Maitland, FL, to prepare a UA Energy Consumption Model Estimate. This model was approved by Florida Housing on December 15, 2020. The Borrower has engaged Matern to provide an updated model and receipt of the updated model is a condition to close. The model reflects the residents paying for electricity and the Borrower paying for water, sewer, pest control and trash pick-up.

**Change in General Contractor**

General Contractor Name: JWR Construction Services, Inc. (“JWR”)

Type: A Florida Corporation

Contact Person: Dustin DuBois, Chief Operating Officer

Telephone (216) 297-2170

E-Mail: [ddubois@jwrconstruction.com](mailto:ddubois@jwrconstruction.com)

Address: 1311 W Newport Center Drive, Suite C  
Deerfield Beach, FL 33442

Experience: JWR was created and licensed on July 4, 1985 as the construction division for a development subsidiary of Security Savings Bank, a publicly traded New Jersey financial institution. The resume indicates JWR has provided over 30 years of design/build, general contracting, construction management, Owner Agency and pre-construction consulting for clients throughout South Florida. In addition, an overview of JWR indicates they have a strong reputation as a full-services construction management company. They support over 35 charitable organizations throughout the United States and they have been recognized by Engineering News Record (“ENR”) as a Southeast Top Contractor since 2008.

JWR provided a list of seven FHFC developments, completed within the last few years, where they have served as the General Contractor.

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Jerry W. Dubois is the president and founding partner of JWR. A resume for Mr. DuBois reflects 43 years of experience and indicates he has participated in every role within the development/construction industry and has expertise in projects that require specialized skills sensitive to unique program requirements. Prior to JWR, Mr. DuBois was a partner in International Underground Inc., a Deerfield Beach based site and utility contracting firm.

Florida Certified General Contractor’s license No. CGC034031 is in the name of Dustin Jerry DuBois and JWR, with an expiration date of August 31, 2024.

**Credit Evaluation:** A comprehensive Business Credit Report for JWR, dated September 5, 2023, reflected satisfactory credit history with minor late payment activity. There were six UCC Filings shown.

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

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

**Surety:** Borrower provided Seltzer a copy of a July 18, 2023, letter from American Global, LLC (“American Global”), of Plantation, Florida, representing it has previously provided surety bonds on behalf of JWR through Liberty Mutual Insurance Company (“LMIC”). Currently, LMIC is willing to entertain bond requests in the \$80 million range for single projects with a \$150 million aggregate program for JWR. LMIC has an A (Excellent) rating and a Financial Size Category of XV (\$2 billion or greater) by A.M. Best Company, meeting FHFC Rule.

**Summary:** SMG recommends that JWR be accepted as the General Contractor for Pembroke Tower II, subject to the conditions thereof, if any.

**HC Allocation Calculation**

<b>Section I: Qualified Basis Calculation</b>	
Development Cost	\$44,592,975
Less Land Cost	(\$1,760,000)
Less Federal Funds	\$0
Less Other Ineligible Cost	(\$2,182,420)
Less Disproportionate Standard	\$0
<b>Total Eligible Basis</b>	<b>\$40,650,555</b>
Applicable Fraction	100.00%
DDA/QCT Basis Credit	130.00%
<b>Qualified Basis</b>	<b>\$52,845,722</b>
Housing Credit Percentage	4.00%
<b>Annual Housing Credit Allocation</b>	<b>\$2,113,829</b>

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*Notes to the Qualified Basis Calculation:*

1. Other ineligible costs primarily include a portion of site work, accounting fees, legal fees, permanent loan origination fees, FHFC loan commitment fees, FHFC administrative, application, and underwriting fees, market study and reserves.
2. The Borrower committed to a set aside of 100%. Therefore, Seltzer has utilized an Applicable Fraction of 100%.
3. The Development is located in a Difficult Development Area (“DDA”) and a Small Area DDA. Therefore, the 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% as therefore been applied.

<b>Section II: Gap Calculation</b>	
Total Development Cost (Including Land and Ineligible Costs)	\$44,592,975
Less Mortgages	(\$16,910,000)
Less Grants	\$0
Equity Gap	\$27,682,975
Percentage to Investment Partnership	99.99%
HC Syndication Pricing	\$0.9050
HC Required to Meet Gap	\$30,591,982
Annual HC Required	\$3,059,198

*Notes to the GAP Calculation:*

1. Mortgages include the Grandbridge first mortgage, FHFC Viability second mortgage, FHFC SAIL third mortgage, Broward County fourth mortgage, FHFC ELI fifth mortgage and FHFC NHTF sixth mortgage.
2. HC Syndication Pricing and Percentage to Investment Partnership are based upon the September 12, 2023, projections from RJTCF.

<b>Section III: Tax-Exempt Bond 50% Test</b>	
Total Depreciable Cost	\$40,650,555
Plus Land Cost	\$1,760,000
Aggregate Basis	\$42,410,555
Tax-Exempt Bond Amount	\$22,500,000
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	\$22,500,000
Proceeds Divided by Aggregate Basis	53.05%

Mr. Ralph Stone  
Pembroke Tower II  
September 27, 2023

*Notes to 50% Test:*

1. Seltzer estimates the Tax-Exempt MMRN amount to be 53.05% of Depreciable Development Costs plus Land Acquisition Costs.

<b>Section IV: Summary</b>	
HC per Qualified Basis	\$2,113,829
HC per Gap Calculation	\$3,059,198
Annual HC Recommended	\$2,113,829

*Notes to the Summary:*

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

Conclusion

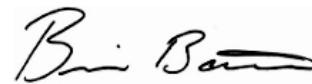
SMG's review indicates that an increase to the Truist first mortgage construction loan of \$6,200,000 will not adversely impact the transaction and/or HFABC's security position. Accordingly, SMG provides this analysis for HFABC consideration to approve the Borrower's request, subject to the following:

- Receipt and satisfactory review of the updated Market Study reflecting the requested change in set-asides to Average Income and that the rents are achievable.
- Receipt and satisfactory review of the updated Utility Allowance Model approved by Florida Housing.
- Review and approval of all loan documents consistent with the terms outlined above by HFABC, its Legal Counsel and Servicer.
- All closing conditions, as stated in the CUR, must be satisfied.
- All other due diligence required by HFABC, its Legal Counsel and Servicer.

