

**BOARD ACTION REQUEST**  
**MULTIFAMILY FINANCE DIVISION**  
**OCTOBER 11, 2018**

Presentation, discussion, and possible action regarding the Issuance of Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018A and Taxable Multifamily Housing Revenue Bonds (Forestwood Apartments) Series 2018B Resolution No. 19-008 and a Determination Notice of Housing Tax Credits

**RECOMMENDED ACTION**

**WHEREAS**, the Board adopted an inducement resolution for Forestwood Apartments at the Board meeting on February 22, 2018;

**WHEREAS**, a 4% Housing Tax Credit application for the Forestwood Apartments, sponsored by LDG Development, was submitted to the Department on March 9, 2018;

**WHEREAS**, a Certification of Reservation was issued, in the amount of \$20,000,000, on August 13, 2018, with a bond delivery deadline of January 10, 2019; and

**WHEREAS**, the Executive Award and Review Advisory Committee (“EARAC”) recommends the issuance of Multifamily Housing Revenue Bonds (Series 2018A) and Taxable Multifamily Housing Revenue Bonds (Series 2018B) for Forestwood Apartments and the issuance of a Determination Notice;

**NOW, therefore, it is hereby**

**RESOLVED**, that the issuance of unrated Tax-Exempt Multifamily Housing Revenue Bonds Series 2018A (Forestwood Apartments) for \$20,000,000, Resolution No. 19-008 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, that the issuance of unrated Taxable Multifamily Housing Revenue Bonds Series 2018B (Forestwood Apartments) for \$3,000,000, Resolution No. 19-008 is hereby approved in the form presented to this meeting;

**FURTHER RESOLVED**, the issuance of a Determination Notice of \$1,422,455 in 4% Housing Tax Credits for Forestwood Apartments, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department’s website, is hereby approved in the form presented to this meeting; and

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

## **BACKGROUND**

*General Information:* The Bonds will be issued in accordance with Tex. Gov't. Code Chapter 2306, as amended, the Department's Enabling Statute (the "Statute"), which authorizes the Department to issue revenue bonds for its public purposes, as defined therein. The Statute provides that the Department's revenue bonds are solely obligations of the Department, and do not create an obligation, debt or liability of the State of Texas or a pledge or loan of faith, credit or taxing power of the State of Texas.

Forestwood Apartments is to be located at approximately 4540 Lasater Road in Balch Springs, Dallas County, and proposes the new construction of 220 units. The Certificate of Reservation from the Bond Review Board was issued under the Priority 3 designation, which does not have a prescribed restriction on the percentage of Area Median Family Income ("AMFI") that must be served; however, all of the units will be rent and income restricted at 60% of AMFI. The development will serve the general population and the land conforms to current zoning. The census tract (0173.01) has a median household income of \$53,415, is in the third quartile, and has a poverty rate of 13.7%.

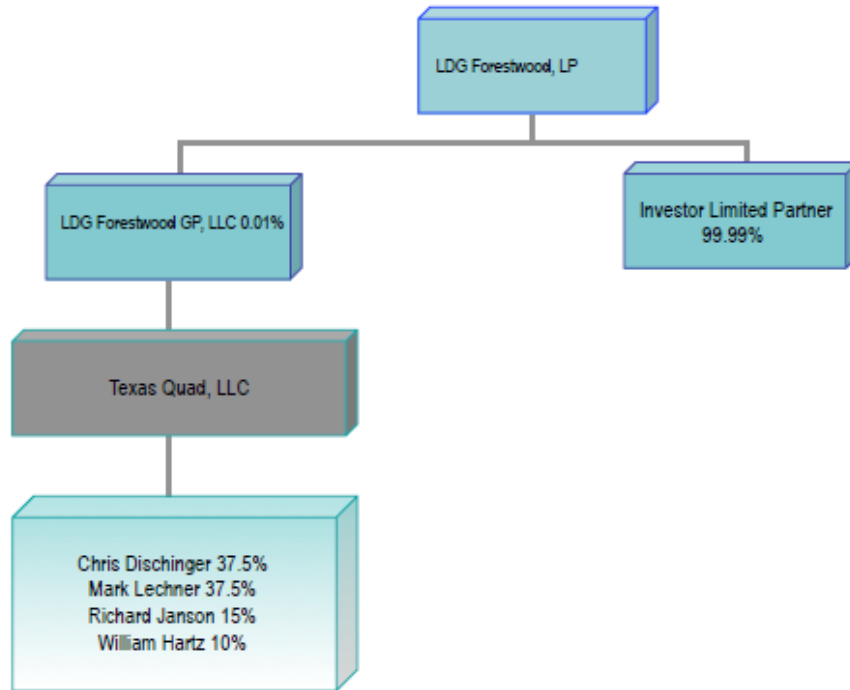
*Organizational Structure and Previous Participation:* The Borrower is LDG Forestwood, LP and includes the entities and principals as illustrated in Exhibit A. The applicant's portfolio is considered a Large Category 2 and the previous participation was deemed acceptable by EARAC without further review or discussion.

*Public Hearing/Public Comment:* A public hearing for the proposed development was conducted by staff on August 14, 2018. There were two people in attendance, both of which were in support of the proposed development. A copy of the hearing transcript is included herein along with the public comment received. The Department has received a letter of support from State Representative Cindy Burkett and no letters of opposition have been received.

### **Summary of Financial Structure**

The Department will issue unrated tax-exempt bonds in the amount of \$20,000,000 and taxable bonds in the amount of \$3,000,000 that will be purchased by R4 Capital Funding ("R4CF"), or designated capital partner, under their Direct Purchase Bond Program. The bonds will bear interest at a variable rate for the first 30 months, and there will be a forward starting swap in place at closing that will commence once the property has reached stabilization. The termination date of the swap will be May 1, 2036. The borrower will pay a fixed interest rate to the swap counterparty and the counterparty will pay a variable rate in return. While the Department is not a party to the swap agreement, the swap payments will flow through the indenture to the trustee. The interest rate on the bonds is anticipated to be the current index plus 2.00% to October 2021 and the current index times 79% plus 2.05% after October 2021, carry a 40-year term and 40 year amortization. The final maturity date for the tax-exempt bonds is October 1, 2058 and the maturity date for the taxable bonds is October 1, 2021.

# Exhibit A



## RESOLUTION NO. 19-008

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (FORESTWOOD), SERIES 2018A AND TAXABLE MULTIFAMILY HOUSING REVENUE BONDS (FORESTWOOD) SERIES 2018B; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

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

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A (the “Tax-Exempt Bonds”) and its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018B (the “Taxable Bonds” and together with the Tax-Exempt Bonds, the “Bonds”) pursuant to and in accordance with the terms of an Indenture of Trust (the “Indenture”) between the Department and BOKF, NA, as trustee (the “Trustee”), for the purpose of obtaining funds to finance the Development (defined below), all under and in accordance with the Constitution and laws of the State; and

WHEREAS, the Department desires to use the proceeds of the Bonds to fund a mortgage loan to LDG Forestwood, LP, a Texas limited partnership (the “Borrower”) in order to finance the cost of the acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the “Development”) located within the State and required

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

WHEREAS, the Board, by resolution adopted on February 22, 2018, declared its intent to issue its revenue bonds to provide financing for the Development; and

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

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

WHEREAS, it is anticipated that the Note will be secured by a subordinate Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Mortgage") from the Borrower for the benefit of the Department and assigned to the Trustee; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Regulatory and Land Use Restriction Agreement (the "Regulatory Agreement") with respect to the Development, which will be filed of record in the real property records of Dallas County, Texas; and

WHEREAS, the Board has determined that the Department, the Trustee, and the Borrower will execute a Tax Exemption Agreement (the "Tax Exemption Agreement") to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Development and to establish the expectations of the Department, the Trustee, and the Borrower as to future events regarding the Bonds, the Development, and the use and investment of Proceeds of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and Cedar Rapids Bank and Trust Company or another purchaser selected by R4 Capital Funding LLC (the "Purchaser"), setting forth certain terms and conditions upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, and the Bond Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Mortgage and the Note; has found the form and substance of such documents to be satisfactory and proper and the recitals contained therein to be true, correct and complete; and has determined, subject to the conditions set forth in Article 1, to authorize the issuance of the Bonds, the execution and delivery of the Issuer Documents, the acceptance of the

Mortgage and the Note and the taking of such other actions as may be necessary or convenient in connection therewith;

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

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

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

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. The Tax-Exempt Bonds shall bear interest at the Bond Coupon Rate, as defined in the Indenture and subject to adjustment as described in the Indenture; provided that (i) in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Tax-Exempt Bonds shall be \$20,000,000; (iii) the final maturity of the Tax-Exempt Bonds shall be October 1, 2058; and (iv) the price at which the Tax-Exempt Bonds are sold to the Purchaser shall be the principal amount thereof.

The Taxable Bonds shall bear interest at the Bond Coupon Rate, as defined in the Indenture and subject to adjustment as described in the Indenture; provided that (i) in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Taxable Bonds shall be \$3,000,000; (iii) the final maturity of the Taxable Bonds shall be October 1, 2021; and (iv) the price at which the Taxable Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.12 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

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

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the

Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Dallas County, Texas.

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

Section 1.7 Approval, Execution and Delivery of the Bond Purchase Agreement. That the sale of the Bonds to the Purchaser is hereby approved, that the form and substance of the Bond Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Bond Purchase Agreement and to deliver the Bond Purchase Agreement to the Borrower and the Purchaser.

Section 1.8 Acceptance of the Note and the Mortgage. That the form and substance of the Note and the Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Note to the order of the Trustee without recourse.

Section 1.9 Taking of Any Action; Execution and Delivery of Other Documents. That the Authorized Representatives are each hereby authorized to take any actions and to execute, attest and affix the Department's seal to, and to deliver to the appropriate parties, all such other agreements, commitments, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers, whether or not mentioned herein, as they or any of them consider to be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.10 Power to Revise Form of Documents. That, notwithstanding any other provision of this Resolution, the Authorized Representatives are each hereby authorized to make or approve such revisions in the form of the documents attached hereto as exhibits as, in the judgment of such Authorized Representative, and in the opinion of Bracewell LLP, Bond Counsel to the Department, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution, such approval to be evidenced by the execution of such documents by the Authorized Representatives.

Section 1.11 Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

- Exhibit A - Description of Development
- Exhibit B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Tax Exemption Agreement
- Exhibit F - Bond Purchase Agreement
- Exhibit G - Note
- Exhibit H - Mortgage

Section 1.12 Authorized Representatives. That the following persons are each hereby named as authorized representatives of the Department for purposes of executing, attesting, affixing the Department’s seal to, and delivering the documents and instruments and taking the other actions referred to in this Article 1: the Chair or Vice Chair of the Board, the Executive Director of the Department, the Director of Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Texas Homeownership Program of the Department and the Secretary or any Assistant Secretary to the Board. Such persons are referred to herein collectively as the “Authorized Representatives.” Any one of the Authorized Representatives is authorized to act individually as set forth in this Resolution.

## ARTICLE 2

### APPROVAL AND RATIFICATION OF CERTAIN ACTIONS

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

Section 2.2 Approval of Submission to the Attorney General. That the Board hereby authorizes, and approves the submission by the Department’s Bond Counsel to the Attorney General, for his approval, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

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

Section 2.4 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond



Purchase Agreement and the requirements of Bond Counsel to the Department, provided such engagement is done in accordance with applicable law of the State.

Section 2.6 Ratifying Other Actions. That all other actions taken by the Executive Director of the Department and the Department staff in connection with the issuance of the Bonds and the financing of the Development are hereby ratified and confirmed.

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

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

(a) Need for Housing Development.

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

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

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

(b) Findings with Respect to the Borrower.

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

(ii) that the Borrower is financially responsible, and

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

(c) Public Purpose and Benefits.

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

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

Section 3.2 Determination of Eligible Tenants. That the Board has determined, to the extent permitted by law and after consideration of such evidence and factors as it deems relevant, the findings of the staff of the Department, the laws applicable to the Department and the provisions of the Act, that eligible tenants for the Development shall be (1) individuals and families of low and very low income, (2) persons with special needs, and (3) families of moderate income, with the income limits as set forth in the Tax Exemption Agreement and the Regulatory Agreement.

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

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

## ARTICLE 4

### GENERAL PROVISIONS

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

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

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

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

*[Execution page follows]*

PASSED AND APPROVED this 11th day of October, 2018.

[SEAL]

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Chair, Governing Board

ATTEST:

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Secretary to the Governing Board

**EXHIBIT A**

**Description of Development**

Borrower: LDG Forestwood, LP, a Texas limited partnership

Development: The Development is a 220-unit affordable multifamily community to be known as Forestwood and to be located at 4012 S. Beltline Road, Balch Springs, Texas 75181. It consists of four (4) residential apartment buildings with approximately 190,149 net rentable square feet. The unit mix will consist of:

58	one-bedroom/one-bath units
126	two-bedroom/two-bath units
36	three-bedroom/two-bath units
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220	Total Units

Unit sizes will range from approximately 668 square feet to approximately 1,355 square feet.

# 18600 Forestwood - Application Summary

REAL ESTATE ANALYSIS DIVISION  
January 0, 1900

PROPERTY IDENTIFICATION		RECOMMENDATION						KEY PRINCIPAL / SPONSOR				
Application #	18600	TDHCA Program	Request	Recommended				LDG Multifamily, LLC Justin Hartz				
Development	Forestwood	LIHTC (4% Credit)	\$1,422,455	\$1,422,455	\$6,466/Unit	\$0.91						
City / County	Balch Springs / Dallas											
Region/Area	3 / Urban											
Population	General											
Set-Aside	General											
Activity	New Construction	Private Activity Bonds	\$19,950,000	4.90%	40	40	1	Related Parties	Contractor - Yes	Seller - No		

TYPICAL BUILDING ELEVATION/PHOTO

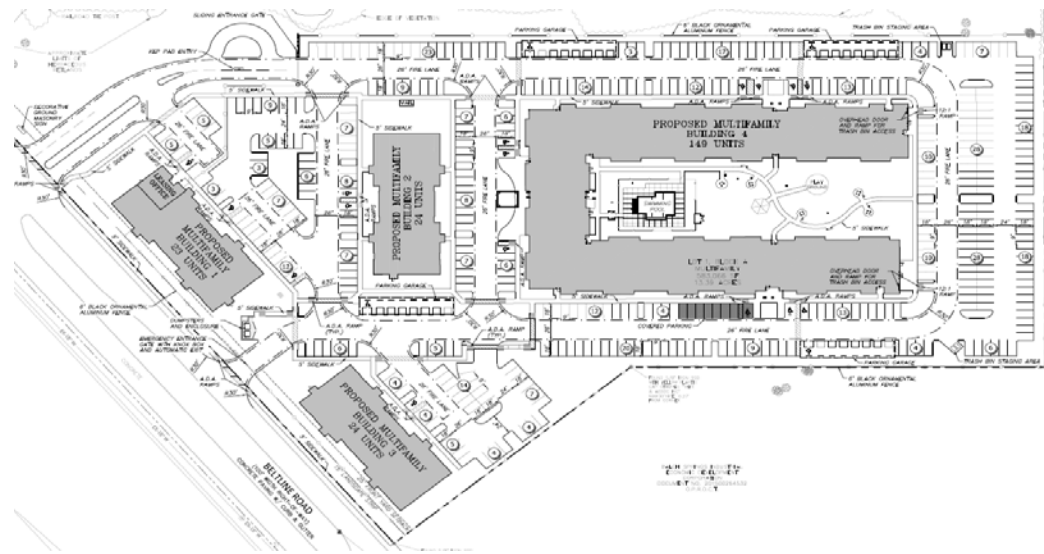


UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	30%	-	0%
1	58	26%	40%	-	0%
2	126	57%	50%	-	0%
3	36	16%	60%	220	100%
4	-	0%	MR	-	0%
<b>TOTAL</b>	<b>220</b>	<b>100%</b>	<b>TOTAL</b>	<b>220</b>	<b>100%</b>

PRO FORMA FEASIBILITY INDICATORS

Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	44.6%
Breakeven Occ.	86.0%	Breakeven Rent	\$892
Average Rent	\$961	B/E Rent Margin	\$69
Property Taxes	\$960/unit	Exemption/PILOT	0%
Total Expense	\$4,858/unit	Controllable	\$2,785/unit

SITE PLAN



MARKET FEASIBILITY INDICATORS

Gross Capture Rate (15% Maximum)	11.5%		
Highest Unit Capture Rate	38%	2 BR/60%	126
Dominant Unit Cap. Rate	38%	2 BR/60%	126
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY

Costs Underwritten		Applicant's Costs	
Avg. Unit Size	864 SF	Density	16.4/acre
Acquisition	\$05K/unit		\$1,125K
Building Cost	\$92.56/SF		\$80K/unit
Hard Cost			\$99K/unit
Total Cost			\$169K/unit
Developer Fee	\$4,338K	(99% Deferred)	Paid Year: 15
Contractor Fee	\$3,051K	30% Boost	Yes

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
R4 Capital (TDHCA Issued)	40/40	4.90%	\$19,950,000	1.15						R4 Capital	\$12,944,342	
										LDG Multifamily	\$4,249,306	
										<b>TOTAL EQUITY SOURCES</b>	<b>\$17,236,648</b>	
										<b>TOTAL DEBT SOURCES</b>	<b>\$19,950,000</b>	
<b>TOTAL DEBT (Must Pay)</b>			<b>\$19,950,000</b>		<b>CASH FLOW DEBT / GRANTS</b>				<b>\$0</b>		<b>TOTAL CAPITALIZATION</b>	<b>\$37,186,648</b>

**CONDITIONS**

- Receipt and acceptance by Cost Certification:
- Architect certification that all noise assessment recommendations were implemented and the Development is compliant with HUD noise guidelines.

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

**BOND RESERVATION / ISSUER**

Issuer	TDHCA
Expiration Date	1/10/2019
Bond Amount	\$20,000,000
BRB Priority	3
Close Date	10/23/2018
Bond Structure	Private Placement
% Financed with Tax-Exempt Bonds	66.3%

**RISK PROFILE**

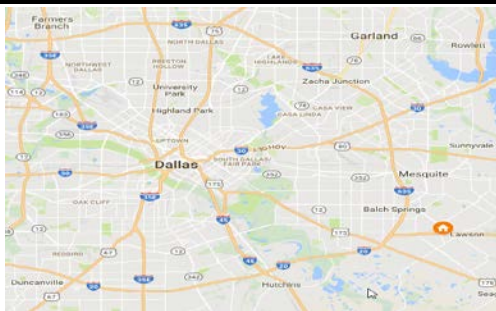
STRENGTHS/MITIGATING FACTORS

- Low expense-to-income ratio
- Low break-even margins
- Connection to regional storm water detention
- Two building styles allows flexibility in marketing

WEAKNESSES/RISKS

- Marginal debt coverage
- Deferred Developer Fee repaid in year 15

**AREA MAP**



**AERIAL PHOTOGRAPH(S)**



# TEXAS HOUSE OF REPRESENTATIVES



Capitol Office  
Room GN.10  
P.O. Box 2910  
Austin, Texas 78768-2910  
(512) 463-0464  
Fax (512) 463-9295

District Office  
3200 Broadway, #240  
Garland, Texas 75043  
(972) 278-7276

## CINDY BURKETT DISTRICT 113

January 19, 2018

Ms. Marni Holloway, Director Multifamily Finance  
c/o Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin TX 78711

RE: Forestwood  
TDHCA Application No. – 18600  
LDG FORESTWOOD, LP

Dear Ms. Holloway:

As State Representative of District 113 of Texas, I support the proposed community development referenced above.

The development as proposed would be located at 4540 Lasater Road in Balch Springs, Texas. I find that it will serve the community well by providing much needed affordable housing, and I look forward to seeing the development come to fruition.

If we can be of assistance to you in the future, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Cindy Burkett". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cindy Burkett  
State Representative  
District 113



— COMMITTEES —

REDISTRICTING, CHAIR • LOCAL & CONSENT CALENDARS • PUBLIC HEALTH • TRANSPORTATION • SUNSET ADVISORY COMMISSION  
HEALTH & HUMAN SERVICES TRANSITION LEGISLATIVE OVERSIGHT



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PUBLIC HEARING  
ON  
ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS  
RELATING TO  
FORESTWOOD

Auditorium  
Balch Springs Public Library Learning Center  
12450 Elam Road  
Balch Springs, Texas

Tuesday,  
August 14, 2018  
5:45 p.m.

BEFORE: SHANNON ROTH, Hearing Officer

ON THE RECORD REPORTING  
(512) 450-0342

I N D E X

<u>SPEAKER</u>	<u>PAGE</u>
Jake Brown	8
Helen Shelby	11

P R O C E E D I N G S

1  
2 MS. ROTH: My name is Shannon Roth, and I'm  
3 with TDHCA. The role of the department in this process is  
4 to allow all interested persons in the surrounding  
5 community the opportunity to provide comments on the  
6 development we will be discussing this evening.

7 The format of this evening's hearing will be as  
8 follows: I will present the programs the developer has  
9 applied for. Then the developer or member of the  
10 development team will give a presentation with specifics  
11 on the development, and lastly I will read a speech  
12 required by the Internal Revenue Service, and then at the  
13 conclusion of that speech, we'll open up the floor for any  
14 public comment.

15 There are handouts for you on the back table.  
16 We have multifamily affordable rental housing handout, a  
17 couple of handouts regarding specifics on the development,  
18 which include income levels and also deadlines for public  
19 input and how to submit that input.

20 We have our email listserv subscription  
21 handout, which allows the opportunity to sign up to  
22 receive emails on applications we receive for funding.

23 We have a handout regarding fair housing  
24 basics, and there are business cards back there with  
25 contact information.

1           If you would like to speak, there are witness  
2 affirmation forms available on the back table. Please  
3 fill out a form and hand it to a staff person prior to  
4 speaking.

5           There are sign-in sheets, also, on the back  
6 table; please be sure to sign in. That's the only we have  
7 of knowing exactly how many people are in attendance.

8           Also, there are columns for you to check either  
9 in support or opposition, or if you don't check either one  
10 of those boxes, then we will count you as neutral. So  
11 please be sure you have -- if you feel strongly one way or  
12 the other, be sure to indicate that.

13           The entire hearing and all of the comments made  
14 here this evening will be transcribed by the court  
15 reporter. It is important that you make your comments at  
16 the microphone, so that she can record your comments. Any  
17 comments or questions made from the audience may not be  
18 picked up and on the record.

19           To allow everyone the opportunity to speak, we  
20 will answer any questions or concerns that were raised at  
21 the end, after all public comment has been made.

22           I ask that the developer keep a list of any  
23 questions that come up as it relates to the development  
24 specifically, and I will keep a list as it relates to the  
25 department.

1           According to the IRS code, the department is  
2 required to hold a public hearing to take public comment.

3           The mission of the department is to help Texans achieve  
4 an improved quality of life through the development of  
5 better communities.

6           The two programs the developer has applied for  
7 are the Private Activity Bond Program and the Housing Tax  
8 Credit Program. Both programs were created by the federal  
9 government to encourage private industry to build quality  
10 housing that is affordable to individuals and families  
11 with lower-than-average income.

12           The Private Activity Bond Program refers to the  
13 issuance of tax-exempt bonds. The tax exemption is not an  
14 exemption of property tax but rather an exemption to the  
15 purchaser of the bonds. The bond purchaser does not have  
16 to pay taxes on their investment and the income they make  
17 on that investment.

18           The bond purchaser accepts a lower rate of  
19 return; therefore, the lender that is involved will charge  
20 a lower rate of interest for the mortgage that will be  
21 placed on the property to the developer. Therefore, the  
22 developer can provide a market-rate property at a lower  
23 cost of the development.

24           The Housing Tax Credit is another program that  
25 goes along with the bond program. The Housing Tax Credit

1 Program was created as a result of the Tax Reform Act of  
2 1986. The housing tax credit is a credit or reduction in  
3 tax liability each year for 10 years for investors in  
4 affordable rental housing.

5 By providing a credit against the tax  
6 liability, the housing tax credit is an incentive for  
7 individuals and corporations to invest in construction or  
8 rehabilitation of housing for low-income families.

9 The housing tax credit provides additional  
10 financing to the development and lowers building costs,  
11 which also allows the developer to provide lower rents to  
12 affordable tenants.

13 In conclusion, with both these programs, the  
14 tax benefit goes to the investors to help finance the  
15 development. The programs result in the developer being  
16 able to bring something of high quality to your area. And  
17 all of these properties are privately owned and privately  
18 managed.

19 There are ongoing oversight responsibilities  
20 between the affordable-housing developments and the  
21 department. This includes regular monitoring to ensure  
22 the development is complying with the rules of the Housing  
23 Tax Credit Program, as well as the Private Activity Bond  
24 Program.

25 The term that the developments will be

1 monitored is the greater of 30 years or as long as the  
2 bonds are outstanding.

3 Oversight responsibilities include making sure  
4 units are occupied by eligible households, the physical  
5 appearance and safety of the structures, rents are kept at  
6 appropriate levels, repair reserve accounts are  
7 established and funded. Tenant background checks are  
8 established by the developer and would apply to all  
9 tenants equally.

10 And the developer can establish procedures up  
11 to and including eviction for various reasons consistent  
12 with state eviction laws that would be applicable to other  
13 apartment complexes. TDHCA does not set those  
14 requirements.

15 The department's Compliance Division monitors  
16 the development every two years. Desk reviews are done  
17 quarterly or annually by the department and are a modified  
18 version of an onsite visit. The department verifies that  
19 the set-asides are met and that units are income- and  
20 rent-restricted.

21 After lease-up, a survey is usually done to  
22 determine tenant profile and the types of services that  
23 would be of interest to the tenants. Some of these  
24 services may include tutoring, computer access, after-  
25 school activities, health screening, GED certifications,

1 ESL programs; basically whatever those tenants might be  
2 interested in.

3 Jake, do you have a brief presentation on the  
4 development? And then we'll read the speech and allow you  
5 to make any comments if you need to.

6 MR. BROWN: Jake Brown, LDG Development, for  
7 the developer on the project. This is the one at 4540  
8 Lasater Road, so it's the one right by city hall.

9 So we're working on the project right now.  
10 We're probably slated to close and begin construction I'm  
11 guessing probably in the middle of October, is what we're  
12 talking about.

13 It's 220 units. It's got one continuous-  
14 corridor building. It's got three garden-style buildings.

15 All the units will be restricted to 60 percent AMI, the  
16 area median income. It's got one-, two-, and three-bedroom,  
17 and there's no age restriction on this property, so it  
18 will be open to anyone.

19 I'm guessing based on our mid-October start of  
20 construction we're looking at probably spring of 2023  
21 being fully completed and open.

22 Other than that, this is kind of a brief  
23 overview.

24 So you want to do that first and then do  
25 questions?



1 MS. ROTH: Sure.

2 And he did bring handouts back there.

3 MR. BROWN: Yeah, and there are handouts back  
4 there from us. It just kind of gives you a brief overview  
5 of what I just --

6 MS. ROTH: Okay. So I'm going to go ahead and  
7 read the speech that the IRS requires us to do.

8 Good evening. My name is Shannon Roth. I  
9 would like to proceed with the public hearing. Let the  
10 record show that it is 5:47 p.m., Tuesday, August 14,  
11 2018, and we are at the City of Balch Springs Public  
12 Library Learning Center located at 12450 Elam Road, Balch  
13 Springs, Texas 75180.

14 I am here to conduct a public hearing on behalf  
15 of the Texas Department of Housing and Community Affairs  
16 with respect to an issue of tax-exempt multifamily revenue  
17 bonds for a residential rental community.

18 This hearing is required by the Internal  
19 Revenue Code. The sole purpose of this hearing is to  
20 provide a reasonable opportunity for interested  
21 individuals to express their views regarding the  
22 development and the proposed bond issuance.

23 No decisions regarding the development will be  
24 made at this hearing. The Department's board is scheduled  
25 to meet to consider the transaction on September 6, 2018.

1 In addition to providing your comments at this hearing,  
2 the public is also invited to provide comment directly to  
3 the board at any of their meetings.

4 The bonds will be issued as tax-exempt  
5 multifamily revenue bonds in an aggregate principal amount  
6 not to exceed \$20 million and taxable bonds, if necessary,  
7 in an amount to be determined and issued in one or more  
8 series by the Texas Department of Housing and Community  
9 Affairs, the Issuer.

10 The proceeds of the bonds will be loaned to LDG  
11 Forestwood, LP, or a related person or affiliate entity  
12 thereof, to finance a portion of the cost of acquiring,  
13 constructing, and equipping a multifamily rental housing  
14 development described as follows: a 220-unit multifamily  
15 residential rental development to be constructed on  
16 approximately 13.39 acres of land located at approximately  
17 4540 Lasater Road, Balch Springs, Dallas County, Texas  
18 75181.

19 The proposed multifamily rental housing  
20 community will be initially owned and operated by the  
21 borrower or a related person or affiliate thereof.

22 So now I would like to open the floor for  
23 public comment if anybody would like to.

24 MS. SHELBY: [inaudible].

25 THE REPORTER: I'm sorry. Would you come up

1 here if you have a comment.

2 MS. ROTH: Could you just state your name for  
3 the record.

4 MS. SHELBY: Yeah. My name's Helen Shelby.

5 MS. ROTH: Helen Shelby?

6 MS. SHELBY: Yes. Helen Shelby.

7 And is this a senior complex or is --

8 MR. BROWN: It is not.

9 MS. SHELBY: Okay. I thought I heard you say  
10 that there's no age restriction.

11 MR. BROWN: No, ma'am.

12 MS. SHELBY: So it's a multifamily.

13 MR. BROWN: It's open to anybody.

14 MS. SHELBY: Okay.

15 MS. ROTH: General population.

16 MS. SHELBY: Okay. And is there a senior  
17 complex in the works also for that area?

18 MR. BROWN: We have not had -- we do not  
19 currently have one in the works.

20 MS. SHELBY: Okay.

21 MR. BROWN: We've had conversations in the past  
22 about doing one in Balch Springs --

23 MS. SHELBY: Yeah, I thought we did.

24 MR. BROWN: -- with the City, but as of right  
25 now, no.

1 MS. SHELBY: Okay.

2 MS. ROTH: That's it? No more questions?

3 MS. SHELBY: Thank you. And what was your  
4 name, sir?

5 MR. BROWN: My name's Jake Brown.

6 MS. SHELBY: Jake Brown.

7 MS. ROTH: Do you have a card she might can  
8 take?

9 MR. BROWN: I did, and then I gave them out all  
10 today. I'm sorry.

11 MS. SHELBY: That's okay. I've got your name  
12 written down on here, along with Sarah Ross, is it?

13 MS. ROTH: Shannon --

14 MS. SHELBY: Shannon.

15 MS. ROTH: -- Roth.

16 THE REPORTER: What was your first name?

17 MS. SHELBY: Helen.

18 MS. ROTH: Helen, H-E-L-E-N?

19 MS. SHELBY: Helen, Helen.

20 THE REPORTER: H-E-L-E-N.

21 MS. ROTH: Well, thank you for attending the  
22 hearing. The comments have been recorded. The meeting is  
23 adjourned, and the time is now 5:50 p.m.

24 (Whereupon, at 5:50 p.m., the public hearing  
25 was concluded.)

C E R T I F I C A T E

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IN RE: Forestwood

4

LOCATION: Balch Springs, Texas

5

DATE: August 14, 2018

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I do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Barbara Wall before the Texas Department of Housing and Community Affairs.

11

DATE: August 15, 2018

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21

  
(Transcriber)

22

On the Record Reporting  
7703 N. Lamar Blvd., Ste. 515  
Austin, Texas 78752

23

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**INDENTURE OF TRUST**

**by and between**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**and**

**BOKF, NA,**

**as Trustee**

**Dated as of October 1, 2018**

**Relating to:**

**\$20,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018A**

**and**

**\$3,000,000**

**Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018B**

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## **INDENTURE OF TRUST**

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of October 1, 2018, made and entered into by and between Texas Department of Housing and Community Affairs, a public, and official agency of the State of Texas (together with its successors and assigns, the “Issuer”), and BOKF, NA, a national banking association, as trustee (together with any successor trustee hereunder and their respective successors and assigns, (the “Trustee”),

### **WITNESSETH:**

**WHEREAS**, by virtue of the authority of the laws of the State of Texas, and particularly the Act, the Issuer is empowered to issue its revenue bonds and to use the proceeds thereof to provide money to aid in financing the acquisition, construction and equipping of residential rental property for dwelling units; and

**WHEREAS**, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (Forestwood), Series 2018A in the original aggregate principal amount of \$20,000,000 (the “Tax-Exempt Bonds”) and its Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B in the original aggregate principal amount of \$3,000,000 (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Bonds”), for the purpose of financing the cost of the acquisition, construction, installation and equipping of a multifamily rental housing facility, consisting of a total of 220 units and related personal property and equipment, and located in the City of Balch Springs, Dallas County, Texas (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and LDG Forestwood, LP, a Texas limited partnership duly organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”); and

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

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

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

**WHEREAS**, simultaneously with the delivery of this Indenture, the Borrower will enter into a Swap Agreement (defined herein) and will be obligated to make payments thereunder.

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

## GRANTING CLAUSES

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

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

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

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

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

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

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

PROVIDED, NEVERTHELESS, and these presents are upon the express condition, that if the Issuer or its successors or assigns shall well and truly pay or cause to be paid the principal of and premium, if any, on such Bonds with interest, according to the provisions set forth in the Bonds, or shall provide for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities requisite for payment or redemption thereof when and as authorized by the provisions of Article V (it being understood that any payment with respect to the principal of or interest on Bonds made by the Borrower shall not be deemed payment or provision for the payment of the principal of or interest on Bonds, except Bonds purchased and canceled by the Trustee, all such uncanceled Bonds to remain Outstanding and the principal of and interest thereon payable to the Holders thereof), and shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then these presents and the estate and rights hereby granted shall cease, terminate and become void, and

thereupon the Trustee, on payment of its lawful charges and disbursements then unpaid, on demand of the Issuer and upon the payment by the Issuer of the cost and expenses thereof, shall duly execute, acknowledge and deliver to the Issuer such instruments of satisfaction or release as may be necessary or proper to discharge this Indenture of record, and if necessary shall grant, reassign and deliver to the Issuer all and singular the property, rights, privileges and interests by it hereby granted, conveyed and assigned, and all substitutes therefor, or any part thereof, not previously disposed of or released as herein provided; otherwise this Indenture shall be and remain in full force;

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

## **ARTICLE I DEFINITIONS**

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

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

**“Accounts”** means all funds and accounts established under this Indenture, including the Bond Fund, the Surplus Fund, the Rebate Fund, the Project Fund, the Tax and Insurance Escrow Fund, the Replacement Reserve Fund, and the Redemption Fund.

**“Act”** means Chapter 2306, Texas Government Code, as amended.

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

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

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

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

**“Approved Investor”** means an “accredited investor” under Regulation D of the Securities Act of 1933, as amended (the “Securities Act”), excluding Section 230.501(a)(4), (a)(5) and (a)(6), or a “qualified institutional buyer” under Rule 144(a) of said Securities Act.

**“Architect”** means Kentucky Architecture Studio, LLC.

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

**“Assignment of Capital Contributions”** shall have the meaning provided in Section 3.1 of the Loan Agreement.

**“Assignment of Management Agreement and Consent”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Assignment of Project Documents”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Authorized Denomination”** means \$100,000, and any amount in excess of \$100,000, but not in excess of the aggregate principal amount of Bonds then Outstanding.

**“Authorized Officer”** means the Chair or Vice Chair of the Governing Body, the Executive Director of the Issuer, the Director of Bond Finance and Chief Investment Officer of the Issuer, the Director of Texas Homeownership of the Issuer and the Secretary or any Assistant Secretary to the Governing Body.

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

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

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

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

**“Bond Coupon Rate”** means with respect to the Tax-Exempt Bonds: (a) the sum of the Current Index plus 2.00% from the Issue Date to but excluding October 1, 2021, and (b) from and after October 1, 2021, the sum of the (i) Current Index times 79% plus (ii) 2.05%, which sum is then, in each case, rounded to five decimal places, and with respect to the Taxable Bonds, the sum of the Current Index plus 0.50% which sum is then rounded to five decimal places; provided, however, that the Bond Coupon Rate shall never exceed the Maximum Rate.

**“Bond Documents”** means, collectively, the Bonds, this Indenture, the Loan Agreement, the Note, the Land Use Restriction Agreement, the Tax Exemption Agreement, the Purchase Agreement, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Issuer Assignment, the Continuing Disclosure Agreement, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Bonds, including all modifications, amendments or supplements thereto.

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

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

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

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

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

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

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

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

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

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

**“Completion Date”** means the date by which the construction of the Improvements must achieve Final Completion. The initial Completion Date for the construction is April 1, 2020; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion, upon delivery of such other information and funds as reasonably requested by the Controlling Person or the Majority Owner. The approval of the Controlling Person shall not be unreasonably withheld, conditioned or delayed in connection with any reasonably required extension of the Completion Date as a result of any Force Majeure event.

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

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

**“Construction Contract”** means the contract between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

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

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of October 1, 2018, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means Xpert Design and Construction, LLC.

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

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

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

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

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

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

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

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

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

(ii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received a notice in writing by any Holder or former Holder that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Holder or

former Holder that asserts in effect that the interest on the Tax-Exempt Bonds received by such Holder or former Holder is included in the gross income of such Holder or former Holder for federal income tax purposes,

(iii) the day on which the Borrower receives notice from the Trustee in writing that the Trustee has received an Opinion of Bond Counsel that concludes that the interest on the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder thereof for federal income tax purposes;

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

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

provided however, no Determination of Taxability shall occur if the interest on any of the Tax-Exempt Bonds is included in the gross income of any Holder or former Holder for federal income tax purposes solely because such Tax-Exempt Bond was held by a Person who is a Substantial User or a Related Person; and provided further, however, no Determination of Taxability shall occur under clause (i) or (ii) of this definition unless the Issuer has been afforded the reasonable opportunity to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined and, to the extent the Issuer reaches an agreement with the Internal Revenue Service in order to allow the Bond to continue to be treated as tax-exempt, no Determination of Taxability shall be deemed to have occurred.

**“Developer Fee Pledge”** shall have the meaning provided in Section 3.1 of the Loan Agreement.

**“Development Budget”** means the budget for the implementation and completion of the acquisition, construction and equipping of the Project Facilities, initially as attached to the Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Loan Agreement and with the prior written consent of the Controlling Person.

**“Effective Gross Revenues”** of the Borrower means, for the three (3) month period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) seven percent (7%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities;



(v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person; Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

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

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

**“Environmental Audit”** means the written Phase I environmental site assessment for the Project Facilities prepared by Phase Engineering, Inc. dated September 10, 2018.

**“Environmental Completion Conditions”** shall have the meaning set forth in the Partnership Agreement.

**“Environmental Indemnity”** shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

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

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

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

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

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

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

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

**“Expenses”** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person in an amount equal to the greater of: (i) the actual amount of aggregate annualized Expenses for the three (3) month period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) [\$640,601] per annum increased on an annual basis commencing January 1, 2019 by 3%, adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions constituting real property taxes, if any, the cost shall be based on the full assessed value of the Project after taking into account completion of construction), plus all required deposits in to the Replacement Reserve Fund established under the Indenture.