Should you have any questions please feel free to contact me directly.

Sincerely,

SELTZER MANAGEMENT GROUP, INC.



Brian Barth  
Senior Credit Underwriter

**Exhibit 1**  
**Pembroke Tower II**  
**15 Year Income and Expense Projection**

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	\$1,146,840	\$1,169,777	\$1,193,172	\$1,217,036	\$1,241,376	\$1,266,204	\$1,291,528	\$1,317,359	\$1,343,706	\$1,370,580	\$1,397,992	\$1,425,951	\$1,454,470	\$1,483,560	\$1,513,231	
	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	\$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	\$0
	Cable/Satellite Income	\$0	\$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	\$0
	Alarm Income	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Gross Potential Income	\$1,171,840	\$1,195,277	\$1,219,182	\$1,243,566	\$1,268,437	\$1,293,806	\$1,319,682	\$1,346,076	\$1,372,997	\$1,400,457	\$1,428,466	\$1,457,036	\$1,486,176	\$1,515,900	\$1,546,218	
	Less:																
	Economic Loss - Percentage:																
	Physical Vacancy Loss - Percentage: 4.0%	(\$46,874)	(\$47,811)	(\$48,767)	(\$49,743)	(\$50,737)	(\$51,752)	(\$52,787)	(\$53,843)	(\$54,920)	(\$56,018)	(\$57,139)	(\$58,281)	(\$59,447)	(\$60,636)	(\$61,849)	
	Collection Loss - Percentage: 1.0%	(\$11,718)	(\$11,953)	(\$12,192)	(\$12,436)	(\$12,684)	(\$12,938)	(\$13,197)	(\$13,461)	(\$13,730)	(\$14,005)	(\$14,285)	(\$14,570)	(\$14,862)	(\$15,159)	(\$15,462)	
	<b>Total Effective Gross Revenue</b>	\$1,113,248	\$1,135,513	\$1,158,223	\$1,181,388	\$1,205,015	\$1,229,116	\$1,253,698	\$1,278,772	\$1,304,347	\$1,330,434	\$1,357,043	\$1,384,184	\$1,411,868	\$1,440,105	\$1,468,907	
<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	\$113,260	\$116,658	\$120,158	\$123,762	\$127,475	\$131,299	\$135,238	\$139,296	\$143,474	\$147,779	\$152,212	\$156,778	\$161,482	\$166,326	\$171,316	
	Insurance	\$162,800	\$167,684	\$172,715	\$177,896	\$183,233	\$188,730	\$194,392	\$200,223	\$206,230	\$212,417	\$218,790	\$225,353	\$232,114	\$239,077	\$246,250	
	Other	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
	Variable:																
	Management Fee - Percentage: 5.0%	\$55,662	\$56,776	\$57,911	\$59,069	\$60,251	\$61,456	\$62,685	\$63,939	\$65,217	\$66,522	\$67,852	\$69,209	\$70,593	\$72,005	\$73,445	
	General and Administrative	\$40,000	\$41,200	\$42,436	\$43,709	\$45,020	\$46,371	\$47,762	\$49,195	\$50,671	\$52,191	\$53,757	\$55,369	\$57,030	\$58,741	\$60,504	
	Payroll Expenses	\$110,000	\$113,300	\$116,699	\$120,200	\$123,806	\$127,520	\$131,346	\$135,286	\$139,345	\$143,525	\$147,831	\$152,266	\$156,834	\$161,539	\$166,385	
	Utilities	\$82,344	\$84,814	\$87,359	\$89,980	\$92,679	\$95,459	\$98,323	\$101,273	\$104,311	\$107,440	\$110,663	\$113,983	\$117,403	\$120,925	\$124,553	
	Marketing and Advertising	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Maintenance and Repairs	\$50,000	\$51,500	\$53,045	\$54,636	\$56,275	\$57,964	\$59,703	\$61,494	\$63,339	\$65,239	\$67,196	\$69,212	\$71,288	\$73,427	\$75,629	
	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	\$26,400	\$27,192	\$28,008	\$28,848	\$29,713	\$30,605	\$31,523	\$32,469	\$33,443	\$34,446	\$35,479	\$36,544	\$37,640	\$38,769	\$39,932	
	<b>Total Expenses</b>	\$640,466	\$659,124	\$678,330	\$698,101	\$718,453	\$739,404	\$760,971	\$783,174	\$806,030	\$829,558	\$853,780	\$878,715	\$904,384	\$930,810	\$958,014	
<b>Net Operating Income</b>	\$472,782	\$476,389	\$479,894	\$483,287	\$486,563	\$489,712	\$492,727	\$495,598	\$498,318	\$500,876	\$503,263	\$505,469	\$507,484	\$509,295	\$510,893		
<b>Debt Service Payments</b>																	
<b>DEBT SERVICE</b>	First Mortgage - HFABC / Grandbridge	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	\$347,559	
	Second Mortgage - FHFC - Viability	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	\$43,000	
	Third Mortgage - FHFC - SAIL	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	
	Fourth Mortgage - Broward County	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Fifth Mortgage - FHFC - SAIL ELI	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Sixth Mortgage - FHFC - NHTF	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	First Mortgage Fees - HFABC / Grandbridge	\$15,900	\$15,730	\$15,553	\$15,369	\$15,178	\$14,980	\$14,774	\$14,560	\$14,338	\$14,108	\$13,869	\$13,620	\$13,362	\$13,095	\$12,817	
	Second Mortgage Fees - FHFC - Viability	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	\$10,596	
	Third Mortgage Fees - FHFC - SAIL	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	\$6,023	
	Fourth Mortgage Fees - Broward County	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
	Fifth Mortgage Fees - FHFC - SAIL ELI	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	
	Sixth Mortgage Fees - FHFC - NHTF	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	\$3,687	
	<b>Total Debt Service Payments</b>	\$450,452	\$450,282	\$450,105	\$449,921	\$449,730	\$449,532	\$449,326	\$449,112	\$448,890	\$448,660	\$448,421	\$448,172	\$447,915	\$447,647	\$447,369	
<b>Cash Flow After Debt Service</b>	\$22,330	\$26,108	\$29,789	\$33,366	\$36,833	\$40,180	\$43,401	\$46,486	\$49,427	\$52,216	\$54,842	\$57,297	\$59,569	\$61,649	\$63,525		
<b>Debt Service Coverage Ratios</b>																	
DSC - First Mortgage plus Fees	1.301	1.311	1.322	1.332	1.341	1.351	1.360	1.369	1.377	1.385	1.392	1.399	1.406	1.412	1.418		
DSC - Second Mortgage plus Fees	1.134	1.143	1.152	1.160	1.169	1.177	1.185	1.192	1.199	1.206	1.213	1.219	1.224	1.229	1.234		
DSC - Third Mortgage plus Fees	1.067	1.076	1.084	1.092	1.100	1.108	1.115	1.122	1.129	1.135	1.141	1.147	1.152	1.157	1.161		
DSC - Fourth Mortgage plus Fees	1.067	1.076	1.084	1.092	1.100	1.108	1.115	1.122	1.129	1.135	1.141	1.147	1.152	1.157	1.161		
DSC - Fifth Mortgage plus Fees	1.058	1.067	1.075	1.083	1.091	1.098	1.106	1.113	1.119	1.126	1.132	1.137	1.142	1.147	1.151		
DSC - Sixth Mortgage and Fees	1.050	1.058	1.066	1.074	1.082	1.089	1.097	1.104	1.110	1.116	1.122	1.128	1.133	1.138	1.142		
<b>Financial Ratios</b>																	
Operating Expense Ratio	57.5%	58.0%	58.6%	59.1%	59.6%	60.2%	60.7%	61.2%	61.8%	62.4%	62.9%	63.5%	64.1%	64.6%	65.2%		
Break-Even Ratio	93.3%	93.1%	92.8%	92.6%	92.3%	92.1%	92.0%	91.8%	91.7%	91.5%	91.4%	91.3%	91.2%	91.2%	91.1%		