**“Extraordinary Services”** and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under this Indenture, other than Ordinary Services and Ordinary Expenses. Extraordinary Services and Extraordinary Expenses shall specifically include but are not limited to services rendered or expenses incurred by the Trustee or the Issuer in connection with, or in contemplation of, an Event of Default.

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

**“Favorable Opinion of Bond Counsel”** means with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel addressed to the Issuer, the Trustee, the Majority Owner, with a copy to the Controlling Person, to the effect that, under existing law, such action or omission does not adversely affect the excludability of interest payable on the Tax-Exempt Bonds from gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

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

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

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

major structural components of the Project Facilities, and (D) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

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

(iv) the Controlling Person shall have received from the Architect, and the Engineering Consultant shall have approved, a certificate of the Architect in the form customary for projects of the scope of the Work for the Project Facilities with respect to completion of the Work at the Project Facilities;

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

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

(vii) with respect to all contractors and subcontractors and materialmen (for contracts less than \$50,000, only as required by the Title Company; provided that the Title Company insures over any mechanics' and materialmen's liens arising from such excepted contractors, subcontractors or materialmen), either (i) the Borrower shall have obtained an unconditional waiver and release upon final payment of mechanics' and materialmen's liens if there are no Punchlist Items, or (ii) if there are Punchlist Items, the Borrower shall have obtained an unconditional waiver and release upon progress payment of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities except for the Punchlist Items, and true copies thereof have been delivered to the Controlling Person;

(viii) the final complete use of proceeds and completion certificates in the form required under the Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

(ix) the Trustee shall have received an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances; and

(x) the Trustee shall have received an as-built ALTA/NSPS Urban Class Survey certified to the Trustee and the Controlling Person.

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

**“First Interest Payment Date”** means the first (1<sup>st</sup>) calendar day of the second month following the Issue Date.

**“First Principal Payment Date”** means May 1, 2021.

**“First Optional Call Date”** means April 1, 2031.

**“First Put Date”** means April 1, 2037.

**“Fiscal Year”** means the annual accounting year of the Borrower, which currently begins on January 1 of each calendar year (unless another Fiscal Year is selected by the Controlling Person).

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

**“Force Majeure”** means any acts of God, strikes, walkouts or other labor disputes, riots, civil strife, war, acts of a public enemy, lightning, fires, explosions, storms or floods or shortages of labor or materials or other causes of a like nature beyond the control of the Borrower, including, without limitation, that the state or county in which the Project facilities are located is disclosed by a duly authorized governmental authority to be a disaster area or under a state of emergency; provided, however, that the unavailability of sources of financing, the insufficiency of funds, the loss of a tenant or changes in market conditions shall not constitute Force Majeure.

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

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

**“General Partner Pledge”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

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

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

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

**“Guarantor”** means LDG Multifamily, LLC, a Kentucky limited liability company, and Xpert Design and Construction, LLC, a Kentucky limited liability company, together with their permitted successors and assigns.

**“Guaranty of Completion”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Guaranty of Debt Service and Stabilization”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Guaranty of Recourse Obligations”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

**“Hazardous Substances”** means any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, radon, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls (PCB), asbestos-containing materials (ACMs), lead-containing or lead-based paint (LBP), radon, Mold, medical waste and other bio-hazardous materials and any chemicals, pollutants, materials or substances defined as or included in the definition of “hazardous substances” as defined pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act, “regulated substances” within the meaning of subtitle I of the federal Resource Conservation and Recovery Act and words of similar import under applicable Environmental Laws.

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

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

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

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

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

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

**“Index”** means: (i) with respect to the Tax-Exempt Bonds, the London Inter-Bank Offered Rate for 1-month U.S. Dollar-denominated deposits administered by the ICE Benchmark Administration Limited (formerly administered by the British Bankers Association), or such other person which takes over the administration of that rate which appears on Reuters Screen LIBOR01 Page (or any successor page) as of 11:00 a.m., London time, on the date that is two (2) London Business Days prior to the applicable on the Rate Determination Date; and (ii) with respect to the Taxable Bonds, the Wall Street Journal Prime Rate or as otherwise set forth in the definition thereof. If Indexing Agent determines that use of the Index would violate any applicable law or regulation, or if the Index becomes unavailable, then Indexing Agent, on behalf of Bondholders, will select a replacement index.

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

**“Initial Bond”** means the initial Tax-Exempt Bond and the initial Taxable Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to this Indenture.

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

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

**“Interest Payment Date”** means the first (1<sup>st</sup>) calendar day of each month that the Bonds are Outstanding, commencing on the First Interest Payment Date.

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

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

**“Issue Date”** means October \_\_, 2018, the date on which the Issuer receives the purchase price in exchange for delivery of the Bonds to the purchaser or purchasers thereof.

**“Issuer”** means the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, including the Act, or any successor to its rights and obligations under the Loan Agreement and this Indenture.

**“Issuer Administration Fee”** means the fee payable annually in advance to the Issuer on each October 1, in the amount of .10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administration Fee in advance to the Issuer for the period from the Closing Date to September 30, 2020. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after September 30, 2020.

**“Issuer Assignment”** means that certain Assignment of Deed of Trust Documents dated as of October 1, 2018 from the Issuer to the Trustee and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Issuer Compliance Fee”** means the fee payable annually in advance to the Issuer on each October 1, in the amount of \$25 per Low-Income Unit in the Project. The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after October 1, 2021. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

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

**“Land Use Restriction Agreement”** means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of October 1, 2018, among the Issuer, the Trustee and the Borrower, as the same may be amended, modified or supplemented from time to time.

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

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

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

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

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

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

**“London Business Day”** shall mean any Business Day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency) in the city of London, England.

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

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

**“Manager”** means Capstone Real Estate Services, Inc., together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

**“Material Change Order”** means, with respect to the Project Facilities, a Change Order which (i) would result in an increase or decrease of \$50,000 in the aggregate contract price of the Work to be performed on the Project Facilities; (ii) when aggregated with other Change Orders previously effected, would result in an increase or decrease in excess of \$250,000 in the aggregate contract price for the Work to be performed on the Project Facilities; (iii) would reduce the number of apartment units in the Project Facilities; (iv) would materially reduce the aggregate useable square footage of the apartment units or the

parking areas in the Project Facilities; (v) would change the number of one, two and three bedroom apartments in the Project Facilities; (vi) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (vii) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (viii) makes a substitution for any material or product that is of lesser quality, in the Controlling Person's determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (ix) would materially adversely impair the value of the Project Facilities once the Work is completed.

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

**“Maturity Date”** means, with respect to the Tax-Exempt Bonds, October 1, 2058, and with respect to the Taxable Bonds, October 1, 2021.

**“Maximum Rate”** means the lower or (i) twelve (12) percent per annum; or (ii) the maximum rate permitted by Chapter 1204 of the Texas Government Code.

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

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

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

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

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

**“Mortgage”** shall have the meaning ascribed to such term in Section 3.1 of the Loan Agreement.

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

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) obligations evidenced by bonds,



debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid.

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

**“Operating Reserve Fund”** means the fund of that name created pursuant to Section 8.5 of the Loan Agreement.

**“Operating Reserve Trigger”** shall have the same meaning set forth in Section 8.5 of the Loan Agreement.

**“Opinion of Bond Counsel”** means any opinion of Bond Counsel delivered pursuant to this Indenture, each of which is to be addressed to the Trustee, the Majority Owner, the Controlling Person and the Issuer.

**“Ordinary Services” and “Ordinary Expenses”** mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to this Indenture.

**“Ordinary Trustee Fees and Expenses”** means amounts due to the Trustee for the Ordinary Services and the Ordinary Expenses of the Trustee incurred in connection with its duties under the Indenture, payable annually in advance beginning on the Closing Date and on each annual anniversary thereafter while the Bonds are outstanding in an annual amount equal to \$4000. In addition, all amounts due to the Trustee for Extraordinary Services and all Extraordinary Expenses of the Trustee will be paid directly by the Borrower pursuant to Section 2.2(d) of the Loan Agreement.

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

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

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof;
- (iv) Taxable Bonds authorized but not yet drawn-down and delivered to Purchaser; and and
- (v) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds

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

**“Partnership Agreement”** means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of October 1, 2018, as may be amended, modified or supplemented from time to time.

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

**“Permitted Encumbrances”** means only:

- (i) the Land Use Restriction Agreement;
- (ii) the Mortgage;
- (iii) liens securing the Subordinate Debt or a Swap Agreement, if any;
- (iv) for Impositions not yet due and payable or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted if such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided that the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person, and any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed;
- (v) statutory liens of landlords and liens of carriers, warehouseman, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (1) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the property subject to such lien or interfere with the operation of the Project Facilities, and provided (2) such liens have been bonded or the Borrower shall have established a reserve or made other appropriate provision, if any, as shall be required by the Controlling Person; and
- (vi) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

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

- (i) Bonds or other obligations of the United States;
- (vi) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (vii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository

bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;

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

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

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

(xi) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (i) through (vi) of this definition or obligations determined to be of comparable quality by the board of directors of such fund or trust, including, without limitation, any such money market fund or trust for which the Trustee or an Affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (a) the Trustee or an Affiliate of the Trustee receives fees from such funds for services rendered, (b) the Trustee charges and collects fees for services rendered pursuant to this Indenture, which fees are separate from the fees received from such funds, and (c) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or its Affiliates;

(xii) investment agreements, including guaranteed investment contracts, forward purchase agreements and reserve fund put agreements, selected by Borrower and approved in writing by the Controlling Person; and

(xiii) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person, provided that the Trustee may require as a condition to the investment of funds under this clause (viii) there having first been delivered to the Trustee an opinion of Counsel to the effect that investment is permitted under any applicable laws of the State.

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

accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person.

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

**“Plans and Specifications”** means, with respect to the Project Facilities, the plans and specifications for the construction of Improvements prepared by the Architect and more particularly identified on Schedule 5 attached to the Loan Agreement and approved by the Controlling Person, as the same may be amended, modified or supplemented as permitted under the Loan Agreement through Change Orders or otherwise.

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

**“Project” or “Project Facilities”** means the 15.57 acres of land and the multifamily apartment housing facilities consisting of a total 220 units and related personal property and equipment, located in Balch Springs, Texas, the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds.

**“Project Costs”** means to the extent authorized by the Act, any and all costs incurred by the Borrower with respect to the acquisition, construction, and equipping, as the case may be, of the Project Facilities, whether paid or incurred prior to or after the Issue Date of the Bonds, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project Facilities, contractors’ and Borrower’s overhead and supervisor’s fees and costs directly allocable to the Project Facilities, and administrative and other expenses necessary or incident to the Project Facilities and the financing thereof.

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

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

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

**“Purchase Agreement”** means the Bond Purchase Agreement, dated the Issue Date, among the Issuer, the Borrower and Purchaser, relating to the initial sale of the Bonds.

**“Purchaser”** means Cedar Rapids Bank and Trust Company, or its designated affiliate, together with its successors and assigns under the Purchase Agreement.

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

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

**“Rate Lock”** means that certain letter agreement dated October \_\_, 2018 between the Borrower and the Swap Provider.

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

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

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

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

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

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

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

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

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

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

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

**“Replacement Reserve Agreement”** shall have the meaning given to such term in Section 3.1 of the Loan Agreement.

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

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

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

**“Reserved Rights”** of the Issuer means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 2.2 of the Loan Agreement, including the Issuer’s Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to

make determinations and grant approvals or consent hereunder and under the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Loan Agreement, in the Tax Exemption Agreement and in the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, and the Note; (h) any and all limitations of the Issuer's liability and the Issuer's disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Loan Agreement, and the Issuer's right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Loan Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

**“Retainage”** means a holdback of ten percent (10%) of the hard costs of construction of the Improvements under each contract or subcontract until achievement of 50% of Substantial Completion and five percent (5%) thereafter.

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

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

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

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

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

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

**“Sinking Fund Schedule”** shall mean the mandatory sinking fund schedule, to be attached as Schedule 3 of the Loan Agreement, prepared by the Controlling Person and providing for level debt service in respect of the Bonds Outstanding on the basis of a 480-month amortization schedule commencing on the Stabilization Date (without extension) together with any replacement schedule following a partial redemption pursuant to Section 3.4(e).

**“Stabilization”** means the point at which (i) the Improvements have been ninety percent (90%) occupied by credit-worthy, qualified tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month (other than the Maturity Date) on the amount of Tax-Exempt Bonds Outstanding, adjusted for the net effect of the Swap Agreement, equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; (v) the Taxable Bonds have been redeemed pursuant to Section 3.4(b)(vii); (viii) to the extent necessary to fully hedge the Bonds as set forth in Section 6.37 of the Loan Agreement, the Borrower has exercised its option in the Rate Lock, all as determined or approved by the Controlling Person.

**“Stabilization Date”** means April 1, 2021, as such date may be extended.

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

**“State”** means the State of Texas.

**“Subordinate Debt”** means that certain loan in the amount of \$1,000,000 from [LDG Forestwood GP, LLC] to the Borrower evidenced and secured by the Subordinate Debt Documents.

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

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

**“Substantial Completion”** means satisfaction of the items (ii) and (iii) in the definition of Final Completion and the Controlling Person has determined that construction of the Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project.

**“Substantial Completion Date”** means the date that is three (3) months prior to the Completion Date.

**“Substantial User”** means, a “substantial user” within the meaning of Section 147(a) of the Code and Section 1.103-11 of the Regulations.

**“Surplus Bond Proceeds”** means all moneys and any unliquidated investments remaining in the Bond Proceeds Account of the Project Fund upon Final Completion and after payment in full of the Project Costs (except for proceeds of the Bonds being retained to pay for Project Costs not then due and payable for which the Trustee shall have retained amounts pursuant to the Loan Agreement).

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

**“Swap Agreement”** shall mean (i) that certain ISDA Master Agreement dated October \_\_, 2018, the related Schedule thereto, and each Confirmation thereunder, each between Swap Counterparty and Borrower, and (ii) any other interest rate exchange, hedge or similar agreement, entered into in order to hedge or manage the interest payable on all or a portion of the Bonds, whether then existing or to be entered into, between the Borrower and the Swap Counterparty and approved by Controlling Person, as such agreements may be amended, supplemented or substituted from time to time.

**“Swap Counterparty”** shall mean Cedar Rapids Bank and Trust Company and its successors and assigns during the term of the initial Swap Agreement and thereafter any person entering into a Swap Agreement with the Borrower.

**“Swap Payment Account”** shall mean the Swap Payment Account of the Project Fund created pursuant to Section 4.3 herein.

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

**“Tax-Exempt Bonds”** shall have the meaning given to such term in the recitals to this Indenture.

**“Tax Exemption Agreement”** means that certain Tax Exemption Certificate and Agreement dated as of the date hereof, by and among Issuer, the Borrower and the Trustee, as in effect on the Issue Date and as it may thereafter be amended or supplemented or restated in accordance with its terms.

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

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

**“Title Company”** means Chicago Title Insurance Company.

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

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

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

**“Underwriter Management Fee”** means 3.5% of gross income received from the Project Facilities on account of rents, service fees, late charges, penalties and other charges under Leases.

**“Wall Street Journal Prime Rate”** shall mean the prime rate for U.S. banks as published in the Midwest Edition of the Wall Street Journal. If such rate is no longer published in the Midwest Edition of



the Wall Street Journal, the Prime Rate shall be a comparable rate for U.S. banks as published in a national journal of similar reputation, as determined by Indexing Agent. A change in the Prime Rate shall be deemed to occur as of the date of announcement of such change by Indexing Agent, and the interest rate shall be adjusted as of that date. The Prime Rate shall be applicable whether or not Purchaser makes loans to other borrowers at, above or below said rate.

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

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

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

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

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

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

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

## **ARTICLE II**

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

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

**Section 2.2 Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

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

the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

**Section 2.4     Execution; Limited Obligation.**

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

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

(c)     **THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.**

**Section 2.5     Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless such Bond has been duly registered by the Comptroller of Public Accounts of the State of Texas (the "Comptroller") by the execution of a registration certificate of the Comptroller substantially in the form set forth in Exhibit A to this Indenture and appearing on the Initial Bond, or there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Sections 2.6 and 3.1 hereof, executed by an authorized representative of the Trustee and such registration or certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder. The Initial Bond shall be the Bond delivered to the

Attorney General of Texas and registered by the Comptroller. The registration certificate of the Comptroller shall be manually executed by said Comptroller (or a deputy designated in writing to act for said Comptroller) and the seal of the Comptroller shall be impressed, or placed in facsimile, on the registration certificate. The execution of the registration certificate shall be conclusive evidence that the Initial Bond has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. Upon receipt of the Initial Bond by the Issuer, with the registration certificate thereon so executed and sealed as aforesaid, the Issuer shall deliver such Initial Bond to the Trustee. The Trustee, upon satisfaction of the conditions specified in Section 2.07 hereof, shall cancel the Initial Bond and shall deliver the definitive Bonds to the initial Purchaser thereof or its designee, in substitution of the Initial Bond.

**Section 2.6 Form of Bonds.**

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

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

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the Purchaser.

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

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

(ii) An original executed counterpart of the documents specifically listed in the definition of Bond Documents (and with respect to the Note, endorsed without recourse by the Issuer to the Trustee) and the Swap Agreement; and

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

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

(v) An Opinion of Bond Counsel or counsel to the Issuer to the effect that this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax-Exemption Agreement and the

Purchase Agreement have been duly authorized, executed and delivered by the Issuer and are legal, valid and binding agreements of the Issuer; and

(vi) An approving Opinion of Bond Counsel that, under existing law, the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Tax-Exempt Bonds is excludable from gross income for federal income tax purposes, except with respect to interest on any Bond during any period while it is held by a Substantial User of the Project Facilities or a Related Person of such a Substantial User and is not subject to the alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Trust Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

(vii) An opinion of Counsel for the Borrower to the effect that the Continuing Disclosure Agreement and the Bond Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower and such other opinions as are required by the Purchase Agreement or reasonably requested by the Controlling Person or the Majority Owner; and

(viii) A pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(ix) Reliance letters for, or address of the opinions to, the Controlling Person and Majority Owner of each of the opinions filed with the Trustee; and

(x) Such other documents as may be required by the Issuer, Trustee, Bond Counsel, or Controlling Person.

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

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

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

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

(b) Any Holder of a Bond, in person or by his/her duly authorized attorney, may transfer title to his/her Bond on the Register upon surrender thereof at the principal office of the Trustee, by providing the Trustee with a written instrument of transfer (in substantially the form of assignment attached to the Bond) executed by the Holder or such Holder's attorney, duly authorized in writing, and thereupon, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the

transferee or transferees a new Bond or Bonds of the same aggregate principal amount and tenor as the Bond surrendered (or for which transfer of registration has been effected) and of any Authorized Denomination or Authorized Denominations; provided, however, that the Bonds may be transferred only to an Approved Investor that delivers an Investor Letter to the Trustee substantially in the form attached hereto as Exhibit B except to the extent otherwise contemplated by Exhibit B.

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

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

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

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

(g) The Bonds may not be held under a book-entry system for the recordation of registered owners of bonds, and no securities depository may be named for the Bonds.

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

**Section 2.11 Reserved.**

**Section 2.12 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and

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

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

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

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

**Section 2.16 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such

trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

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

**Section 3.1 Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The Tax-Exempt Bonds shall be designated “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A” and the Taxable Bonds shall be designated “Texas Department of Housing and Community Affairs Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B.” The total principal amount of Tax-Exempt Bonds that may be issued and Outstanding hereunder is expressly limited to \$20,000,000 and the total principal amount of Taxable Bonds that may be issued and Outstanding hereunder is expressly limited to \$3,000,000. The forms of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein. The Taxable Bonds shall be issued as draw-down Bonds in accordance with Section 3.2(e) below.

#### **Section 3.2 Issuance of Bonds.**

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

(b) The Bonds shall be issued as fully registered bonds without coupons in Authorized Denominations only. The Tax-Exempt Bonds shall be numbered from R-A-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee and the Taxable Bonds shall be numbered from R-B-1 upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee. The initial Tax-Exempt Bond approved by the Attorney General of the State of Texas and registered by the Comptroller shall be numbered I-A-1. The initial Taxable Bond approved by the Attorney General of the State of Texas and registered by the Comptroller shall be numbered I-B-1.

(c) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 3.4(c) hereof. In any case that an Interest Payment Date or Principal Payment Date shall occur on a day that is not a Business Day, such payments shall be made on the next succeeding Business Day.

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

written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

(e) The Taxable Bonds are issued as draw-down Bonds. The Purchaser shall fund the purchase price of the Taxable Bonds from time to time, in accordance with the Purchase Agreement, to provide funds for deposit in the Project Fund for the payment of requisitions therefrom. The Trustee shall record amounts funded in such manner in the Bond recordkeeping system maintained by the Trustee. The Holders may request exchange of the Bonds for Bonds reflecting the principal draw-down from time to time in accordance with Section 2.9. Upon deposit by the Purchaser of each installment of the purchase price of each draw-down Bond, the aggregate amount of Bonds purchased shall be deemed Outstanding and shall begin to accrue interest. The Issuer and the Trustee acknowledge that the Borrower and the Purchaser have agreed pursuant to the Purchase Agreement that under certain circumstances the Bonds may be converted from a draw down bond issue to a fully funded issue, and each of the Issuer and the Trustee agrees to take all actions reasonably required of it in connection with such a conversion of the Taxable Bonds to a fully funded bond issue.

**Section 3.3 Interest Rate on Bonds.** The Bonds shall bear interest at the applicable Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated on the basis of a 360-day year for the actual number of days elapsed in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof. The Indexing Agent will promptly after each Rate Determination Date notify the Trustee, the Borrower and the Controlling Person via electronic mail of the applicable Bond Coupon Rate. The determination of the Bond Coupon Rate by the Indexing Agent, absent manifest error, shall be conclusive and binding on the Bondholders, the Borrower, the Controlling Person and the Trustee.

**Section 3.4 Redemption of Bonds.**

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

Redemption Date	Redemption Price
April 1, 2031 to March 31, 2033	103%
April 1, 2033 to March 31, 2035	102%
April 1, 2035 to March 31, 2036	101%
April 1, 2036 and thereafter	100%



(b) Mandatory Redemption of Bonds.

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

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

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

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

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

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of three (3) consecutive months);

(3) as a result of any changes in the Constitution of the State, or the Constitution of the United States of America or by legislative or administrative action (whether state or federal) or by final decree, judgment, decision or order of any court or administrative body (whether state or federal), any material provision of the Loan Agreement or the Bond Documents, in the judgment of the Controlling Person shall have

become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed therein;

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

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

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

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

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

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

(vii) The Taxable Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person following Final Completion but not later than the Stabilization Date at a redemption price equal to 100% of the principal amount of the Taxable Bonds

to be redeemed without premium or penalty plus interest accrued thereon to, but not including, the redemption date.

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

(d) Selection of Bonds to be Redeemed. If less than all the Outstanding Bonds shall be called for redemption, the Trustee shall select or arrange for the selection of Bonds to be redeemed by lot pursuant to its rules and procedures, in Authorized Denominations, provided that any Bond or portion thereof remaining Outstanding shall be in an Authorized Denomination.

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 3.4(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 3.4(c), the Sinking Fund Schedule shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the number of months remaining in the original 480-month amortization schedule. The Controlling Person shall provide the Trustee, the Issuer and the Borrower with a new Sinking Fund Schedule reflecting such adjustment promptly following any such partial redemption.

(f) Redemption Price. Other than as described in Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to 100% of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) Right of Borrower to Purchase Tax-Exempt Bonds. The Borrower shall have the option, by written notice to the Trustee and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 3.4(b)(vi) hereof), in advance of such redemption date, to cause purchase of the Tax-Exempt Bonds in lieu of redemption, in whole but not in part, on the redemption date. The purchase price of the Tax-Exempt Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof, and shall be payable on the redemption date. Tax-Exempt Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 3.5** Notice of Redemption. Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, but no defect in or failure to give such notice of redemption shall affect the

validity of the redemption; provided, however, that no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 3.4(c) hereof. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price from the Trustee and a new Bond for any portion not redeemed.

#### **ARTICLE IV FUNDS**

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

- (a) The following are hereby created and established as special trust funds:
  - (i) the Project Fund, consisting of:
    - (A) the Bond Proceeds Account (containing a Tax-Exempt Bond Proceeds Subaccount and a Taxable Bond Proceeds Subaccount);
    - (B) the Costs of Issuance Account (containing a Tax-Exempt Bond Proceeds Subaccount and a Taxable Bond Proceeds Subaccount);
    - (C) the Equity Account;
    - (D) the Capitalized Interest Account (containing a Tax-Exempt Bond Proceeds Subaccount and a Taxable Bond Proceeds Subaccount);
    - (E) the Insurance and Condemnation Proceeds Account;
    - (F) Subordinate Debt Proceeds Account; and
    - (G) the Swap Payment Account;
  - (ii) the Replacement Reserve Fund;
  - (iii) the Tax and Insurance Escrow Fund;
  - (iv) the Rebate Fund;
  - (v) the Bond Fund;
  - (vi) the Surplus Fund; and
  - (vii) the Redemption Fund.

(b) All the Accounts created by subsection (a) of this Section shall be held by the Trustee in trust for application only in accordance with the provisions of this Indenture.

(c) The proceeds of the sale of the Tax-Exempt Bonds (\$20,000,000), the initial installment of Required Equity Funds (\$[1,963,350]) and the proceeds of the Subordinate Debt (\$1,000,000) shall be applied as follows:

- (i) \$\_\_\_\_\_, representing a portion of the proceeds of the sale of the Tax-Exempt Bonds, shall be deposited in the Tax-Exempt Bond Proceeds Subaccount of the Project Fund;
- (ii) \$\_\_\_\_\_, representing a portion of the proceeds of the sale of the Tax-Exempt Bonds, shall be deposited into the Tax-Exempt Bond Proceeds Subaccount of the Capitalized Interest Account of the Project Fund, \$\_\_\_\_\_, representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Equity Subaccount of the Capitalized Interest Account of the Project Fund;
- (iii) \$\_\_\_\_\_, representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Equity Subaccount of the Costs of Issuance Account of the Project Fund;
- (iv) \$\_\_\_\_\_, representing the balance of the initial installment of Required Equity Funds, shall be deposited in the Equity Account of the Project Fund; and
- (v) \$1,000,000, representing the proceeds of the Subordinate Debt, shall be deposited in the Subordinate Debt Proceeds Account of the Project Fund.

**Section 4.2 Bond Fund.**

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

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

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

**Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in Section 4.1(c) hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit installments of the purchase price of the Taxable Bonds, as set forth in Section 3.2(e) hereof, into the Taxable Bonds Subaccount of the Bond Proceeds Account of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Investor Limited Partner and the General Partner, in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. The Trustee shall deposit any other amounts received, to the extent not otherwise directed herein, in such Accounts as directed by Controlling Person.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person in accordance with the provisions of the Loan Agreement. Except as otherwise consented to in writing by the Controlling Person, through approval of a Requisition or otherwise, moneys in the Project Fund shall be applied for payment or reimbursement of Project Costs. After Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Equity Account of the Project Fund and the Subordinate Debt Proceeds Account upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

(c) The Trustee shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Bond Fund to pay interest on the Bonds accruing up to and including (i) the Completion Date with respect to amounts in the Bond Proceeds Subaccount; and (ii) achievement of Stabilization with respect to the Equity Subaccount without submission of any Requisition. With respect to any such transfer, the Trustee shall first transfer amounts from the Bond Proceeds Subaccount of the Capitalized Interest Account. The Trustee shall transfer any Surplus Bond Proceeds remaining in the Capitalized Interest Account after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, to the Surplus Fund.

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

(e) The Trustee shall deposit all net swap payments received from the Swap Counterparty under the Swap Agreement into the Swap Payment Account and transfer any such net swap payments to the Bond Fund to make payments of interest on the Bonds. The Trustee shall deposit all net swap payments received from the Borrower under the Swap Agreement into the Swap Payment Account and will transfer any such net swap payments to the Swap Counterparty on behalf of the Borrower as provided in written instructions from the Swap Provider. Any net swap payments received from the Swap Counterparty and transferred to the Bond Fund to make payments of interest on the Bonds shall be credited against Borrower's obligations under the Note.

(f) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Redemption Fund and applied to the redemption of Bonds in accordance with Section 3.4 hereof, or (ii) released to the Borrower if the Borrower obtains a Favorable Opinion of Bond Counsel with respect to the Tax-Exempt Bonds, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

(g) The Trustee shall transfer moneys between Accounts as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required

following the occurrence and during the continuance of a Default or Event of Default hereunder. Upon the occurrence and continuation of an Event of Default hereunder, all money and investments in the Project Fund may be disbursed at the direction of the Controlling Person to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under the Bond Documents, in whatever amounts and whatever order the Controlling Person may determine.

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

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

(a) **Redemption Fund.**

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 3.4 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 3.4 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

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

(b) **Tax and Insurance Escrow Fund.** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Trustee from the Borrower pursuant to Section 8.2 of the Loan Agreement. Moneys in the Tax and Insurance Escrow Fund shall be applied to payment of Impositions and insurance premiums at the direction of the Controlling Person; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the

payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Rebate Fund is established for the purpose of complying with Section 148 of the Code and shall be for the sole benefit of the United States of America and shall not be subject to the claim of any other Person, including without limitation, the Issuer. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. At the written direction of the Borrower, which shall include a statement to the effect that such direction complies with the restrictions set forth in this Indenture, the Trustee shall invest all amounts held in the Rebate Fund as directed by the Borrower and if no written direction has been received then such funds may be uninvested. The Trustee shall not be liable for any consequences arising from the investment of any such funds required to make a rebate payment.

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

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



amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid to the Borrower.

**Section 4.6     Records.**

(a)     The Trustee shall cause to be kept and maintained records pertaining to all funds and accounts maintained by the Trustee hereunder until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. and all disbursements therefrom and shall periodically deliver to the Borrower statements of activity and statements indicating the investments made with moneys in all such funds during the applicable period. Upon written request, the Trustee shall provide the Borrower and the Controlling Person, within a reasonable period of time, with a report stating the principal amount of Bonds Outstanding and a list of the registered owners of the Bonds as of the date specified by the Borrower or the Controlling Person in its request.

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

**Section 4.7     Investment of Funds.** Subject to the provisions of sections 12 and 13 of the Tax Exemption Agreement, moneys held as part of all Accounts hereunder shall be invested and reinvested in Permitted Investments as directed in writing by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of or interest or acceleration premium that has become payable with respect to the Bonds shall not be invested. Written direction may include electronic direction. The Trustee shall have no discretion for investing funds or advising any parties on investing funds. The Trustee may invest funds in its own proprietary money market funds or deposit products. Absent written direction, the Trustee shall invest funds in the Federated Treasury Obligations Fund (TOSXX) as standing instructions. The Trustee shall not be liable for any losses (including specifically depreciation of value) resulting from investing funds in such Permitted Investments. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its Affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective fund or account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. Absent specific instructions from the Borrower, funds held hereunder shall remain uninvested.

**Section 4.8 Tax Covenants.**

(a) Issuer's Covenants. The Issuer represents, covenants, and agrees that:

(i) The Issuer will comply with all applicable requirements of the Code that are necessary to preserve the excludability from gross income of interest on the Bonds for federal income tax purposes, all as set forth in the Tax Exemption Agreement.

(ii) The Issuer will not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

(b) Trustee's Covenants. The Trustee represents, covenants and agrees that:

(i) The Trustee will invest funds held under this Indenture in accordance with the terms of this Indenture, the Tax Exemption Agreement and the written instructions of the Borrower.

(ii) The Trustee will not take any action inconsistent with its obligations expressly stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

**Section 4.9 Guaranties.** Any amounts realized by the Trustee under the Guaranty of Completion, the Guaranty of Debt Service and Stabilization, the Guaranty of Recourse Obligations or the Environmental Indemnity shall be used or applied or invested by the Trustee as directed in writing by the Controlling Person.

**ARTICLE V  
DISCHARGE OF LIEN**

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

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

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will,

in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds at the earliest redemption date possible under Section 3.4 (and any earlier partial redemption date required herein) and interest to accrue thereon, and redemption premium, if any, through such maturity or redemption dates, as the case may be;

(b) the Trustee shall have received an opinion of Bond Counsel to the effect that all conditions precedent to the defeasance of such Bonds pursuant to this Indenture have been complied with and such Bonds are no longer outstanding;

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

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

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

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

## ARTICLE VI DEFAULT PROVISIONS AND REMEDIES

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

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

**Section 6.2**     **Acceleration.**

(a) Upon the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 hereof (if applicable).

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

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

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

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

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

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

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

#### **Section 6.4 Right of Controlling Person to Direct Proceedings.**

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

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

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

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

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

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

**First:** To the payment of all installments of interest then due on the Bonds in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment;

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

**Third:** To the payment of all amounts owed under the Swap Agreement;

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

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

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

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

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

(e) Whenever moneys are to be applied pursuant to this Section, the Trustee shall fix the date which shall be not more than seven (7) calendar days after such acceleration upon which such

application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal or interest payable on the Bonds is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before the First Optional Call Date, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII THE TRUSTEE**

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

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

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

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

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

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

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

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

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

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

(j) The Trustee shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Issuer under the Loan Agreement or this Indenture, and shall not be deemed to have, or be required to take, notice of default under this Indenture (other than under Section 6.1(a) or (b), or Section 6.1(c) if written notice thereof has been received by the Trustee) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any Repayment when due, (ii) in the event of an insufficient amount in the Bond Fund (or any account therein) to make a principal or interest payment on the Bonds, (iii) written notification of a Determination of Taxability by the Holder of any Bonds, (iv) written notification of such default by the Controlling Person, the Majority Owner or two or more Holders with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, or (v) receipt of an Opinion of Bond Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Trustee may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Trustee may nevertheless require the Issuer and the Borrower to furnish information regarding performance of their obligations under the Loan Agreement and this Indenture, but is not obligated to do so.



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

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

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

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

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

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

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

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

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

other obligations of the Borrower, as freely as if it were not the Trustee hereunder. The provisions of this paragraph shall extend to the Affiliates of the Trustee.

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

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

(a) The Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Trustee under this Indenture and all other amounts which may be payable to the Trustee under this Section, such fees and expenses to be paid when due and payable by the Borrower directly to the Trustee for its own account. Except as set forth in Section 6.7, the Trustee shall not have a lien on the Security for the payment of its fees or expenses and shall not be entitled to pay its fees and expenses from amounts held in the funds and accounts hereunder.

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

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Issuer is a party, the Trustee may intervene on behalf of Holders, and shall intervene if requested in writing by the Controlling Person, the Majority Owner or the Holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding. The Trustee shall be indemnified for such action in accordance with Section 7.2 hereof.

**Section 7.4 Resignation; Successor Trustees.**

(a) The Trustee and any successor Trustee may resign only upon giving sixty (60) days prior written notice to the Issuer, the Borrower, the Controlling Person and each Holder of Bonds then Outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Trustee by the Borrower (if the Borrower is not in default under any Bond Document) with the consent of the Controlling Person and the Issuer and the acceptance of such appointment by the successor Trustee. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Trustee or the resigning Trustee may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of a successor Trustee, the resigning Trustee shall assign all of its right, title and interest in this Indenture and the Security to the successor Trustee. The successor Trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States, or the District of

Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000. Any successor Trustee shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Issuer, the Controlling Person and the Borrower.

(b) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, reorganization or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Trustee that includes this Indenture, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any Person, anything herein to the contrary notwithstanding, provided that such successor Trustee shall be eligible to serve as Trustee under the provisions of this Indenture. If the Trustee is not the successor corporation in any such merger or consolidation, the Trustee shall give notice of such event to the Borrower and shall take such action as may be required to effect a transfer of the trust included in this Indenture to such successor corporation.

**Section 7.5 Removal of Trustee.** The Trustee may be removed at any time, by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Controlling Person and the Borrower and signed by the Majority Owner. During such time that no Event of Default has occurred and is continuing under this Indenture, the Trustee may also be removed by an instrument or concurrent instruments in writing delivered to the Trustee and the Issuer and signed by the Controlling Person, with notice to the Borrower. Such removal shall take effect only upon the appointment of a successor Trustee by the Issuer with the consent of the Controlling Person and the acceptance of such appointment by the successor Trustee. Upon such removal, the Trustee shall assign to the successor Trustee all of its right, title and interest in this Indenture and the Security in the same manner as provided in Section 7.4 hereof.

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

(i) A certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him/her the execution thereof; and

(ii) A certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Bonds therein mentioned.

(b) The Trustee may rely on such an instrument of Holders unless and until the Trustee receives notice in the form specified in clauses (a) (i) or (ii) above that the original such instrument is no longer reliable. In the absence of direction from the Controlling Person, if the Trustee shall receive conflicting directions from two or more groups of Holders, each with combined holdings of not less than twenty-five percent (25%) of the principal amount of Outstanding Bonds, the directions given by the group of Holders which holds the largest percentage of the principal amount of the Bonds shall be controlling and the Trustee shall follow such directions.

## **Section 7.7     Power to Appoint Co-Trustees.**

(a) At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Project Facilities may at the time be located, the Issuer and the Trustee shall have power to appoint and, upon the request of the Trustee or of the Holders of a majority of the aggregate principal amount of the Bonds then Outstanding, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons approved by the Trustee and the Borrower either to act as co-trustee or co-trustees, jointly with the Trustee of all or any part of the Project Facilities, or to act as separate trustee or separate co-trustees of all or any part of the Project Facilities, and to vest in such person or persons, in such capacity, such title to the Project Facilities or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

(b) Any co-trustee or separate trustee shall be a bank or trust company with trust powers organized under the laws of the United States of America or any state of the United States or the District of Columbia, having a combined capital stock, surplus and undivided profits aggregating at least \$50,000,000.

(c) The Trustee and co-trustee, if any, may by written instrument between them designate and assign either the Trustee or the co-trustee or both of them to perform all or any part of the responsibilities and duties of the Trustee under this Indenture.

(d) If the Issuer shall not have joined in such appointment within thirty (30) days after the receipt by it of a written request to do so, or in case an Event of Default shall have occurred and be continuing, the Trustee and the Borrower shall have the power to make such appointment.

(e) The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

(f) Every co-trustee or separate trustee appointed pursuant to this Section 7.7, to the extent permitted by law or any applicable contract, shall be subject to the following terms, namely:

(i) This Indenture shall become effective at the time the Bonds shall be authenticated and delivered, and thereupon such co-trustee or separate trustee shall have all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of moneys, papers, securities and other personal property.

(ii) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees, or separate trustee or separate trustees, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(iii) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(iv) Any co-trustee or separate trustee, to the extent permitted by law, may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(v) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of any co-trustee or separate trustee appointed under this Section, and, in case an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section.

(vi) No co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(vii) Any moneys, paper, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

(g) Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with the security interest in the Security and with such rights, powers, duties, trusts or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as applicable law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee.

(h) In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the security interest in the Security and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the same manner as provided for with respect to the appointment of a successor Trustee pursuant to Section 7.4 hereof.