### Exhibit 2 – Viability Sizing Chart

Viability Loan Sizing Parameters and Metrics				Cash Flow Assumptions			
Select the Development	Pembroke Tower II			<b>Net Operating Income:</b>			
RFA of Active Award	RFA 2019-116			Total Effective Gross Income in CUR Yr 1	\$ 1,113,248.00		
Demographic Commitment	Elderly, Non-ALF			Total Operating Expenses in CUR Yr 1	\$ 640,466.40		
Total Number of Units	88			Net Operating Income in CUR Yr 1	\$ 472,781.60		
<b>Existing Competitive Active Awards:</b>		<b>Set-Aside Units</b>		<b>Actual Traditional 1st Mortgage:</b>			
9% HC Allocation	NA	NA	NA	<b>Proposed Amount of Traditional 1st Mortgage</b>	\$ 6,750,000.00		
SAIL	\$ 2,000,000	88		Traditional 1st Mtg Amortization (Years)	35.00		
ELI	\$ 600,000	9		Traditional 1st Mtg Interest Rate	3.770%		
NHTF	\$ 1,041,200	4		Traditional 1st Mtg Mortgage Constant	5.14902%		
HOME	NA	NA		Local HFA Bond Fees, if applicable	\$ 15,900.00		
<b>Tax Exempt Bond Financing:</b>				Traditional 1st Mtg DSCR (w/ fees)	1.21x		
If MMRB, how much is the Perm Amount?	\$ 6,750,000	NA		Net Cash Flow (NCF) after 1st Mtg Debt Service	\$ 82,574.54		
<b>Viability Funding Limits:</b>				Debt Service (DS) on FHFC Subsidy Loans (w/ fees)	\$ 33,733.00		
Gross Per Development Limit	\$ 4,300,000			NCF after FHFC Subsidy Loans DS & Fees	\$ 48,841.54		
Maximum Per Unit Limit	\$ 125,000			<b>RFA 2023-211 Minimum 1st Mortgage:</b>			
Net Per Development Limit (same as gross)	\$ 4,300,000			Maximum 1st Mtg DSCR from Viability RFA	1.30x		
Maximum Limit from PU Limit (88 units x \$125,000 PU)	\$ 11,000,000		Does the stated Eligible Request Amount need to be adjusted?	Sized Debt Service from maximum DSCR	\$ 363,678.15		
<b>Lesser of Net Per Development or PU Limit</b>	\$ 4,300,000			MMRB Fees to be included in Sized Debt Service	\$ 42,648.00		
<b>Viability Loan Sizing Parameters</b>				Sized Debt Service to be incorporated, net of fees	\$ 321,030.15		
a. Eligible Request Amount:	<select one>			Mortgage Constant to be incorporated	5.14902%		
Applicant's Request Amount	\$ 4,300,000		If so, how much should be deducted?	<b>Resulting minimum 1st Mtg</b>	\$ 6,234,777.80		
Per Development/PU Limit	\$ 4,300,000			NCF after resulting minimum 1st Mtg	\$ 109,103.45		
<b>Eligible Request Amount:</b>	\$ 4,300,000			NCF after FHFC Subsidy Loans DS & Fees	\$ 75,370.45		
b. Gap Analysis for Viability Sizing Purposes Only:				<b>Rule Chapter 67-48.0072(28)(g)2. Variables and Process:</b>			
<b>Permanent Funding Sources:</b>							
		<b>DS w/ Fees</b>	<b>DSCR</b>	<b>NCF</b>			
Traditional First Mortgage	\$ 6,972,182.55	\$ 385,747	1.2256x	\$ 87,034	Total Vacancy & Collection Rate in CUR	5.000%	
Viability	\$ 4,300,000.00	\$ 53,750	1.0757x	\$ 33,284	Revenue Growth Rate in CUR	2.000%	
SAIL	\$ 2,000,000.00	\$ 26,023	1.0156x	\$ 7,261	Operating Expense Growth Rate in CUR	3.000%	
ELI	\$ 600,000.00	\$ 3,855	1.0073x	\$ 3,406	Amortization to be incorporated (Years)	35.00	
NHTF	\$ 1,041,200.00	\$ 3,855	0.9991x	\$ (449)	Interest Rate to be incorporated	7.000%	
Broward County	\$ 3,860,000.00	\$ -	0.9991x	\$ (449)	Resulting Mortgage Constant for qualifying debt	7.66628%	
<additional source>	\$ -	\$ -	0.9991x	\$ (449)	Revenue Growth Rate to be incorporated	2.000%	
<additional source>	\$ -	\$ -	0.9991x	\$ (449)	Operating Expense Growth Rate to be incorporated	3.000%	
<additional source>	\$ -	\$ -	0.9991x	\$ (449)	Vacancy Rate to be incorporated	7.000%	
<additional source>	\$ -	\$ -	0.9991x	\$ (449)	Maximum DSCR for Year 1 NOI	1.50x	
HC Equity	\$ 19,627,568.00	\$ -			Maximum DSCR for Year 15 NOI	1.25x	
Deferred Developer Fee (95.46%)	\$ 6,192,024.45	\$ -			Minimum NCF PU Year 1 (after 1st Mtg DS Only)	\$1,000	
<b>Total Sources</b>	\$ 44,592,975.00	\$ 473,230	0.9991x	\$ (449)	Net Operating Income Year 1	NA	
Additional First Mortgage (Min 1st Sizing)	\$ -	\$ -			Net Operating Income Year 15	NA	
Additional First Mortgage (DCR Sizing)	\$ 222,182.55	\$ -			(a) Resulting Debt for Year 15 DSCR Limitations	NA	
					(b)(i) Resulting Debt for Year 1 DSCR Limitation	NA	
					(b)(ii) Resulting Debt for Year 1 NCS Limitation	NA	
					(b) Greater of (b)(i) or (b)(ii)	NA	
					Lesser of (a) or (b)	NA	
					<b>Sized Minimum 1st Mortgage per Rule</b>	NA	
					Resulting DSCR from Sized Minimum 1st Mortgage per Rule (using actual 1st mortgage debt structure)	NA	