**Section 7.8 Filing of Continuation Statements.** The Trustee shall file or record or cause to be filed or recorded all continuation statements that are required in order fully to protect and preserve the security interests and the priority thereof and the rights and powers of the Trustee in connection with any Financing Statements which shall have been filed by the Issuer at or prior to the issuance of the Bonds in connection with the Security for the Bonds pursuant to the UCC, including without limitation all continuation statements for the purpose of continuing without lapse the effectiveness of (i) such Financing Statements, and (ii) any previously filed continuation statements that shall have been filed as required herein. The Trustee shall also file the continuation statements required under Section 3.2 of the Loan Agreement. The Borrower will pay all costs of filing the Financing Statements and all financing and continuation statements required under Section 3.2 of the Loan Agreement. The initial Financing Statement will indicate that the Financing Statement is filed pursuant to a public finance transaction.

**Section 7.9 Compliance with Texas Government Code.** Pursuant to Section 2270.002, Texas Government Code, and subject to or as otherwise required by applicable federal law, the Trustee hereby represents that the Trustee does not boycott Israel and will not boycott Israel through the term of this Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement and such representation is hereby incorporated by reference into each of the documents referenced herein. For purposes of this representation, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or

limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Pursuant to Subchapter F, Chapter 2252, Texas Government Code, to the extent applicable to this Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, the Trustee represents that neither they nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Trustee, is a company engaged in business with Iran, Sudan, or a foreign terrorist organization or on a list prepared and maintained by the Comptroller of Public Accounts of the State of Texas under Section 806.051, 807.051, or 2252.153, Texas Government Code.

## **ARTICLE VIII AMENDMENTS, SUPPLEMENTAL INDENTURES**

### **Section 8.1 Supplemental Indentures.**

(a) The Issuer and the Trustee, with the prior written consent of the Controlling Person, but without the consent of or notice to any Holders, may enter into an indenture or indentures supplemental to this Indenture that do not materially adversely affect the interest of the Holders for one or more of the following purposes:

(i) to grant to or confer upon the Trustee for the benefit of the Holders, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Holders or the Trustee;

(ii) to grant or pledge to the Trustee for the benefit of Holders, any additional security other than that granted or pledged under this Indenture;

(iii) to modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute then in effect or to permit the qualification of the Bonds for sale under the securities laws of any of the states of the United States;

(iv) to appoint a successor Trustee or co-trustees in the manner provided in Article VII hereof;

(v) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture which shall not materially adversely affect the interest of the Holders; or

(vi) to make any change herein necessary, in the opinion of Bond Counsel, to maintain the exclusion of the interest on any Outstanding Tax-Exempt Bonds from gross income of the Holders thereof for federal income tax purposes.

(b) When requested by the Issuer, and if all conditions precedent under this Indenture have been met, and there shall have been delivered to the Trustee an Opinion of Bond Counsel to the effect that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and a Favorable Opinion of Bond Counsel, the Trustee will join the Issuer in the execution of such supplemental indenture but shall not be required to join the Issuer in the execution of any such supplemental indenture unless it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee cover any changes in the Trustee's

rights and immunities under this Indenture or otherwise. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower.

(c) The Trustee shall file copies of all such supplemental indentures with the Borrower. The Trustee shall cause notice of any supplemental indenture described above to be given by first-class mail, postage prepaid, to the Holders of the Outstanding Bonds then shown on the Register.

**Section 8.2 Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.**

(a) Exclusive of supplemental indentures covered by Section 8.1 hereof and subject to the terms and provisions contained in this Section 8.2, and not otherwise, anything contained in this Indenture to the contrary notwithstanding, no indenture or indentures supplemental hereto for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture shall be effective without delivery of a Favorable Opinion of Bond Counsel, the written consent of the Majority Owner and execution and delivery by the Trustee (acting upon the direction of the Majority Owner) and the Issuer; provided, however, that nothing contained in this Section shall permit, or be construed as permitting, without the prior written consent of the Holders of all Outstanding Bonds, (i) an extension of the maturity of the principal of, or the optional, extraordinary or mandatory redemption date of, or interest on, any Bond, (ii) a reduction in the principal amount of or the rate of interest on, any Bond, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) the creation of a lien on the Security prior to the lien of this Indenture, or (v) a reduction in the aggregate principal amount of the Bonds required for any consent to any supplemental indenture; provided further, however, that without the prior written consent of the Trustee, the Trustee shall not be required to join the Issuer in the execution of any supplemental indenture unless (i) it is reasonably compensated for additional obligations on the Trustee not initially contemplated and the indemnification rights of the Trustee covering any changes in the Trustee's rights and immunities under this Indenture or otherwise and (ii) it shall either receive an opinion of counsel (at the expense of the Borrower) to the effect that such supplement or amendment complies with the requirement hereof or the written waiver of such opinion by the Controlling Person on behalf of the Bondholders. Any additional compensation or the expansion of any indemnity obligation shall be the sole responsibility of the Borrower. The giving of notice to and consent of the Holders to any such proposed supplemental indenture shall be obtained pursuant to Section 8.5 hereof.

(b) Anything herein to the contrary notwithstanding, a supplemental indenture, amendment or other document described under this Article that affects any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented to the execution of such supplemental indenture, amendment or other document.

**Section 8.3 Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders.**

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the excludability of interest on any Outstanding Tax-Exempt Bonds from gross income for federal income tax purposes, or (iv) in connection with any other change therein which, in the

judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

(b) The Issuer and the Borrower shall file copies of any such amendments to the Loan Agreement or the Note with the Trustee and the Controlling Person.

**Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

**Section 8.5 Notice to and Consent of Holders.** If consent of the Controlling Person, the Majority Owner or any other Holder is required under the terms of this Indenture for the amendment of this Indenture, the Loan Agreement, the Note or for any other similar purpose, the Trustee shall cause notice of the proposed execution of the amendment or supplemental indenture to be given by first-class mail, postage prepaid, to the Controlling Person, the Majority Owner or any other applicable Holder then shown on the Register. Such notice shall briefly set forth the nature of the proposed amendment, supplemental indenture or other action and shall state that copies of any such amendment, supplemental indenture or other document are on file at the principal office of the Trustee for inspection by all Holders. If, within forty five (45) days or such longer period as shall be prescribed by the Trustee following the mailing of such notice, the Controlling Person, the Majority Owner or the Holders of all, as the case may be, of the principal amount of the Bonds Outstanding by instruments filed with the Trustee shall have consented to the amendment, supplemental indenture or other proposed action, then the Trustee may execute such amendment, supplemental indenture or other document or take such proposed action and the consent of the Holders shall thereby be conclusively presumed.



**ARTICLE IX**  
**CONTROLLING PERSON; SERVICING**

**Section 9.1**     **Majority Owner to Appoint Controlling Person and Indexing Agent.** The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person" and the "Indexing Agent". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person or Indexing Agent. The Majority Owner shall give written notice to the Trustee, the Issuer and the Borrower of its appointment, termination, removal or replacement of any Controlling Person or Indexing Agent, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner will act as Indexing Agent and has engaged R4 Servicer LLC to act as the "Controlling Person" hereunder and R4 Servicer LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person or an Indexing Agent; if at any time a Controlling Person or Indexing Agent has not been designated by the Majority Owner, all references to the "Controlling Person" and "Indexing Agent" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion or certificate provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Borrower, the Trustee or any other Person for any act or omission of the Controlling Person or Indexing Agent unless the Controlling Person or Indexing Agent is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case.

**Section 9.2**     **Servicing.**

(a)     The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

(b)     The Controlling Person shall be responsible for the performance of the following servicing duties:

(i)     The Controlling Person shall perform the duties expressly given to the Controlling Person under the Bond Documents and this Indenture.

(ii)    The Controlling Person shall prepare monthly bills to the Borrower (with a copy to the Trustee) in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan, together with adjustments with respect to the Swap Agreement, and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. The Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

- (1) The principal and interest due and payable on the Note;
- (2) Amounts due and payable under the Swap Agreement;
- (3) The Ordinary Trustee Fees and Expenses and Issuer Fee, as applicable;
- (4) Any monthly Replacement Reserve Fund deposit;
- (5) Any Monthly Tax and Insurance Amounts;
- (6) Any other escrow or reserve deposits required by this Indenture or Bond Documents;
- (7) Any assumption or transfer fee required by this Indenture or Bond Documents; and
- (8) Any acceleration premium.

(c) All payments received under this Indenture or Bond Documents shall be applied in the following order unless otherwise instructed by the Majority Owner or expressly set forth in this Indenture or the Bond Documents:

- (i) To the Issuer Fees and Ordinary Trustee Fees and Expenses, as applicable;
- (ii) To the principal and interest due and payable on the Note;
- (iii) To amounts due and payable under the Swap Agreement;
- (iv) To the acceleration premium, if applicable;
- (v) To required deposits to the Replacement Reserve Fund;
- (vi) To required deposits in the Tax and Insurance Escrow Fund;
- (vii) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- (viii) To Default Interest and any late fees; and
- (ix) To other amounts due under the Bond Documents.

(d) Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents. The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

(e) The Controlling Person shall review the Tax and Insurance Escrow Fund and the Replacement Reserve Fund on an annual basis and adjust required monthly escrow payments in accordance with terms of Bond Documents. The Controlling Person shall notify the Majority Owner and the Trustee of such adjustment.

(f) Upon request of the Majority Owner, the Controlling Person shall furnish to the Majority Owner monthly account statements received from the Trustee with respect to the Accounts under this Indenture, including disbursements from the Accounts under this Indenture, loan history schedules, outstanding loan balances and escrow balances.

(g) The Controlling Person shall provide immediate written notice to the Majority Owner of any Event of Default of which it receives notice or has actual knowledge, or any event which, with the giving of notice or the passage of time, or both, would constitute any Event of Default of which it receives notice or has actual knowledge.

(h) The Controlling Person shall refer to the Trustee all Borrower requests for a quote of a payoff amount for the Loan, shall request a copy of any such quote from the Trustee, and shall notify the Majority Owner of the Borrower's request. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Bond Documents or this Indenture or otherwise as directed by the Majority Owner.

(i) The Controlling Person shall use its best efforts to obtain financial statements and other reports from the Borrower at the times and to the extent required under the Bond Documents and deliver the same to the Majority Owner and, if requested, to the Trustee.

(j) The Controlling Person shall obtain, and shall provide to the Majority Owner a copy of the Borrower's certificates of compliance with the Land Use Restriction Agreement or other evidence of such compliance submitted by the Borrower to the Issuer within thirty (30) days after the later of (i) the date it is required to be submitted to the Issuer, or (ii) the date it is actually so submitted.

(k) The Controlling Person may perform additional duties with respect to the Loan during construction of the Project Facilities or during the period following an Event of Default at the request of the Majority Owner.

## ARTICLE X MISCELLANEOUS

**Section 10.1 Right of Trustee to Pay Taxes and Other Charges.** If any tax, assessment or governmental or other charge upon any part of the Project Facilities is not paid as required, the Trustee may, subject to any indemnity required pursuant to Section 7.1(h) hereof, pay such tax, assessment or governmental or other charge, without prejudice, however, to any rights of the Trustee hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Bonds or the per annum rate of interest announced from time to time by the bank serving as Trustee as its "prime rate" shall become so much additional indebtedness secured by this Indenture, shall be given a preference in payment over the Bonds, and shall be paid out of the Security.

**Section 10.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Holders, the Controlling Person and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions

and provisions herein being intended to be and being for the sole and exclusive benefit of the parties hereto, the Holders, the Controlling Person and the Borrower as herein provided.

**Section 10.3 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections of this Indenture, shall not affect the remaining portions of this Indenture or any part thereof.

**Section 10.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service or electronic mail (with confirmed receipt) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Issuer, the Borrower, the Trustee, the Majority Owner, the Controlling Person and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests or other communications shall be sent.

**To the Issuer:**

Texas Department of Housing and Community  
Affairs  
PO Box 13941  
Austin, Texas 78711  
Attention: Teresa Morales  
Telephone: (512) 475-3344  
Facsimile: (512) 475-1895

**To the Borrower:**

LDG Forestwood, LP  
1469 S. 4th Street  
Louisville, Kentucky 40208  
Attention: Justin Hartz  
Telephone: (502) 931-5795  
Facsimile: (502) 638-9197

**With a copy to:**

Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, Texas 77046  
Attention: Barry Palmer  
Telephone: (713) 653-7395  
Facsimile: (713) 890-3944

**With a copy to:**

Adams Law Group  
6004 Brownsboro Park Blvd. Suite A  
Louisville, KY 40207  
Attention: Robert W. "Tad" Adams III  
Telephone: (502) 895-8210  
Facsimile: (502) 895-1702

**To the Trustee:** BOKF, NA  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department  
Telephone: (817) 348-5797  
Facsimile: (972) 581-8913

**To the Majority Owner:** At the address set forth on the Register  
maintained by the Trustee

**To the Controlling Person** R4 Servicer LLC  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble  
E-mail: gdoble@r4cap.com

**With a copy to** Kutak Rock LLP  
1760 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
Email: Andrew.schmutz@kutakrock.com

**If to Investor Limited Partner:** R4 FW Acquisition LLC  
c/o R4 Capital LLC  
780 Third Avenue, 10th Floor  
New York, New York 10017  
Attention: Marc Schnitzer  
Telephone: 646.576.7569  
Fax: 212.546.9085  
E-mail: mschnitzer@R4cap.com

**With a copy to:** Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110-2131  
Attention: Thomas Giblin  
E-mail: tgiblin@nixonpeabody.com

**Section 10.5 Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of the Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of such interest, premium or principal need not be made on such date but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date of maturity or the date fixed for redemption, and, in the case of such payment, no interest shall accrue for the period from and after such date.

**Section 10.6 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

**Section 10.7 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 10.8 Governing Law.** This Indenture shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 10.9 Limited Liability of Issuer.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Issuer may incur under the Bonds, this Indenture, the Loan Agreement, the Purchase Agreement or any other Bond Document shall not constitute a general obligation of the Issuer but shall constitute limited obligations of the Issuer payable solely from and enforced only against the Security. Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance hereof, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

**Section 10.10 Execution in Counterparts; Electronic Signatures.** This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Bonds (which must be manually signed by an authorized representative of the Trustee) and instruments of transfer of the Bonds, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Indenture.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its authorized official and the Trustee has caused this Indenture to be executed, in its name by its duly authorized representative, all as of the day and year first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair

**BOKF, NA, as Trustee**

By: \_\_\_\_\_  
Name: Courtney Miller  
Title: Assistant Vice President

**EXHIBIT A  
FORM OF TAX-EXEMPT BOND**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood), Series 2018A**

No. R-A-\_\_

<b>DATED DATE</b>	<b>MATURITY DATE</b>	<b>INTEREST RATE</b>	<b>CUSIP NO.</b>
___ October __, 2018	_____, ____	Variable	_____

REGISTERED OWNER: \_\_\_\_\_  
PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

The Texas Department of Housing and Community Affairs (the "Issuer"), a public and official agency of the State of Texas, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Interest Rate specified above, payable on the first Business Day of each month, commencing \_\_\_\_\_ to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of BOKF, NA, as trustee (the "Trustee"), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year for the actual number of days elapsed. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A issued in the aggregate principal amount of \$20,000,000 (the "Tax-Exempt Bonds"), pursuant to the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"). Simultaneously with the issuance of the Tax-Exempt Bonds, the Issuer will issue its Texas Department of Housing and Community Affairs Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B issued in the aggregate principal amount of \$3,000,000 (the "Taxable Bonds").



The Tax-Exempt Bonds and the Taxable Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located in Balch Springs, Texas, and known as “Forestwood Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

**THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.****

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon or the Comptroller of Public Accounts of the State of Texas shall have executed the Comptroller's Registration Certificate appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

(SEAL)

ATTEST:

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

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]<sup>1</sup>**

**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

**BOKF, NA**, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE - Include only on initial Bond]

**COMPTROLLER'S REGISTRATION CERTIFICATE**

Office of the Comptroller §  
of Public Accounts of § Register No. \_\_\_\_\_  
the State of Texas §

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the State of Texas

(Comptroller's Seal)

<sup>1</sup> Do not include on Initial Bond

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:  
Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

**FORM OF TAXABLE BOND**

**Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood), Series 2018B**

No. R-B-\_\_\_

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>INTEREST RATE</u>	<u>CUSIP NO.</u>
__October __, 2018	_____, ____	Variable	_____

REGISTERED OWNER: \_\_\_\_\_  
PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)

The Texas Department of Housing and Community Affairs (the “Issuer”), a public and official agency of the State of Texas, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and (B) interest thereon, at the Interest Rate specified above, payable on the first Business Day of each month, commencing \_\_\_\_\_ to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a “Record Date”) and to pay any other amounts as specified in the Indenture (hereinafter defined).

Principal of, and premium, if any, on this Bond are payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of BOKF, NA, as trustee (the “Trustee”), or its successor.

Interest on this Bond shall be computed on the basis of a 360-day year, comprised of twelve 30 day months. Interest on this Bond shall be payable in such coin or currency of the United States as at time of payment is legal tender for payment of private and public debts, at the designated payment office of the Trustee or its successor.

If a Bondholder so elects, any payment due to such Bondholder shall be made by wire transfer of federal reserve funds to any account in the United States of America designated by such Bondholder if such Bondholder, at its expense, (a) so directs by written notice delivered to the Trustee at least ten (10) Business Days before the date upon which such wire transfer or other arrangement is to be made and (b) otherwise complies with the reasonable requirements of the Trustee.

This Bond is one of an issue of duly authorized Texas Department of Housing and Community Affairs Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B issued in the aggregate principal amount of \$3,000,000 (the “Taxable Bonds”), pursuant to the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”). Simultaneously with the issuance of the Taxable Bonds, the Issuer will issue its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A issued in the aggregate principal amount of \$20,000,000 (the “Tax-Exempt Bonds”).

This is a draw-down Bond. The principal amount of this Bond as of any given date shall be equal to (i) the total amount of principal advanced by the Purchaser, less (ii) any payment of principal on the

Bonds received by the Holders thereof. Principal amounts advanced by the Purchaser shall be noted on the recordkeeping system maintained by the Trustee.

The Taxable Bonds and the Tax-Exempt Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of October 1, 2018 (as amended, modified or supplemented from time to time, the “Loan Agreement”), between the Issuer and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located in Balch Springs, Texas, and known as “Forestwood” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

Reference is hereby made to the Indenture and to all amendments and supplements thereto for a description of the property pledged and assigned to the Trustee and of the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the Trustee, the terms on which the Bonds are issued and secured, the manner in which interest is computed on this Bond, mandatory and optional redemption rights, acceleration, the rights of the Bondholders and the provisions for defeasance of such rights.

This Bond is subject to optional and mandatory redemption in whole or in part, on the dates, under the terms and conditions and at the redemption prices set forth in the Indenture, all of the provisions of which are, by this reference, incorporated into this Bond. Notice of redemption shall be given in the manner set forth in the Indenture.

**THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE LOAN AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.****

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of

default thereunder, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

By its purchase of this Bond, the registered owner hereof agrees to the appointment of the Controlling Person as provided in the Indenture and authorizes the Controlling Person to exercise such rights and remedies afforded to the Controlling Person on behalf of the Bondholder as provided in the Bond Documents.

Modifications or alterations of the Indenture or of any indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Indenture.

This Bond may be exchanged, and its transfer may be effected, only by the registered owner hereof in person or by his attorney duly authorized in writing at the designated corporate trust office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture. Upon exchange or registration of such transfer a new registered bond or bonds of the same series, maturity and interest rate and of an Authorized Denomination or Authorized Denominations for the same aggregate principal amount will be issued in exchange therefor.

The Issuer and the Trustee may deem and treat the person in whose name this Bond shall be registered on the bond register, as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes and neither the Issuer nor the Trustee shall be affected by any notice to the contrary.

All acts, conditions and things required by the laws of the Issuer to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law.

Neither the trustees, officers, agents, employees or representatives of the Issuer nor any person executing the Bonds shall be personally liable hereon or be subject to any personal liability by reason of the issuance hereof, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly released and waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon or the Comptroller of Public Accounts of the State of Texas shall have executed the Comptroller's Registration Certificate appearing hereon.

IT IS HEREBY CERTIFIED, RECITED AND REPRESENTED that the issuance of this Bond is duly authorized by law; that all acts, conditions and things required to exist and to be done precedent to and in the issuance of this Bond to render the same lawful and valid have been properly done and performed and have happened in regular and due time, form and manner as required by law; and that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to or in the execution and delivery of the Indenture have been done and performed and have happened in regular and due form as required by law.



IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name under its official seal by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Secretary all as of the Dated Date hereof.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

(SEAL)

ATTEST:

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

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]<sup>2</sup>**

**CERTIFICATE OF AUTHENTICATION**

This is to certify that this Bond is one of the Bonds referred to in the within mentioned Indenture.

Date of Authentication:

**BOKF, NA**, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF COMPTROLLER'S REGISTRATION CERTIFICATE - Include only on initial Bond]

**COMPTROLLER'S REGISTRATION CERTIFICATE**

Office of the Comptroller §  
of Public Accounts of § Register No. \_\_\_\_\_  
the State of Texas §

I hereby certify that this Bond has been examined, certified as to validity, and approved by the Attorney General of the State of Texas, and that this Bond has been registered by the Comptroller of Public Accounts of the State of Texas.

Witness my signature and seal this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the State of Texas

(Comptroller's Seal)

<sup>2</sup> Do not include on Initial Bond

**ASSIGNMENT FOR TRANSFER**

FOR VALUE RECEIVED, the undersigned, hereby sells, assigns and transfers unto \_\_\_\_\_ (Tax Identification or Social Security No. \_\_\_\_\_) the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within bond on the books kept for registration thereof, with full power or substitution in the premises.

\_\_\_\_\_  
Date:  
Signature Guaranteed:

\_\_\_\_\_  
Signature

NOTICE: Signature(s) must be guaranteed by a signature guarantor institution that is a participant in a nationally recognized signature guarantor program.

NOTICE: The signature to this assignment must correspond with the name of the registered owner of the within bond as it appears on the face hereof in every particular, without alteration or enlargement or any change whatever, and the Social Security number or federal employer identification must be supplied.

## EXHIBIT B

### FORM OF INVESTOR LETTER

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701

BOKF, NA  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

RE: Forestwood

Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the “Purchaser”), the initial purchaser of the Texas Department of Housing and Community Affairs \$20,000,000 Multifamily Housing Revenue Bonds (Forestwood) Series 2018A and \$3,000,000 Taxable Multifamily Housing Revenue Bonds (Forestwood) Series 2018B, both dated \_October \_\_, 2018, (collectively, the “Bonds”), does hereby certify, represent and warrant for the benefit of the Texas Department of Housing and Community Affairs (the “Issuer”) and BOKF, NA, as trustee (the “Trustee”), that the Purchaser is a “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933, as amended (a “QIB”).

The Purchaser hereby acknowledges, represents, and warrants to, and agrees with, the Issuer and the Trustee, as follows:

(1) The Purchaser is purchasing the Bonds with its own funds (or with funds from accounts over which it has sole investment authority) and not the funds of any other person, and for its own account (or for accounts over which it has sole investment authority) and not as nominee or agent for the account of any other person and not with a view to any distribution thereof, other than the deposit of the Bonds in a custodial or trust arrangement each of the beneficial owners of which shall be required to be a QIB.

(2) The Purchaser has such knowledge and experience in business and financial matters and with respect to the purchase and ownership of multifamily housing revenue bonds, tax-exempt securities and other investment vehicles similar in character to the Bonds, so as to enable it to understand and evaluate the risks of such investments and form an investment decision with respect thereto, the Purchaser has no need for liquidity in such investment and the Purchaser is (or any account for which it is purchasing is) able to bear the risk of such investment for an indefinite period and to afford a complete loss thereof.

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements, and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer, LDG Forestwood, LP (the “Borrower”), and its credit standing, the Loan Agreement dated as of October 1, 2018, among the Issuer, the Borrower and the Trustee (the “Loan Agreement”), the Indenture of Trust dated as of October 1,

2018, between the Issuer and the Trustee (the “Indenture”), and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

(4) The Purchaser has had the opportunity to ask questions and receive answers concerning the terms and conditions of the offering and to obtain any additional information it may request.

(5) **THE PURCHASER UNDERSTANDS THAT:**

(a) **NEITHER THE STATE OF TEXAS NOR ANY POLITICAL SUBDIVISION OR AGENCY OF THE STATE OF TEXAS, SHALL BE LIABLE OR OBLIGATED (GENERALLY, SPECIALLY, MORALLY OR OTHERWISE) TO PAY THE PRINCIPAL OF THE BONDS OR THE PREMIUM, IF ANY, OR INTEREST THEREON, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF TEXAS, OR ANY OTHER POLITICAL SUBDIVISION OR AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS; AND**

(b) **THE ISSUER HAS NO TAXING POWER AND PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS IS PAYABLE SOLELY OUT OF THE MONEYS TO BE RECEIVED BY THE TRUSTEE ON BEHALF OF THE ISSUER UNDER THE LOAN AGREEMENT AND AMOUNTS ON DEPOSIT IN THE FUNDS AND ACCOUNTS ESTABLISHED AND PLEDGED UNDER THE INDENTURE.**

(6) The Purchaser understands that in connection with any proposed transfer or exchange of Bonds, there must be delivered to the Trustee a letter of the transferee in substantially the same effect as this letter or otherwise as permitted under the Indenture.

(7) The Purchaser understands that, in connection with any proposed transfer of the Bonds, such transfer must be limited to an Eligible Purchaser. “Eligible Purchaser” means a prospective transferee that the Purchaser has clear grounds to believe and does believe can make representations with respect to itself to substantially the same effect as the representations set forth herein.

**(8) THE PURCHASER INDEMNIFIES THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL LIABILITY, COST OR EXPENSE (INCLUDING ATTORNEYS’ FEES) THAT RESULT IF THE REPRESENTATIONS CONTAINED IN THE PURCHASER’S INVESTOR LETTER ARE FALSE IN ANY MATERIAL RESPECT.**

(9) The Purchaser is acquiring 100% of the Bonds.

The Purchaser has conducted its own investigation to the extent it deemed necessary. The Purchaser has been offered an opportunity to have made available to it any and all such information it might request from the Issuer and the Borrower. On this basis, it is agreed by the Purchaser that the Purchaser is not relying on any other party or person to undertake the furnishing or verification of information related to the referenced transaction.

The Bonds for this Purchaser should be registered with the Trustee as follows and an executed W-9 has been attached:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tax ID #: \_\_\_\_\_

Payment instructions: ( ) wire ( ) check

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

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

PURCHASER:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MUST BE SIGNED BY ACTUAL PURCHASER.  
MAY NOT BE SIGNED BY NOMINEE OR AGENT**

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**LOAN AGREEMENT**

**by and between**

**LDG FORESTWOOD, LP**

**and**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**Dated as of October 1, 2018**

**Relating to:**

**\$20,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018A**

**and**

**\$3,000,000**

**Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018B**

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The amounts payable to Texas Department of Housing and Community Affairs (the “Issuer”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to BOKF, NA, as trustee (the “Trustee”) under the Indenture of Trust between the Issuer and the Trustee dated as of October 1, 2018.

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## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of October 1, 2018, by and between TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (together with its successors and assigns, the “Issuer”) and LDG FORESTWOOD, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under Chapter 2306, Texas Government Code, as amended (the “Act”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$20,000,000 in original aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (Forestwood), Series 2018A (the “Tax-Exempt Bonds”) and \$3,000,000 in original aggregate principal amount of the Issuer’s Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Bonds”), pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “Indenture”), dated as of October 1, 2018, between the Issuer and BOKF, NA, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “Trustee”), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 220 units and related personal property and equipment, located in Balch Springs, Texas and known as “Forestwood Apartments” (the “Project” or “Project Facilities”).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

### ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture or the Tax Exemption Agreement among the Issuer, the Trustee, and the Borrower dated as of October 1, 2018.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to

include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and (vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## **ARTICLE 2 LOAN AND PROVISIONS FOR REPAYMENT**

### Section 2.1     Basic Loan and Repayment Terms.

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower’s obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, two Business Days before the dates, and in the amounts, set forth on the Sinking Fund Schedule, and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c) It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan re-payments payable to the Issuer pursuant to the Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 3.4(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

### Section 2.2     Fees.

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to R4 Capital Funding LLC an origination fee of \$143,750 and to R4 Servicer LLC a construction monitoring fee of \$143,750, together with the fees and expenses of its counsel.

(b) The Borrower shall pay (as directed by the Controlling Person) two Business Days before each Interest Payment Date, commencing on the First Interest Payment Date and continuing through Final Completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to

exceed \$1,500 per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Controlling Person may direct the Trustee to disburse such amounts as part of any Advance.

(c) The Borrower shall pay all Issuer Fees.

(d) The Borrower shall pay all Ordinary Trustee Fees and Expenses and Extraordinary Trustee Fees and Expenses.

(e) The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

### Section 2.3 Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's and the Majority Owner's and each Holder's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 3.4(a) of the Indenture, on any Interest Payment Date on or after The First Optional Call Date, upon the payment of the principal amount of the Bonds plus interest accrued thereon to, but not including, the date of redemption, without premium or penalty.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to The First Optional Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, The First Optional Call Date.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 3.4(b) of the Indenture. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on the Sinking Fund Schedule, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 3.4(c) of the Indenture except as otherwise provided in Section 3.4(b)(vii) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other

right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. The Borrower covenants to defend, indemnify and hold harmless the Trustee, the Controlling Person, the Majority Owner, and each of their respective Affiliates and each of their and their Affiliates' respective directors, officers, employees, representatives and agents (collectively, the "Indemnified Parties"), except as limited below, from and against any and all claims, damages, losses, liabilities, costs or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Bonds, Indenture, Loan Agreement, Regulatory Agreement or Tax Agreement, or the execution or amendment hereof or thereof or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance or redemption of the Bonds;

(b) any breach by the Borrower of any representation, warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement or the other Bond Documents, including all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default or any Determination of Taxability;

(c) the involvement of any of the Indemnified Parties in any legal suit, investigation, proceeding, inquiry or action as a consequence, direct or indirect, of the Controlling Person or the Majority Owner's actions taken pursuant to this Agreement or any of the other Bond Documents or any other event or transaction contemplated by any of the foregoing;

(d) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Bonds, or any supplement or amendment thereof, or the omission or alleged omission to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Bond Documents or the Security Interests thereunder or the performance of duties under the Bond Documents or any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project Facilities or the use thereof, including without limitation any lease thereof or assignment of its interest in this Agreement;

(f) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Advances or the Project Facilities, the operation of the Project Facilities, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition or construction of, the Improvements or any part thereof;

(g) any Lien (other than a Permitted Encumbrance) or charge upon payments by the Borrower to the Issuer and the Trustee hereunder, or any taxes (including, without limitation, all ad

valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project Facilities;

(h) any violation or alleged violation of any applicable law or regulation including, without limitation, any Environmental Law or any inspection, review or testing with respect to, or the release of any toxic substance from, the Project Facilities or any part thereof;

(i) the enforcement of, or any action taken by the Issuer or any Indemnified Party, related to remedies under, this Agreement, the Indenture and the other Bond Documents;

(j) any action, suit, claim, proceeding, audit, inquiry, examination, or investigation of a judicial, legislative, administrative or regulatory nature concerning or related to interest payable on the Tax-Exempt Bonds not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(k) any action, suit, claim or demand contesting or affecting the title of the Project Facilities;

(l) the investigation of, preparation for or defense of any litigation, proceeding or investigation in connection with the Project Facilities or the transactions to be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities or any Indemnified Party; and

(m) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Bonds or the Project.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of any Indemnified Party. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Indenture. Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Trustee or its employees arising from or in connection with any investment of funds made by the Trustee in good faith as directed by the Borrower, the Controlling Person or the Majority Owner, and (ii) to indemnify and hold the Trustee and its employees harmless against any liability, losses, damages, costs, expenses, causes of action, suits, claims, demands and judgments of any nature arising from or in connection with any such investment. Nothing in this Section is intended to limit the Borrower's obligations contained in Section 2.1 and 2.2 hereof. Amounts payable to the Issuer hereunder shall be due and payable five (5) days after demand and will accrue interest at the Default Rate, commencing with the expiration of the five (5) day period. When the Issuer incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

Section 2.6 Indemnification; Borrower's Additional Obligations.

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY



AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS LOAN AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS LOAN AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

(b) IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THIS LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE ISSUER OR ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN

CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT THEREON, AND UPON TIMELY NOTICE FROM THE ISSUER THE BORROWER SHALL DEFEND THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

(c) NOTWITHSTANDING ANY PROVISION OF THIS LOAN AGREEMENT TO THE CONTRARY, THE ISSUER SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE ISSUER'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

Section 2.7 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Security Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver to the Trustee (and where required, duly record), (a) the Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of the date hereof, made by the Borrower to the Issuer and assigned to the Trustee covering the Project Facilities (the "Mortgage"); (b) the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and Guarantor in favor of the Trustee (the "Environmental Indemnity") pursuant to which the Borrower and the Guarantor shall indemnify and hold the Trustee harmless from environmental liabilities; (c) the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Trustee, consented to by the Manager (the "Assignment of Management Agreement and Consent"); (d) the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Replacement Reserve Agreement"); (e) the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Assignment of Project Documents") and consented to by the Architect and the Contractor; (f) the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Trustee (the "Guaranty of Recourse Obligations"); (g) the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Trustee (the "Guaranty of Completion"); (h) the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Trustee (the "Guaranty of Debt Service and Stabilization"); (i) the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Trustee (the "Assignment of Capital Contributions"), (j) a Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the General Partner, in favor of the Trustee (the "General Partner Pledge"); and (k) a Developer Limited Guaranty, Pledge and Security Agreement dated as of the date hereof from LDG Multifamily, LLC, as "Developer" in favor of the Trustee (the "Developer Fee Pledge").

Section 3.2 Financing Statements. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file such continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to continue filed Financing Statements, copies of which are provided to Trustee. The Borrower will pay upon demand the costs of and expenses incurred in filing the foregoing continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

#### **ARTICLE 4 REPRESENTATIONS OF ISSUER**

Section 4.1 Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a public and official agency of the State of Texas and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds thereof to the Borrower for the acquisition and construction of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition to the performance by the Issuer of its obligations under the Bond Documents.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, legal, valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(e) There is no default of the Issuer in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Bond Documents or the ability of the Issuer to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) There are no obligations of the Issuer other than the Bonds that have been, are being or will be (i) sold at substantially the same time, (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from substantially the same source of funds.

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

(h) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under the Indenture. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

(j) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement or the Indenture.

(k) The Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes. All of the amounts received upon the sale of the Tax-Exempt Bonds shall be allocated to, and shall be used, for the purpose of financing the aggregate basis of land and building costs within the meaning of Section 42(h)(4)(B) of the Code. To the extent within the reasonable control of the Issuer, and provided that the Issuer shall be under no duty to enforce compliance, the amounts received upon the sale of the Tax-Exempt Bonds and interest and other investment earnings on those amounts shall be allocated and used for financing Project Costs of each building and related land in the Project Facilities so that the aggregate basis of each such building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed fifty percent (50%) or more from those amounts.

(l) No member of the Issuer, nor any other official or employee of the Issuer, has any interest (financial, employment or other) in the Borrower, in the Project Facilities or in the transactions contemplated hereby, by the other Bond Documents or by the Indenture.

(m) The Issuer used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 4.2 No Liability of Issuer; No Charge Against Issuer's Credit. Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released

as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person and the Holders from time to time of the Bonds as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the state of its organization and is duly qualified to do business in the State. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, renovating, equipping, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is LDG Forestwood GP, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Texas and is duly qualified to do business in the State. The General Partner has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its partnership agreement and certificate of formation. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it. The execution, delivery and performance by the Borrower of this Agreement, the Swap Agreement and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary company and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, or certificate of limited partnership of the Borrower or the General Partner, as applicable, or any Legal Requirement applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents. Except as set forth on Schedule 6 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. No such Governmental Action will terminate, or become void or voidable or

terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement, the Swap Agreement, and the other Bond Documents and the Subordinate Debt Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirement affecting creditors' rights generally.

Section 5.5 No Litigation. Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Bonds, the Swap Agreement or the Bond Documents or the Subordinate Debt Documents or the construction, operation or ownership of the Project Facilities, or the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

Section 5.6 No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Bond Documents, the Swap Agreement, the Subordinate Debt Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Exemption Agreement and the Land Use Restriction Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and the requirements for exemption from ad valorem real estate taxation under the laws of the State.

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has good and indefeasible title in fee simple to the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable

working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9 Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate governmental authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10 Financial Information.

(a) All of the financial information furnished to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantor, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the General Partner has any material liability or contingent liability not disclosed to the Controlling Person or the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantor, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the General Partner.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBGC”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the General Partner’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, “ERISA Affiliate” means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the

meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

Section 5.15 Full Disclosure. This Agreement, the exhibits hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner by or on behalf of the Borrower, the Guarantor, or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities and do not



omit to state a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person and the Majority Owner on behalf of any such party before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Bond Documents. Each of the Borrower, the Guarantor and the General Partner has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing (including, without limitation, the Swap Agreement and the Subordinate Debt) relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17 Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18 Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 4 accurately reflects (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Controlling Person and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Controlling Person and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for construction of the Project Facilities.

Section 5.23 Survey. The survey for the Project Facilities delivered to the Controlling Person and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto.

Section 5.24 Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25 Reserved.

Section 5.26 Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

## **ARTICLE 6 GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of financing, constructing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, (v) except for Permitted Transfers, not amend any provision of its certificate of limited partnership or its Partnership Agreement, as applicable, relating to its purpose, management or operation without the prior written consent of the Controlling Person, and (vi) promptly and diligently enforce its rights under the Partnership Agreement, subject to the terms and conditions therein, and cause Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement and apply the capital contributions to the repayment of the Bonds to the extent set forth in the Development Budget.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable

deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Controlling Person.

Section 6.3 Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.4 Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 11 hereto.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Controlling Person and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Controlling Person on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Controlling Person, with evidence that such policy has

been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person may, from time to time, reasonably require. The Trustee shall not be required to examine such insurance policies or certificates to determine compliance with this Section 6.4.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply with all of its covenants and agreements under the Swap Agreement or the Subordinate Debt Documents. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) As soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(1) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(2) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Tax-Exempt Bonds for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (ii) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (iii) no Event of Default has occurred or exists;

(b) As soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year; and

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate; and

(3) an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages); and

(4) notwithstanding the foregoing, if the Issue Date occurred on or after November 15, the Borrower may elect, by written notice to Controlling Person, to include the period from the Issue Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Issue Date occurred.

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within fifteen (15) days after receipt of notice thereof, notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (iii) which challenges the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes;

(g) As soon as possible, notice of any material adverse change in the operations, financial condition or prospects of the Borrower, the General Partner, the Guarantor or the Project Facilities;

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer;

(i) Not later than the Completion Date, the certificate of completion and the use of proceeds certificate set forth as Schedules 8 and 9 hereof;

(j) As and when required under the Land Use Restriction Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Land Use Restriction Agreement;

(k) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(l) Not later than the Stabilization Date, a stabilization certificate in the form set forth on Schedule 10 hereto;

(m) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents; and

(o) Copies of IRS Forms 8609 as issued and received by the Borrower; and

(p) Upon receipt thereof, copies of all real estate tax bills and insurance bills;

(q) Promptly following filing thereof, all tax returns of the Borrower and, if requested, the General Partner; and

(r) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request.