Total Development Costs	\$ 44,592,975.00				<b>Verification Debt Coverage Ratio is Not Enhanced</b>		
Maximum Developer Fee Percentage	18%				<b>Prior Overall Debt Coverage Ratio</b>		
Total Developer Fee	\$ 6,486,436				Did the Proposed Development have a DSCR prior to the RFA 2023-211 Application Deadline?	Yes	
Minimum 30% Deferred Developer Fee	\$ 1,945,930.80				If yes, what was the Net Operating Income used in calculating the DSCR?	\$ 432,009.00	
<i>*Set-Asides for MMRB are expressed as the greater of MMRB Set-Asides or 4%HC Set-Asides for purposes of calculating Compliance Monitoring Fees on the MMRB loan.</i>					If yes, what was the total of all debt service and servicing fees of all applicable Permanent Sources of Funding used in calculating the DSCR?	\$ 432,419.00	
<b>Total FHFC Servicing Fees</b>				<b>Add'l MMRB Fees for Add'l 1st Mtg Funding</b>	If yes, what was the overall Debt Coverage Ratio, inclusive of all applicable Permanent Sources of Funding?	0.9991x	
					The actual overall Debt Coverage Ratio, inclusive of all actual applicable Permanent Sources of Funding (excludes any additional sized 1st Mtg) is:	1.0238x	
					The actual overall Debt Coverage Ratio, inclusive of all applicable Permanent Sources of Funding (inclusive of actual debts and applicable additional gap sized 1st Mtg) is:	1.0238x	
					With the Debt Coverage Ratio preliminarily enhanced after Viability, the RFA requires the insertion of an additional first mortgage amount in the gap analysis so the resulting inclusive debt service creates an updated Debt Coverage Ratio that is equal to the prior Debt Coverage Ratio with the Viability Loan re-sized accordingly. Given the loan structure of the proposed Traditional First Mortgage, it is recommended the 1st Mtg be artificially increased by an amount of \$222,182.55 for DCR sizing to achieve the intended DCR of 0.9991x.		
					<b>The existing debt coverage ratio of 0.9991x is being enhanced with the Viability Loan sizing process, but Additional First Mortgage sizing has been included in the gap process to size the Viability Loan per RFA requirements.</b>		
<b>Permanent Loan Servicing</b>							
MMRB Annual Fee	0.023%	\$ 1,552.50					
MMRB Annual Minimum	\$2,832	\$ 2,832.00					
<b>MMRB Permanent Loan Servicing Fee</b>		\$ 2,832.00					
Non-MMRB Annual Fee(s)	0.25%	\$ 19,853.00					
Non-MMRB Annual Minimum(s)	\$2,832	\$ 11,328.00					
Non-MMRB Annual Maximum(s)	\$11,232	\$ 44,928.00					
<b>Non-MMRB Permanent Loan Servicing Fee(s)</b>		\$ 21,414.00					
<b>Compliance Monitoring</b>							
MMRB Annual Base Fee	\$2,196	\$ 2,196.00					
Additional MMRB PSAU Fee	\$11.24	\$ -					
MMRB Minimum Annual Fee	\$3,216	\$ 3,216.00					
<b>MMRB Compliance Monitoring Fee</b>		\$ 3,216.00					
Non-MMRB Annual Base(s)	\$2,196	\$ -					
Additional Non-MMRB PSAU Fee(s)	\$11.24	\$ -					
Non-MMRB Annual Minimum(s)	\$3,432	\$ -					
Multiple Program Fee(s)	\$1,023	\$ 3,069.00					
<b>Non-MMRB Compliance Monitoring Fee(s)</b>		\$ 3,069.00					
<b>FHFC MMRB Ongoing Issuer Fees</b>							
MMRB Annual Fee	0.24%	\$ 16,200.00	\$ 533.24				
MMRB Annual Minimum	\$10,000	\$ 10,000.00					
<b>FHFC MMRB Trustee Fees</b>							
Flat Rate	\$4,500	\$ 4,500.00					

# **ITEM 9**



## **Housing Finance Authority of Broward County**

### *Dufresne CPA Services, PA – Overview of the September 2023 Financial Reports*

The following are items considered to be of note regarding the financial reports for the month of September 2023:

- Balance sheets (Attachments 1 and 2) changes relate primarily to individual cash and investment account activity, including payments to BOCC and cash received on investments.
- Audit adjustments posted to reverse accruals for items properly reported on audited financial statements and/or end of year closing entries.
- Profit and Loss (Attachments 3, 4, and 5) – Total income exceeds prior year, and as compared to budget, primarily as a result of the application and authority fees received in connection with increased bond issuance activity and positive change in market value of investment portfolio. Income items directly related to operations such as bond authority fees and application fees exceed budget and prior year as a result of developer applications and other activities that generate fees. Expenses are less than budget.