#### Section 6.10 Tax-Exempt Status.

(a) The Borrower represents, warrants and covenants that it shall not take any action, or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the excludability of the interest on the Tax-Exempt Bonds from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Exemption Agreement, which is incorporated herein as if set forth fully herein.

(b) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to

comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Loan Agreement.

(c) The Borrower covenants that, notwithstanding any other provision of this Loan Agreement or any other instrument, the Borrower will take no action, nor shall it direct the Trustee to take any action, to invest or use of proceeds of the Bonds, or any other moneys that may arise out of or in connection with this Loan Agreement, the Indenture or the Project that would cause the Bonds to be treated as “arbitrage bonds” within the meaning of Section 148 of the Code. In addition, the Borrower covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Bonds or the proceeds derived from the sale of the Bonds or any other moneys that may arise out of, or in connection with, this Loan Agreement, the Indenture or the Project throughout the term of the Bonds. No provision of this Loan Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with Section 148 of the Code.

(d) Neither the Borrower nor any “related party” to the Borrower within the meaning of Section 1.150-1(b) of the Regulations is, or will be, a party to any agreement, formal or informal, pursuant to which it has or will purchase any of the Bonds in an amount related to the amount of the Loan made to the Borrower pursuant to this Agreement unless the Borrower or such related party provides a Favorable Opinion of Bond Counsel to the Issuer, the Trustee and the Controlling Person.

#### Section 6.11    Single Purpose Entities.

(a) The Borrower and the General Partner shall (i) not engage in any business or activity, other than the ownership, construction, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Bond Documents, the Swap Agreement, the Subordinate Date Documents or unsecured loans or guaranty payments made by the partners of the Borrower or Guarantor pursuant to the Partnership Agreement, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Bond Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its partnership certificate, Partnership Agreement, articles of incorporation or bylaws without obtaining the prior written consent of the Controlling Person, not to be unreasonably withheld, conditioned or delayed (and which Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); provided that no consent shall be required for changes or amendments to the Partnership Agreement to the extent such change or amendment is solely required to effect a Permitted Transfer, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted



Transfer, materially and adversely affect the rights and interests of the Holders also require Majority Owner consent, which consent shall not be unreasonably withheld, conditioned or delayed; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Loan Documents.

Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person’s sole and absolute discretion; and (ii) complying with the applicable requirements of the Land Use Restriction Agreement.

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower’s Indebtedness under the Bond Documents, the Swap Agreement, the Subordinate Date Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; (ii) Indebtedness in respect of the

Swap Agreement or the Subordinate Date Documents; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from partners or their Affiliates or the Guarantor pursuant to the Partnership Agreement.

Section 6.14 Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "Moisture Management Program") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "Mold"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("EPA") guide entitled "Mold Remediation in Schools and Commercial Buildings", EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in connection with any mold remediation

undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower's expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in paragraph (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15 Controlling Person. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed R4 Servicer LLC to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Majority Owner.

Section 6.16 Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17 Leases. The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect except for leases to residential tenants in compliance with the Land Use Restriction Agreement. Except for leases to residential tenants in compliance with the Land Use Restriction Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Land Use Restriction Agreement.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture. The Borrower shall obtain any approvals required under the Swap Agreement or the Subordinate Debt Documents in connection with any of the foregoing.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Manager (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the "Management Agreement"). Under the Management Agreement, the Manager shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Manager in excess the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts. The Borrower shall not replace the Manager for the Project Facilities without the Controlling Person's prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person's prior written approval. In the event the Manager resigns or is removed, the Borrower shall promptly seek a replacement Manager and submit such Manager and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Manager on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Manager shall execute a consent to the Assignment of the Management Agreement pursuant to which the Manager shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days' notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Tax-Exempt Bonds has become includable in gross income for federal income tax purposes without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an

event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner.

Section 6.21 List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person's request shall be paid by the Controlling Person.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Tax-Exempt Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Tax-Exempt Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 —Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an "OFAC Violation"), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the "Anti-Terrorism Regulations"), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person's taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the "Proposed Budget"). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower's control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following

submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, acceleration premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 7 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the Swap Agreement or the Subordinate Debt Documents without the prior written consent of the Controlling Person.

Section 6.29 Construction of Improvements. The Borrower shall construct the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description for the due completion of renovation or construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of renovation or construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure.

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32 Loan Rebalancing. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, (ii) the capital contributions from Borrower's partners, (iii) any other source of funds shown in the Development Budget attached hereto and (iv) any other sums deposited by the Borrower with the Trustee are insufficient to pay through completion of the Project Facilities, all of the following sums: (x) all remaining costs of construction, marketing, ownership, maintenance and leasing of the Project Facilities and (y) all remaining interest and all other remaining sums which may accrue or be payable under the Bond Documents, then, the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made. Notwithstanding the foregoing, if, at any time, Controlling Person determines, in the Controlling Person's reasonable discretion, that it is unlikely that Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Loan proceeds), Controlling Person may exclude such amount from its determination of whether the Loan is "in balance" as provided above.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from

Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34 Special Servicing Costs. The Controlling Person, as servicer of the Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Developer Fee. Borrower will not pay any Developer Fee unless permitted under Section 2 of the Developer Fee Pledge.

Section 6.36 Substitution of Guarantor. The Borrower and the Guarantors shall, within sixty (60) days of the death or dissolution of an individual Guarantor, provide a substitute guarantor (the "Substitute Guarantor") who shall assume and perform the obligations of a Guarantor under the Bond Documents if the remaining Guarantors shall not then satisfy the Minimum Net Worth Requirement set forth below. The Substitute Guarantor shall: (i) be a person or entity reasonably acceptable to Controlling Person; (ii) be a person or entity for which no OFAC Violation (as set forth in Section 6.23 hereof) shall have occurred; (iii) together with the other remaining Guarantors, satisfy the Minimum Net Worth Requirement set forth below immediately following the substitution; (iv) satisfy the Controlling Person's credit underwriting standards at the time of substitution; and (v) execute and deliver instruments of assumption in form and substance acceptable to the Controlling Person. For purposes of the forgoing, Guarantors must have an aggregate minimum net worth of \$5,000,000 with liquid assets (unencumbered cash, cash equivalents and liquid securities) of at least \$1,000,000 (collectively, "Minimum Net Worth Requirement"). The Substitute Guarantor and each remaining Guarantor must provide the Controlling Person with a written certification, under penalty of perjury as true and complete, of the net worth and liquid assets of such Guarantor, derived in accordance with customarily acceptable accounting practices together with such other evidence as the Controlling Person may request.

Section 6.37 Maintenance of Swap Agreement. Unless otherwise consented to by the Controlling Person, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained the Swap Agreement or a replacement Swap Agreement approved in form and substance by the Controlling Person at all times throughout the term hereof such that the entire outstanding principal amount of the Bonds is fully hedged. To the extent necessary to fully hedge the Bonds, the Borrower will timely exercise its option in the Rate Lock.

Section 6.38 Compliance with Texas Government Code. To the extent Section 2270.002, Texas Government Code, is applicable and subject to or as otherwise required by applicable federal law, the Borrower hereby represents that the Borrower does not boycott Israel and will not boycott Israel through the term of this Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Purchase Agreement, and the related assignments, and such representation is hereby incorporated by reference into each of the documents referenced herein. For purposes of this representation, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, to the extent this Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, Purchase Agreement, and the related assignments are governmental contracts within the meaning of Section 2252.151 of the Texas Government Code, as amended, and solely for the purpose of



compliance with Chapter 2252 of the Texas Government Code, the Borrower represents that neither the Borrower nor any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Borrower, is a company engaged in business with Iran, Sudan, or a foreign terrorist organization or on a list prepared and maintained by the Comptroller of Public Accounts of the State of Texas under Section 806.051, 807.051, or 2252.153, Texas Government Code.

Section 6.39    Extension of the Stabilization Date

(a)    Notwithstanding any provisions in this Agreement to the contrary, the Borrower may, upon 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(1)    there is no uncured Default or Event of Default under the Bond Documents and the Borrower is then in compliance with its obligations under the Bond Documents;

(2)    the extended deadline for the achievement of Stabilization is no later than October 1, 2021; and

(3)    an extension fee equal to 0.10% times the principal amount of Bonds Outstanding at the date of extension is paid to the Controlling Person with respect to each extension; and

(4)    that the Controlling Person is satisfied, at its sole discretion, that for the term of the extension (i) sufficient cash flows are generated from property operations to pay debt service during such period, or (ii) the Borrower has deposited with the Trustee interest to cover such period.

**ARTICLE 7**  
**DEFAULTS AND REMEDIES**

Section 7.1    Defaults. Each of the following shall constitute an event of default hereunder (“Event of Default”):

(a)    Failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;

(b)    Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c)    Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than as described in paragraphs (a) and (b) above, and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower (with a copy to the Investor Limited Partner, or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Investor Limited Partner shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner or the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Indenture or the other Bond Documents;

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities fail to achieve (i) Substantial Completion on or before the Substantial Completion Date, or (ii) Final Completion on or before the Completion Date, or (iii) Stabilization on or before the Stabilization Date;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for thirty (30) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or the Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such obligation or obligations or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or the Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(n) construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except such reason as the Controlling Person shall deem reasonable;

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(p) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon five (5) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled; and

(q) The Improvements have not been completed in accordance with the Plans and Specifications by the Completion Date.

(r) an event of default or termination event pertaining to the Borrower as defined in and pursuant to the Swap Agreement or the Subordinate Debt Documents occurs and any applicable notice and or cure period has expired;

(s) An event of default under the Partnership Agreement which adversely effects the timing or payment of Required Equity Funds; and

(t) The death or dissolution of any individual Guarantor to the extent that the remaining Guarantors do not then meet the Minimum Net Worth Requirement and a substitute Guarantor is not provided as set forth in Section 6.36 hereof.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the direction of the Controlling Person, shall:

(a) Declare the principal of all Bonds then Outstanding and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee upon demand any amount or amounts expended by the Trustee or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Note, and shall be considered part of the indebtedness evidenced by the Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for

payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and its counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Bond Documents or any other document; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Withhold funding of any Advances pursuant to Article IX of this Agreement; and

(h) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand

hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6 Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.7 Cure by Investor Limited Partner. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Investor Limited Partner shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

(a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) If there shall have occurred and be then continuing an event of default under the Land Use Restriction Agreement which would, in the reasonable judgment of the Issuer or the Trustee, jeopardize the excludability of interest on the Tax-Exempt Bonds from gross income for federal tax purposes (a “Regulatory Agreement Default”) and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Controlling Person and the Majority Owner receive written notice from the Trustee or the Issuer stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the consent of the Controlling Person or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with a Favorable Opinion of Bond Counsel (which opinion may be requested and obtained by the Controlling Person or the Majority Owner and obtained at the expense of the Borrower);

(ii) The Controlling Person, the Majority Owner or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee's first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel provided to the Trustee, such extension will not adversely affect the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes; and provided further, that the Trustee, upon five (5) Business Days' prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Trustee, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Majority Owner, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8 DEPOSITS TO FUNDS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.2      Deposits to Tax and Insurance Escrow Fund.

(a)      On the Issue Date, the Borrower shall pay, or cause to be paid, to the Trustee, to be deposited in the Tax and Insurance Escrow Fund, an amount which, when added to an amount equal to the sum of:

(i)      the product of the Impositions component of the Monthly Tax and Insurance Amount for the Project Facilities and the number of months from and including the Issue Date, until and including the month in which occurs the date that the Impositions on the Project Facilities are due and payable before penalty; and

(ii)     the product of the insurance component of the Monthly Tax and Insurance Amount and the number of months from and including the Issue Date, until and including the month in which occurs the date that the annual insurance premiums for the insurance on the Project Facilities required hereunder are due and payable, will be sufficient to pay in full the Impositions and insurance premiums for the Project Facilities when the same become due and payable before penalty.

(b)      Thereafter, on the first (1<sup>st</sup>) Business Day of each month commencing on the First Interest Payment Date, and each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

Section 8.3      [Intentionally Omitted].

Section 8.4      Deposits to Redemption Fund. Two Business Days before each Principal Payment Date, commencing on the First Principal Payment Date and continuing thereafter until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on the Sinking Fund Schedule for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture. Following any partial redemption of Bonds (other than pursuant to Section 3.4(c) of the Indenture), the Controlling Person shall adjust the monthly amount due pursuant to this provision to account for any partial redemption of the Bonds in the manner set forth in Section 3.4(e) of the Indenture and shall provide the Borrower and the Trustee with the revised Sinking Fund Schedule. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 3.4(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 3.4(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 3.4 of the Indenture, as provided therein.

Section 8.5      Establishment of Operating Reserve Fund. The Borrower shall, upon the receipt of the Fifth Installment (as defined in the Partnership Agreement), establish and maintain at a bank approved by the Controlling Person, an operating reserve fund (the "Operating Reserve Fund") in the amount of \$759,651. Moneys in the Operating Reserve Fund may be used by the Borrower only to fund any operating deficits of the Borrower, Expenses, or for any other operating or capital needs approved by the Controlling Person and Investor Limited Partner in writing. During the continuance of an Event of Default or in order to prevent an Event of Default, the Operating Reserve Fund shall be applied to by the Borrower, at the direction of the Controlling Person: (i) first to pay current debt service on the Bonds; (ii) second to pay other operating deficits of the Project Facilities; and (iii) thereafter to payment of other amounts owed by the Borrower. Borrower additionally covenants and agrees that promptly following the date that the Investor Limited Partner, or an Affiliate of Investor Limited Partner, is no longer a partner under the Partnership Agreement of the Borrower (the "Operating Reserve Trigger"), the Operating



Reserve Fund shall be transferred to the Trustee and held as additional security for the Bonds. Notwithstanding the foregoing, the Borrower may request that the Controlling Person reduce the amount of the Operating Reserve Fund by twenty percent (20%) annually each year commencing in the eleventh year of the compliance period. The Controlling Person shall consent to the such reduction provided that: (i) the ratio of Stabilized NOI in each of the prior twelve (12) consecutive months to maximum principal, interest, Issuer Fees and Trustee fees payable in any month on the amount of Tax-Exempt Bonds Outstanding, adjusted for the net effect of the Swap Agreement, equals or exceeds 1.20 to 1.0; (ii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iii) there have been no draws on the Operating Reserve Fund during the prior twelve (12) months; and (iv) with respect to the initial reduction, the amount in the Operating Reserve Fund shall be at least \$759,651.

Section 8.6     [Intentionally Omitted].

Section 8.7     Investment. Funds in the Accounts shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.8     Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.9     Reports. The Trustee shall provide to the Borrower and the Issuer detailed monthly reports on or before the fifth (5<sup>th</sup>) business day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) business days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.10    No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

**ARTICLE 9**  
**CONSTRUCTION AND FUNDING OF ADVANCES**

Section 9.1 Construction of Project Facilities; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days following the Issue Date, and shall achieve Substantial Completion by the Substantial Completion Date and Final Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date; provided, however, that at the request of the Borrower and with the prior written approval of the Controlling Person, the Substantial Completion Date or the Completion Date may be extended one or more times for such periods as the Controlling Person may approve in its sole discretion and upon delivery of such other information and funds as the Controlling Person may require in its sole discretion.

Section 9.2 Making The Advances.

(a) At such time as the Borrower desires to obtain an advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Controlling Person, and each advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Controlling Person. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3 Advances to Contractors; to Others. At its option during the existence of any Event of Default or Default, the Controlling Person may direct the Trustee to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due. The Trustee shall not be liable for making such advances at the direction of the Controlling Person.

Section 9.4 Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in (i) less than 5% of the Net Proceeds of the Tax-Exempt Bonds having been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Tax-Exempt Bonds having been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Tax-Exempt Bonds having been used for Costs of Issuance.

Section 9.5 Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section

9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any advances previously made by the Trustee from the Project Fund for such costs. Borrower shall not requisition or receive disbursement of amounts allocated under the line item "Deferred Extension Fees Reimbursement" in the Development Budget until the amount shown under the line item "Pre-Stabilization NOI" in the Development Budget has been received and applied to the Project Facilities.

Section 9.6 Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7 Contingency Reserve. The amount allocated to "contingency" in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.8 Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person's receiving satisfactory evidence that:

(a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and

(b) such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

Section 9.9 Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$25,000 or more, the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless and until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the construction of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other Projected costs in connection with the Work.

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, to other line items.

(d) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Note.

Section 9.10 Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Controlling Person and at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Neither the Controlling Person, Majority Owner nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

Section 9.11 Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the construction of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12 Initial Advances. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the following conditions precedent:

(a) The Borrower shall have delivered the items listed on Schedule 7 attached hereto;

(b) The Borrower shall have delivered to the Controlling Person evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the construction of the Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that no such permits or licenses are required;

(c) The Borrower shall have delivered to the Controlling Person copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project Facilities;

(d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;

(e) The Borrower shall have delivered to the Controlling Person payment and performance bonds in respect of the Construction Contract and/or major subcontracts as may be requested by the Controlling Person;

(f) The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the Plans and Specifications identified on Schedule 5, (b) the Construction Contract satisfactorily provides for the construction of the Project Facilities, and (c) in the opinion of the Engineering Consultant construction of the Project Facilities can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose on the Development Budget;

(g) The Borrower shall have delivered to the Controlling Person evidence as to:

(i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(iii) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions as listed on Schedule 6;

(h) The first installment of the Borrower's Required Equity Funds shall have been delivered to the Trustee and the other deposits required under Section 4.1(c) of the Indenture shall have been made; and

(i) The Controlling Person and the Trustee shall have executed a closing statement for the Bonds in form and substance satisfactory to the Controlling Person and, if any portion of the initial Advance shall be for hard costs of construction, a completed Requisition as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent Advances of funds from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 7 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage;

(c) There shall not be a continuing Event of Default or a Default;

(d) The Controlling Person and the Trustee shall have received:

(i) a completed Requisition in the form set forth on Exhibit B hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(ii) a “date down” endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person; and

(iii) approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Indenture is adequate to complete construction of the Improvements in accordance with the Plans and Specifications.

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full, conditional or partial release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, material men or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

(f) The Controlling Person may withhold or refuse to approve any Requisition hereunder if any mechanic’s lien is filed or notice of intention to record or file a mechanic’s lien has been filed or given.

(g) In addition to the conditions set forth in this Section 9.13, the Controlling Person’s obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant’s certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

(h) If the Plans and Specifications provide for construction of the foundations, within thirty (30) days after the completion of construction of the foundations of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications together with, if requested by Controlling Person, a foundation endorsement to the Title Policy in for and substance acceptable to Controlling Person.

(i) All installments of Required Equity Funds then due and payable shall have been deposited with the Trustee;

(j) If at any time during the construction of the Project Facilities, the Controlling Person shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, any other sums previously deposited by Borrower with the Trustee, and any Required Equity Funds yet to be deposited with the Trustee (other than Required Equity Funds which have not been deposited due to a default by the Borrower under the applicable provisions of the Partnership Agreement), is or will be insufficient to complete fully the construction of the Improvements in accordance with the Scope of Work, and to pay all other projected costs in connection with the Work, the Borrower will, within seven (7) days after written notice of such determination from the Controlling Person deposit with the Trustee (for deposit into the Equity Account of the Project Fund) such sums of money in cash as the Controlling Person may reasonably require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements (to the extent not already bonded over or reserved for), and, at the Controlling Person's option, the Controlling Person shall not be obligated to authorize any further advances of the amounts held in the Project Fund by Trustee until the provisions of this Section 9.13(i) have been fully complied with.

(k) No Material Change Order shall have been made without the written approval of the Controlling Person.