### *Cash vs Accrual Basis for P&L Budget to Actual comparison* (Attachment 5)

On a monthly basis the process to prepare the financial statements includes:

- a. Budgetary column – Cumulative 1/12 of the budgeted revenues and expenses are reported
- b. Actual column – Significant known revenue and expense items are accrued
  - a. Authority fees receivable are adjusted to correct accrual basis balance
  - b. Cumulative 1/12 of budgeted Personnel and Other Expenses due to BOCC are adjusted to correct accrual basis balance
  - c. Expenses for all invoices submitted to the HFA prior to month end are paid and recorded in the financial statements.
  - d. Bank and account management fees that are reported on the monthly bank statements are recorded as expense in the applicable month.

### **Index to Attachments**

- Attachment 1, Page 2: Balance Sheet (Flux Report – September 2023 comparison to August 2023)
- Attachment 2, Page 3: Balance Sheet (Flux Report – September 2023 comparison to September 2022)
- Attachment 3, Page 4: P&L (Flux Report – September 2023 comparison to August 2023)
- Attachment 4, Page 5: P&L (Flux Report – September 2023 comparison to September 2022)
- Attachment 5, Page 6: P&L (Flux Report – Budget to Actual)
- Attachment 6, Page 7: Aged Receivables Report as of September 30, 2023
- Attachment 7, Page 8-9: Wells Fargo Bank Reconciliation Report – Operating at September 30, 2023
- Attachment 8, Page 10: Cumulative Net Change in Investment Value as of September 30, 2023

**Attachment 1**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Balance Sheet (Flux Report)**  
**9/30/2023**

	<u>Sep-23</u>	<u>Aug-23</u>	<u>\$ Difference</u>	<u>% Difference</u>	<u>*Explanation</u>
<b>Assets</b>					
Cash-Wells Fargo	\$ 1,353,752	\$ 1,054,431	299,321	28%	<b>2</b>
Cash-LOC	6,735	6,707	28	0.4%	
Indemnification Fund -BNY					
Good Faith Deposits	\$ 225,000				
Indemnification Deposits	600,000				
Interest	<u>60,363</u>				
	885,363	956,306	(70,943)	-7%	<b>3</b>
Cash-BNY Mellon Custody Account	<u>1,870,090</u>	<u>872,938</u>	997,152	114%	<b>4</b>
Total Cash	<u>4,115,940</u>	<u>2,890,382</u>			
Investments-BNY Mellon Custody Account	11,386,936	12,477,726	(1,090,790)	-9%	<b>4</b>
Note Receivable-DPA	200,000	200,000	-	NA	
Authority Fees Receivable	11,509	115,558	(104,049)	-90%	<b>1,2</b>
Interest Receivable	103,424	102,813	611	1%	
Notes Receivable-CDC	146,528	147,500	(972)	-1%	
Notes Receivable - Mt. Olive	131,156	131,156	-	NA	
HFA Mortgage Receivables	6,797	6,845	(48)	-1%	
Whole Loan Mortgages Receivable	241,836	246,339	(4,503)	-2%	
Allowance for Doubtful Whole Loan Mortgages	(70,523)	(102,104)	31,581	-31%	<b>5</b>
HFA Land	621,704	621,704	-	NA	
HFA Buildings	1,036,000	1,036,000	-	NA	
Equipment	90,258	90,258	-	NA	
Capital Assets BOCC (Tagged)	127,474	127,474	-	NA	
Accumulated Depreciation -BOCC	(127,474)	(127,474)	-	NA	
Accumulated Depreciation, HFA	(815,459)	(815,459)	-	NA	
Total Assets	<u>17,206,106</u>	<u>17,148,718</u>			
<b>Deferred Outflows</b>					
Deferred outflows related to pension	<u>160,218</u>	<u>160,218</u>	-	NA	
Total Assets and Deferred outflows	<u>\$ 17,366,325</u>	<u>\$ 17,308,937</u>			
<b>Accrued Sick/Vacation, ST</b>					
Due to BOCC - Exp reimb	\$ 43,000	\$ 43,000	-	NA	
Good Faith Deposits	231,300	154,200	77,100	50%	<b>1</b>
Net Pension Liability - Pension	225,000	300,000	(75,000)	-25%	<b>3</b>
Net Pension Liability - HIS	478,858	478,858	-	NA	
Accrued Sick/Vacation, LT	155,814	155,814	-	NA	
Total Liabilities	<u>77,000</u>	<u>77,000</u>	-	NA	
	<u>1,210,972</u>	<u>1,208,872</u>			
<b>Deferred Inflows</b>					
Deferred inflows related to pension	<u>29,246</u>	<u>29,246</u>	-	NA	
<b>Equity</b>					
Beginning of year	14,642,901	14,642,901			
Prior Period Adjustment	6,220	6,220	-	NA	
Current Year Earnings	<u>1,476,985</u>	<u>1,421,697</u>			
Total Equity	<u>16,126,107</u>	<u>16,070,819</u>			
Total Liabilities, Deferred Inflows and Equity	<u>\$ 17,366,325</u>	<u>\$ 17,308,937</u>			

**\*Criteria to determine if explanations are required:**

**Cash and investment fluctuation explanations are provided for >=\$100,000 variance**

**Remaining items explanations are provided for >=10% and >=\$5,000 variance**

**NA No change as compared to prior month**

- 1 Timing of receipts/payments and accruals based on budget**
- 2 Closing and issuer fees deposited in current month**
- 3 Federation Plaza good faith deposit returned to borrower in current month**
- 4 Maturity in Investments-BNY used to purchase treasury in Cash-BNY**
- 5 Allowance adjusted to agree to Cenlar**

**Attachment 2**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**

**Balance Sheet (Flux Report)**  
**9/30/2023**

	Sep-23	Sep-22	\$ Difference	% Difference	*Explanation
<b>Assets</b>					
Cash-Wells Fargo	\$ 1,353,752	\$ 1,346,721	7,031	1%	
Cash-LOC	6,735	6,440	295	5%	
Indemnification Fund -BNY					
Good Faith Deposits	\$ 225,000				
Indemnification Deposits	600,000				
Interest	60,363				
	885,363	826,351	59,012	7%	<b>5</b>
Cash-BNY Mellon Custody Account	1,870,090	2,287,436	(417,346)	-18%	<b>2</b>
Total Cash	4,115,940	4,466,948			
Investments-BNY Mellon Custody Account	11,386,936	9,213,052	2,173,884	24%	<b>2,3</b>
Note Receivable-DPA	200,000	210,000	(10,000)	-5%	
Authority Fees Receivable	11,509	-	11,509	100%	<b>1</b>
Interest Receivable	103,424	16,322	87,102	534%	<b>1</b>
Notes Receivable-CDC	146,528	158,195	(11,667)	-7%	
Notes Receivable-Mt. Olive	131,156	141,156	(10,000)	-7%	
HFA Mortgage Receivables	6,797	7,358	(561)	-8%	
Whole Loan Mortgages Receivable	241,836	253,526	(11,690)	-5%	
Allowance for Doubtful Whole Loan Mortgages	(70,523)	(102,104)	31,581	-31%	<b>7</b>
Loan Receivable - SE FL CDF	-	473,983	(473,983)	-100%	<b>4</b>
Utility Deposit	-	1,925	(1,925)	-100%	
HFA Land	621,704	621,704	-	NA	
HFA Buildings	1,036,000	1,036,000	-	NA	
Equipment	90,258	90,258	-	NA	
Capital Assets BOCC (Tagged)	127,474	127,474	-	NA	
Accumulated Depreciation -BOCC	(127,474)	(127,474)	-	NA	
Accumulated Depreciation, HFA	(815,459)	(789,559)	(25,900)	3%	
Total Assets	17,206,106	15,798,763			
<b>Deferred Outflows</b>					
Deferred outflows related to pension	160,218	149,338	10,880	7%	
Total Assets and Deferred outflows	\$ 17,366,325	\$ 15,948,102			
<b>Liabilities</b>					
Accounts Payable	\$ -	\$ 12,581	(12,581)	-100%	<b>1</b>
Accrued Sick/Vacation, ST	43,000	39,000	4,000	10%	<b>6</b>
Due to BOCC - Exp reimb	231,300	206,860	24,440	12%	<b>1</b>
Good Faith Deposits	225,000	300,000	(75,000)	-25%	<b>8</b>
Net Pension Liability - Pension	478,858	136,813	342,045	250%	<b>6</b>
Net Pension Liability - HIS	155,814	182,602	(26,788)	-15%	<b>6</b>
Accrued Sick/Vacation, LT	77,000	77,000	-	NA	<b>6</b>
Total Liabilities	1,210,972	954,856			
<b>Deferred Inflows</b>					
Deferred inflows related to pension	29,246	315,521	(286,275)	-91%	<b>6</b>
<b>Equity</b>					
Beginning of year	14,642,901	15,854,087			
Prior Period Adjustment	6,220	(4,640)	10,860	-234%	<b>6</b>
Current Year Earnings	1,476,985	(1,171,722)			
Total Equity	16,126,106	14,677,725			
Total Liabilities, Deferred Inflows and Equity	\$ 17,366,325	\$ 15,948,102			

**\*Criteria to determine if explanations are required:**

Cash and investment fluctuation explanations are provided for >=\$100,000 variance

Remaining items explanations are provided for >=10% and >=\$5,000 variance

**NA** No change as compared to prior year

- 1** Timing of receipts/payments and accruals based on budget
- 2** Cash - BNY used to purchase Investments - BNY
- 3** Transfers from Cash - WF to BNY - Custody
- 4** SFCDF Loan repaid January 2023
- 5** Indemnity deposits received in current year
- 6** Audit adjustments
- 7** Allowance adjusted to agree to Cenlar
- 8** Federation Plaza good faith deposit returned to borrower September 2023

**Attachment 3**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report)**  
**9/30/2023**

	Sep-23	Aug-23	\$ Difference	% Difference to Prior Month	*Explanation
<b>Income</b>					
Bond Authority Fees	\$ 895,325	\$ 805,251	90,074	11%	<b>3</b>
Inducement Fees	9,000	9,000	-	0%	
Bond redemption and other income	31,581	-	31,581	100%	<b>4</b>
Application, TEFRA and Closing Fees	1,370,700	1,205,000	165,700	14%	<b>3</b>
MCC and Lender Program Income	600	600	-	0%	
Interest Income, Mortgages	481	443	38	9%	
Interest Income, BNY Mellon	418,119	386,430	31,689	8%	
Interest Income, LOC	295	267	28	10%	
Net Change in Investment Value	(67,123)	58,038	(125,161)	-216%	<b>2</b>
Interest Income, SFCDF Loan	3,495	3,495	-	0%	
Rent Income	121,044	121,044	-	0%	
<b>Total Income</b>	<b>\$ 2,783,517</b>	<b>\$ 2,589,568</b>			
<b>Expenses</b>					
Personnel Services, Broward Co	\$ 740,976	\$ 680,115	60,861	9%	
Other Expenses, Broward County	149,752	133,513	16,239	12%	<b>1</b>
Temporary Staffing	104	104	-	0%	
Professional Fees	190,450	174,340	16,110	9%	
Bank Management Fees	2,879	2,879	-	0%	
Advertising/Marketing	4,417	4,023	394	10%	
Dues and Membership Fees	2,595	2,595	-	0%	
Conference and Travel Expense	22,882	22,882	-	0%	
Building/Land Maintenance	114,371	72,730	41,641	57%	<b>1</b>
Utilities	30,121	26,705	3,416	13%	
Capital Outlay Expense	47,985	47,985	-	0%	
<b>Total Expenses</b>	<b>\$ 1,306,532</b>	<b>\$ 1,167,871</b>			
<b>Net Profit/(Loss)</b>	<b>\$ 1,476,985</b>	<b>\$ 1,421,697</b>	<b>55,288</b>	<b>4%</b>	

\*Explanations provided for >=10% and >= \$5,000 variance

- 1** Timing of receipts/payments and accruals based on budget
- 2** Gain/Loss related to current market conditions and changes in the composition of the investment portfolio
- 3** Fees collected in current month
- 4** Adjustments to Allowance for Doubtful Whole Loan Mortgages in current month

**"%Difference to Prior Month" Column Legend**

**100%** - Actual % change or no amount reported in one of the two columns

**0%** - Current month amount is equal to prior month amount

**Attachment 4**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report)**  
**9/30/2023**

	Sep-23	Sep-22	\$ Difference	% Difference to Prior Year	*Explanation
<b>Income</b>					
Bond Authority Fees	\$ 895,325	\$ 562,180	333,145	59%	4
Inducement Fees	9,000	7,500	1,500	20%	
Bond redemption & other income	31,581	-	31,581	100%	5
Compliance Monitoring Fees	-	500	(500)	100%	
Application, TEFRA and Closing Fees	1,370,700	245,419	1,125,281	459%	4
MCC and Lender Program Income	600	8,204	(7,604)	-93%	6
Interest Income, Mortgages	481	519	(38)	-7%	
Interest Income, BNY Mellon	418,119	228,510	189,609	83%	2
Net Change in Investment Value	(67,123)	(1,210,978)	1,143,855	-94%	2
Interest Income, FHLB LOC	295	45	250	556%	
Interest Income, SFCDF Loan	3,495	15,273	(11,778)	-77%	3
Rent Income	121,044	121,044	-	0%	
Total Income	<u>\$ 2,783,517</u>	<u>\$ (21,784)</u>			
<b>Expenses</b>					
Personnel Services, Broward Co	\$ 740,976	\$ 634,495	106,481	17%	1
Other Expenses, Broward County	149,752	200,811	(51,059)	-25%	1
Temporary Staffing	104	-	104	100%	
Professional Fees	190,450	151,950	38,500	25%	7
Bank Management Fees	2,879	3,867	(988)	-26%	
Advertising/Marketing	4,417	1,433	2,984	208%	
Dues and Membership Fees	2,595	4,620	(2,025)	-44%	
Conference and Travel Expense	22,882	18,026	4,856	27%	
Building/Land Maintenance	114,371	66,166	48,205	73%	8
Utilities	30,121	27,073	3,048	11%	
Capital Outlay Expense	47,985	41,497	6,488	16%	8
Total Expenses	<u>\$ 1,306,532</u>	<u>\$ 1,149,938</u>			
Net Profit/(Loss)	\$ 1,476,985	\$ (1,171,722)	2,648,707	-226%	2,4

\*Explanations provided for >=10% and >= \$5,000 variance

- 1 Timing of receipts/payments and accruals based on budget
- 2 Related to current market conditions and changes in the composition of the investment portfolio
- 3 SFCDF Loan repaid January 2023
- 4 Closing/issuer fees received on new bond issues in current FY
- 5 Adjustments to Allowance for Doubtful Whole Loan Mortgages in current FY
- 6 Less participants in MCC program as compared to prior years
- 7 Increased bond issuance resulted in higher professional fees
- 8 Anticipated and necessary routine maintenance/replacements

**"%Difference to Prior Year" Column Legend**

100% - Actual % change or no amount reported in one of the two columns

0% - Current year amount is equal to prior year amount

**Attachment 5**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**  
**Profit & Loss (Flux Report) Budget to Actual**  
**Year to Date As of September 2023**

	Selected Period	Budget for Selected Period	\$ Difference	% Difference to budget	*Explanation	Total Annual Budget Amount
<b>Income</b>						
Bond Authority Fees	\$ 895,325	\$ 525,000	(370,325)	-71%	<b>3</b>	\$ 525,000
Bond redemption & other income	31,581	394,354	362,773	92%	<b>1</b>	394,354
Application, TEFRA and Closing Fees	1,370,700	-	(1,370,700)	NA		-
MCC and Lender Program Income	600	4,200	3,600	86%		4,200
Interest Income, Mortgages	481	-	(481)	NA		-
Interest Income, BNY Mellon	418,119	300,000	(118,119)	-39%	<b>2</b>	300,000
Net Change in Investment Value	(67,123)	-	67,123	NA		-
Interest Income, FHLB LOC	295	-	(295)	NA		-
Interest Income, SFCDF Loan	3,495	-	(3,495)	NA		-
Rent Income	121,044	121,044	-	0%		121,044
<b>Total Income</b>	<b>\$ 2,783,517</b>	<b>\$ 1,344,598</b>				<b>\$ 1,344,598</b>
<b>Expenses</b>						
Personnel Services, Broward Co	\$ 740,976	\$ 730,328	(10,647)	-1%		\$ 730,328
Other Expenses, Broward County	149,752	194,870	45,118	23%	<b>1</b>	194,870
Temporary Staffing	104	-	(104)	NA		-
Professional Fees	190,450	221,000	30,550	14%	<b>1</b>	221,000
Bank Management Fees	2,879	5,600	2,721	49%		5,600
Advertising/Marketing	4,417	5,000	583	12%		5,000
Dues and Membership Fees	2,595	6,500	3,905	60%		6,500
Conference and Travel Expense	22,882	25,000	2,118	8%		25,000
Postage/FedEx	-	200	200	100%		200
Building/Land Maintenance	114,371	83,000	(31,371)	-38%	<b>4</b>	83,000
Utilities	30,121	23,100	(7,021)	-30%	<b>1</b>	23,100
Capital Outlay Expense	47,985	50,000	2,015	4%		50,000
<b>Total Expenses</b>	<b>\$ 1,306,532</b>	<b>\$ 1,344,598</b>				<b>\$ 1,344,598</b>
<b>Net Profit/(Loss)</b>	<b>\$ 1,476,985</b>	<b>\$ 0</b>				<b>\$ 0</b>

Budgeted Expenses - Actual Expenses = \$ 38,066 Under Budget
--

\* Explanations provided for >=10% and >= \$5,000 variance

- 1** Timing of receipts/payments and accruals based on budget
- 2** Related to current market conditions and changes in the composition of the investment portfolio
- 3** Closing/issuer fees received on new bond issues in current FY
- 4** Anticipated and necessary routine maintenance/replacements

NA - No Budget amount

100% - Actual is zero

**Attachment 6**  
**The Housing Finance Authority of Broward County**  
**110 NE Third Street, #300**  
**Fort Lauderdale, FL 33301**

**Aged Receivables**  
**9/30/2023**

	<b>Total Due</b>	<b>0 - 30</b>	<b>31 - 60</b>	<b>61 - 90</b>	<b>90+</b>
<b>BNY Mellon Authority fee receivable</b>					
	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total BNY Mellon Authority Fee Receivable</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Regions Authority fee receivable</b>					
2018 NW Gardens	\$ 11,509	\$ -	\$ -	\$ -	\$ 11,509
<b>Total Regions Authority Fee Receivable</b>	\$ 11,509	\$ -	\$ -	\$ -	\$ 11,509
<b>Total Authority Fee Receivable (combined)</b>	\$ 11,509	\$ -	\$ -	\$ -	\$ 11,509

# 2885 Broward Housing Finance Authority

110 NE Third Street #300  
Fort Lauderdale, FL 33301

Attachment 7

## Reconciliation Report

10/5/2023  
10:51:39 AM

Page 1

ID#	Date	Memo/Payee	Deposit	Withdrawal
<b>Checking Account: 1-1000 Cash-Wells Fargo</b>				
<b>Date of Bank Statement: 9/30/2023</b>				
<b>Last Reconciled: 8/31/2023</b>				
<b>Last Reconciled Balance: \$1,293,059.32</b>				
 <b>Cleared Checks</b>				
5435	8/31/2023	Zomermaand Financial Advisor		\$6,100.00
5436	8/31/2023	Sadowski Education Effort		\$0.00
5437	8/31/2023	Broward County Board of Coun		\$222,166.47
5438	8/31/2023	Dufresne CPA Services, PA		\$3,500.00
5439	8/31/2023	Coast to Coast Garage Door		\$1,700.00
5440	8/31/2023	4 Best Business Corp		\$103.55
GJ001259	9/1/2023	WF:Utilities debit		\$639.74
5443	9/26/2023	United Restoration of FL, LLC		\$16,224.57
GJ001258	9/29/2023	WF:Utilities debits		\$2,727.93
Total:			\$0.00	\$253,162.26
 <b>Cleared Deposits</b>				
GJ001257	9/8/2023	"WF:BrwdHsngSltns,2ndMtgP	\$1,059.06	
CR000244	9/25/2023	Payment; 2020 Federation Sun	\$28,777.37	
CR000246	9/25/2023	Payment; 2018 Emerald Palms	\$63,123.61	
CR000241	9/26/2023	Payment; 2021 Solaris	\$14,850.00	
CR000242	9/26/2023	Payment; 2006 Palms of Deerfi	\$5,652.00	
CR000247	9/26/2023	Payment; 2019 Regency Gard	\$13,477.60	
CR000239	9/27/2023	Payment; 2021 Pembroke Tow	\$14,670.00	
GJ001260	9/29/2023	WF:FederationPlaza Closing&	\$165,700.00	
CR000245	9/29/2023	2023 Federation Plaza for 000	\$53,572.54	
Total:			\$360,882.18	\$0.00
 <b>Outstanding Checks</b>				
5423	7/21/2023	Cadillac Graphics, Inc.		\$57.81
5441	9/26/2023	Amer-plus Janitorial & Mainten		\$4,016.48
5442	9/26/2023	Cadillac Graphics, Inc.		\$38.55
5444	9/26/2023	Trane		\$21,065.00
5445	9/26/2023	Holmes Lawn Services		\$335.00
5446	9/26/2023	TECO Peoples Gas		\$47.89
5447	9/26/2023	Zomermaand Financial Advisor		\$6,100.00
5448	9/26/2023	Dufresne CPA Services, PA		\$10,010.00
5449	9/26/2023	Sun-Sentinel		\$356.50
5450	9/26/2023	Sadowski Education Effort		\$5,000.00
Total:			\$0.00	\$47,027.23



# 2885 Broward Housing Finance Authority

Attachment 7, cont.

## Reconciliation Report

Page 2

10/5/2023  
10:51:39 AM

ID#	Date	Memo/Payee	Deposit	Withdrawal
-----	------	------------	---------	------------

Checking Account:	1-1000	Cash-Wells Fargo		
Date of Bank Statement:	9/30/2023			
Last Reconciled:	8/31/2023			
Last Reconciled Balance:	\$1,293,059.32			

### Outstanding Checks

#### Reconciliation

AccountEdge Pro Balance on 9/30/2023:	\$1,353,752.01
Add: Outstanding Checks:	\$47,027.23
Subtotal:	\$1,400,779.24
Deduct: Outstanding Deposits:	\$0.00
Expected Balance on Statement:	<u>\$1,400,779.24</u>

**Attachment 8**  
**Cumulative Net Change in Investment Value**  
**Prior Year-to-Date Comparison to Current Year-to-Date**

	<u>9/30/2022</u>	<u>9/30/2023</u>
BNY Mellon Custody Acct	<u>\$ (1,210,978)</u>	<u>\$ (67,123)</u>
<b>Cumulative Net Change in Investment Value</b>		<u>\$ 1,143,855</u>