(l) Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant) may condemn as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

(m) The Borrower shall have delivered to the Controlling Person payment and performance bonds in respect of the Construction Contract and/or major subcontracts as may be requested by the Controlling Person.

Section 9.14 Construction Information and Verification. From time to time, within ten (10) days after the written request of Controlling Person, Borrower shall deliver to Controlling Person any and all of the following information and documents, to the extent applicable to the construction or construction of the Project Facilities, that Controlling Person may request, all in forms acceptable to Controlling Person, as applicable:

(a) Current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) A current, complete and correct list showing the name, address, telephone number and license information of each contractor, subcontractor and material supplier engaged in connection with the construction and/or rehabilitation of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person;

(c) True and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) True and correct copies of all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Governmental Authorities or third parties necessary for the construction and/or rehabilitation of the Improvements and the operation of, and access to, the Project;

(e) Copies of (i) owner/architect/contractor project meeting minutes; (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and change order logs; (iii) independent test results, (iv) quality inspection reports; and (v) anticipated cost reports, buy-out logs and Major Contracts;

(f) A construction schedule showing the progress of construction or rehabilitation, as the case may be, and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule; and

(g) Any update to any item described above which Borrower may have previously delivered to Controlling Person.

(h) Borrower expressly authorizes Controlling Person to contact Architect, Contractor or any contractor, subcontractor, material supplier, surety or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. Controlling Person shall give notice to Borrower of any such contacts, provided that neither Controlling Person nor Trustee shall incur any liability to Borrower by reason of the failure to give such notice, and Borrower's obligations under the Borrower Loan Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor to disclose such information to Trustee and Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier or surety shall be promptly replaced, and Borrower shall promptly deliver all required information and documents to Controlling Person and Trustee regarding each replacement architect, contractor, subcontractor, material supplier and surety. Controlling Person may disapprove any architect, contractor, surety or other party whom Controlling Person in its reasonable judgment may deem financially unqualified, however, the absence of any such disapproval shall not constitute a representation of qualification.

Section 9.15 Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower:

LDG Forestwood, LP



1469 S. 4th Street  
Louisville, Kentucky 40208  
Attention: Justin Hartz  
Telephone: (502) 931-5795  
Facsimile: (502) 638-9197

With a copy to:

Coats Rose, P.C.  
9 Greenway Plaza, Suite 1000  
Houston, Texas 77046  
Attention: Barry Palmer  
Telephone: (713) 653-7395  
Facsimile: (713) 890-3944

With a copy to:

Adams Law Group  
6004 Brownsboro Park Blvd. Suite A  
Louisville, KY 40207  
Attention: Robert W. "Tad" Adams III  
Telephone: (502) 895-8210  
Facsimile: (502) 895-1702

If to the Issuer:

Texas Department of Housing and  
Community Affairs  
P.O. Box 13941  
Austin, Texas 78711  
Attention: Teresa Morales  
Telephone: (512) 475-3344  
Facsimile: (512) 475-1895

If to the Trustee:

BOKF, NA  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department  
Telephone: (817) 348-5797  
Facsimile: (972) 581-8913

If to the Controlling Person:

R4 Servicer LLC  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble  
E-mail: gdoble@r4cap.com

With a copy to:

Kutak Rock LLP  
1760 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
E-mail: Andrew.Schmutz@kutakrock.com

If to the Majority Owner:

At the address set forth on the Register  
maintained by the Trustee

If to Investor Limited Partner:

R4 FW Acquisition LLC  
c/o R4 Capital LLC  
780 Third Avenue, 10th Floor  
New York, New York 10017  
Attention: Marc Schnitzer  
Telephone: 646.576.7569  
Fax: 212.546.9085  
E-mail: mschnitzer@R4cap.com

With a copy to:

Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110-2131  
Attention: Thomas Giblin  
E-mail: tgiblin@nixonpeabody.com

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no person other than the parties hereto, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs

and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be “interest”) shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Controlling Person, the Trustee, the Issuer and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal

process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Bonds or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Issuer shall, so long as the Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Manager, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, the Borrower, General Partner, Guarantor, Manager, Contractor and other third parties in connection with the Bonds, as may be reasonably requested from time to time by the Controlling Person or Majority Owner or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Controlling Person or Majority Owner pursuant to this paragraph (i) and the other information provided pursuant to this Agreement and the other Bond Documents used in connection with a Secondary Market Transaction being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Majority Owner and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower, General Partner, Guarantor, Manager, Contractor or other third parties and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a “bringdown” of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no default or event of default has occurred and is continuing; and

(iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a “Secondary Market Disclosure Document”), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Controlling Person and Majority Owner in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower, General Partner or Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, General Partner or Guarantor, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties; provided further that the Borrower will be required to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Controlling Person, the Trustee, the Issuer and issuer, sponsor, guarantor and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys and controlling persons (the “Underwriter Group”) for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Majority Owner, the Trustee, the Issuer, its members, and the Underwriter Group for any liabilities to which the Majority Owner, the Controlling Person, the Issuer, the Trustee or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Majority Owner, the Trustee, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Majority Owner, the Trustee or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### Section 10.13 Nonrecourse.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents, the Issuer agrees that, in connection with the exercise of any rights or remedies available to the Issuer under this Agreement or any of the

other Bond Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Issuer shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Issuer, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon demand after an Event of Default all Rents to which the Trustee is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Mortgaged Property or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and Borrower has not complied with the provisions of this Agreement.

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents.

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents.

(D) Borrower executes a Lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral; or

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, binders, enjoins or otherwise interferes with or frustrates the efforts of Trustee to exercise any rights and remedies available to Trustee provided herein or in the other Bond Documents.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Issuer, Trustee, Controlling Person or the Bondholders;

(vi) the Borrower or the General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization,



receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the General Partner (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the Issuer, Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability; and

(iv) Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, construction and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary, Issuer, Trustee, Controlling Person and Holders shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of Borrower's and Guarantor's Obligations under the Bond Documents or to require that all collateral shall continue to secure all Obligations under the Bond Documents.

Section 10.14 Publicity. The Borrower hereby authorizes the Controlling Person or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through

any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person.

Section 10.15 Determinations by the Majority Owner and Controlling Person. Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion.

Section 10.16 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Bond Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its partners set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equityholders, shareholders and partners will be directly responsible for any audit adjustments, changes or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement and the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair

**LDG FORESTWOOD, LP**, a Texas limited  
partnership

By: LDG Forestwood GP, LLC, a Texas limited  
liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$23,000,000

\_\_\_\_\_ 1, 20\_\_  
(40 year max)

FOR VALUE RECEIVED, LDG FORESTWOOD, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “Borrower”), by this promissory note hereby promises to pay to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”) the principal sum of Twenty Three Million, and no/100 Dollars (\$23,000,000), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of BOKF, NA, a national banking association, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on the Sinking Fund Schedule (as defined in the Indenture) and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Note” referred to in the Loan Agreement, dated as of October 1, 2018 (as the same may be amended, modified or supplemented from time to time, the “Agreement”) between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to BOKF, NA, a national banking association, as trustee under the Indenture of Trust, dated as of October 1, 2018 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), by and between the Issuer and BOKF, NA, a national banking association, as trustee (the “Trustee”), and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$20,000,000 in aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (Forestwood), Series 2018A (the “Tax-Exempt Bonds”) and \$3,000,000 in aggregate principal amount of the Issuer’s Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

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

Name: Chris Dischinger

Title: Manager

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

Name: J.B. Goodwin

Title: Chair

Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER:

PROJECT :

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$\_\_\_\_\_

TO: BOKF, NA, as trustee  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- Borrower's Representations and Warranties
- Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- Pending Change Order and Change Order Log (dated)
- Requisitions and Invoices Supporting Application
- Vendor Payee List or equivalent
- Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- Contractor's Requisition Certificate
- Architect's Requisition Certificate
- Borrower's Request for Payment
- Lien Waivers, Conditional for the current Hard cost pay request
- Lien Waivers, Unconditional for payment thru the prior period pay request
- Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- Current Project Schedule
- Other Documents as Requested by the Trustee or Controlling Person

## Representations and Warranties

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of October 1, 2018 (the “Agreement”), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of October 1, 2018, with respect to the Bonds.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower’s best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed/constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition: (i) less than 5% of the Net Proceeds of the Tax-Exempt Bonds will have been used for costs that are not Qualified Project Costs; (ii) less than 25% of the Net Proceeds of the Tax-Exempt Bonds will have been used for the cost of acquiring land; and (iii) not more than 2% of the Net Proceeds of the Tax-Exempt Bonds will have been used for Costs of Issuance. For this

purpose, "Net Proceeds" means sale proceeds of the Tax-Exempt Bonds, less any sale proceeds invested in a reasonably required reserve or replacement fund and as part of a minor portion under Section 148 (e) of the Code, and investment proceeds of the Tax-Exempt Bonds.

- 11. Attached hereto are copies of lien waivers from all such contractors, subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
- 12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

Approved:  
R4 SERVICER LLC, as Controlling Person

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_, 20\_\_



**Contractor's Application for Payment**

**Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: BOKF, NA ("Trustee")  
R4 Servicer LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Contractor")

RE: Construction of Forestwood (the "Project Facilities") by LDG Forestwood, LP  
("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements and knowing that the Trustee and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a. Retainage not exceeding \_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 20\_\_, is \$\_\_\_\_\_); and
  - b. [specify other claims, if any]
3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_ [none]
4. We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.

5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 20\_\_ plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CONTRACTOR]

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

Name:

Title:

**Architect's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: BOKF, NA ("Trustee")

R4 Servicer LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Architect")

RE: Construction of Forestwood (the "Project Facilities") by LDG Forestwood, LP ("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows: \_\_\_\_\_ [substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here]
  
2. We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
  
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_
  
4. We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from [\_\_\_\_\_] ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
  
5. We have been advised that as of this date there remains unexpended funds of \$\_\_\_\_\_ which are available to fund construction costs, from which funds to pay the aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be

sufficient to pay for all construction costs reasonably required to complete the Work, provided that the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of construction of the Improvements.

6. All permits, licenses, approvals and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
  
7. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
  
8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
  
9. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
  
10. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[ARCHITECT]

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

Name:

Title:



**Borrower's Request for Payment**

[attach spreadsheets in form provided by R4 Capital]

**Lien Waivers**

**EXHIBIT C**  
**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between LDG FORESTWOOD, LP ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident's property as well as personal injury to Resident and Occupants resulting from Resident's failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

Lessor:

\_\_\_\_\_  
Resident's Signature

LDG FORESTWOOD, LP

\_\_\_\_\_  
Resident's Name

By: \_\_\_\_\_  
Authorized Representative:

\_\_\_\_\_  
Resident's Unit No.

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

**SCHEDULE 1  
SCHEDULE OF LITIGATION**

None.

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

1. Construction Contract
2. Architect's Agreement

**SCHEDULE 3**  
**SINKING FUND SCHEDULE**

**SCHEDULE 4  
DEVELOPMENT BUDGET**

**SCHEDULE 5  
PLANS AND SPECIFICATIONS**

As provided separately to the Controlling Person on or before the Issue Date.



**SCHEDULE 6  
PERMITS AND APPROVALS**

None.

**SCHEDULE 7**  
**CONDITIONS TO ADVANCES**

A. CONDITIONS TO INITIAL ADVANCE. The right of Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Construction Documents. Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Agreement, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Developer Fee Pledge and the General Partner Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.

4. Deliveries. The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

(a) Plans and Specifications. Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the construction of the Improvements.

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(c) Other Insurance. Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

(d) Evidence of Sufficiency of Funds. Evidence that the proceeds of the Bonds, together with Required Equity Funds and the proceeds of the Subordinate Debt delivered to the Trustee on the Issue Date or to be delivered after the Issue Date pursuant to the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to construct the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

5. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:
- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
  - (b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
  - (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
  - (d) the obtaining of all Project Approvals which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.
6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
7. Soils Report. A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed construction and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.
8. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.
9. Deposit of Funds. The initial installment of Required Equity Funds shall have been delivered to the Trustee and deposited in the Project Fund.
10. Requisition. A Requisition complying with the provisions of this Agreement and the Indenture.
11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.
12. Engineering Consultant Report. The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the construction

of the Improvements, and (iv) in the opinion of the Engineering Consultant, construction of the Improvements can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

13. Searches. The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the General Partner and the Guarantor (collectively, the "Obligors"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

14. Mechanics' Liens. In the event that for any reason the initial Advance is not funded on the Issue Date, the Controlling Person may withhold or refuse to approve the initial Advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.

16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.

17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.

18. Representations and Warranties. The representations and warranties made by the Obligors in the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance.

19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

20. Payment and Performance Bonds. The Controlling Person shall have received the Payment and Performance Bonds in form and content satisfactory in all respects to the Controlling Person.

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).
4. No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A Requisition in meeting the requirements of this Agreement and the Indenture;
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;
6. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;
7. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person, and that payment and performance bonds have been obtained, as required.
8. Mechanics' Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic's lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.
9. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Trustee.
10. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person's obligation to authorize any advance of Retainage shall be subject to receipt by the Controlling Person of evidence of Final Completion.

**SCHEDULE 8**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711  
Attention: Teresa Morales

BOKF, NA, as trustee  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Forestwood (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the "Trustee"), and R4 Capital Funding LLC as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the "Controlling Person") that "Final Completion" of the Project Facilities (as defined in the Indenture of Trust dated as of October 1, 2018 (the "Indenture") by and between the Trustee and Texas Department of Housing and Community Affairs (the "Issuer") has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of October 1, 2018 between the undersigned and the Issuer (the "Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect's certificate as required by clause (iv) of the definition of "Final Completion" contained in the Indenture.

2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the "Permits") as referenced in clause (ii) of the definition of "Final Completion" contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.

3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of "Final Completion" contained in the Indenture. This schedule of Punchlist Items meets the requirements and limitations set forth in the Loan Agreement for Punchlist Items. The undersigned will promptly complete all Punchlist Items.

4. Attached are lien waivers required by clause (vii) of the definition of "Final Completion" contained in the Indenture.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (ix) of the definition of "Final Completion" contained in the Indenture.

6. Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Trustee and the Controlling Person and meeting the requirements clause (x) of the definition of "Final Completion" contained in the Indenture.

7. Attached hereto is evidence of completion of the Environmental Completion Conditions meeting the requirements clause (ix) of the definition of "Final Completion" contained in the Indenture.

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Loan Agreement.

9. Attached hereto is evidence of payment of all Impositions which are due and payable.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

Accepted and agreed to by:

R4 SERVICER LLC, as Controlling Person

By: \_\_\_\_\_  
Name:  
Title:

## **Schedule of Attachments to Completion Certificate**

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

ALTA/ACSM Urban Class Survey

Insurance Certificates

Evidence of Payment of Impositions



**SCHEDULE 9**  
**FORM OF USE OF PROCEEDS CERTIFICATE**

\_\_\_\_\_, 20\_\_

BOKF, NA, as trustee  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Forestwood (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to BOKF, NA, as trustee (the “Trustee”), and R4 Capital Funding LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the “Controlling Person”) that [(i)] no less than 95% of the Net Proceeds of the Tax-Exempt Bonds has been spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code. Attached hereto is a schedule of expenditures showing all costs of the Project Facilities, the amounts expended for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended in compliance with the requirements of the Internal Revenue Code. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of October 1, 2018 between the Trustee and Texas Department of Housing and Community Affairs.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

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

Name: Chris Dischinger

Title: Manager

**Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds

**SCHEDULE 10**  
**FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 20\_\_

BOKF, NA, as trustee  
777 Main Street, Suite 3500  
Fort Worth, Texas 76102  
Attention: Corporate Trust Department

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1004  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Forestwood (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the "Trustee") and R4 Capital Funding LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that the date of Final Completion was \_\_\_\_\_, 20\_\_ and:

The undersigned hereby represents and warrants that:

1. The Improvements have been % occupied by credit-worthy qualified tenants meeting the requirements of the Bond Documents in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months.
2. The ratio of Stabilized NOI in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding is \_\_\_\_ to 1.0.
3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the Bond Documents, the General Partner Pledge, the Developer Fee Pledge or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Land Use Restriction Agreement.
5. The Taxable Bonds shall have been redeemed in whole.
6. Stabilization [has/has not] occurred.
7. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of October 1, 2018 between the Trustee and Texas Department of Housing and Community Affairs.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

Accepted and agreed to by:

R4 SERVICER LLC, as Controlling Person

By: \_\_\_\_\_  
Name:  
Title:

## Stabilization Spreadsheet

## **SCHEDULE 11**

### **INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

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**GENERAL INSURANCE REQUIREMENTS**  
**INSTRUCTIONS**

1. R4 Capital LLC, the Limited Partner and R4 Capital Funding LLC, the Lender and/or the Trustee collectively are to be known as R4.
2. Attached are Construction Period and Permanent Phase insurance requirements outlining the minimum types and amounts of insurance that are satisfactory to R4.
3. Insurance binders/certificates reflecting the coverages outlined herein are to be submitted to R4 within fourteen (14) days prior to closing and thereafter at least five (5) days prior to expiration.
  - a. The evidence of insurance is to reference compliance with all of the requirements listed in this document.
  - b. Certified copies of the required policies are to be provided upon request.
  - c. Certificates (Acord 25 for Liability, Acord 27 or 28 for property)/binders (Acord 75) are to identify the Named Insured and Additional Insureds as outlined herein and shall reference the complete and accurate Property address in the "description section" of the insurance certificate.
  - d. Certificate / Additional Interest Holder:

**For Equity** - should be the name of the Limited Partner, c/o R4 Capital LLC, 155 Federal Street, Ste 1004, Boston, MA 02110

**For Debt** – should be the name of the Trustee, c/o R4 Capital Funding LLC, 155 Federal Street, Ste 1004, Boston, MA 02110

- e. Mortgagee Clause (applies to debt only):

**For Debt** - All property and casualty insurance policies shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder.

4. R4 reserves the right to amend these requirements as deemed appropriate.
5. R4 may require:
  - a. **For Equity** - higher limits of insurance or against other hazards for which insurance is reasonably obtainable and which, at the time, are commonly insured against in the case of similar properties conducting similar activities within the geographic area of the Property, whether or not such additional insurance requirements are otherwise described or contemplated herein.
  - b. **For Debt** - additional insurance coverages to meet Freddie Mac Multifamily Insurance Requirements whether or not such additional insurance requirements are otherwise described or contemplated herein.

6. If, at any time, R4 is not in receipt of written evidence satisfactory to R4 that all insurance policies are in full force and effect, within fourteen (14) days after R4 has requested same or if the Partnership fails to maintain the insurance required hereunder, after notice is given to the Partnership, R4 shall have the right, but shall not be obligated, to take such action as R4 deems necessary to protect their interest in the Property, including the obtaining of such insurance coverage as R4 in its reasonable discretion deems appropriate. All premiums incurred by R4 in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Partnership to R4 within ten (10) days of demand.

7. **For Debt** – all of the Permanent Phase Partnership insurance requirements are intended to meet the minimums of Freddie Mac Multifamily Insurance Requirements including coverage for any “special hazards” (i.e. swimming pools, garages, exercise rooms, restaurants, drug stores, etc.).

**INSURANCE REQUIREMENTS  
DURING CONSTRUCTION PERIOD  
FOR**

**PARTNERSHIP**

**General Requirements applicable to all policies**

(i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer's rights of recovery.

**NOTE** – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

(ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000.

(iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days' notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days' notice before cancellation for all others reasons;

(iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Builders' Risk Insurance.**

The Partnership is to insure damage to property under construction including existing structures on the following minimum terms, coverage extensions and conditions:

- a) **Policy Form:** Coverage to be provided on an "All Risk" basis using a completed value Builder's Risk form.
- b) **Named Insured:** Partnership
- c) **Loss Payee:** Limited Partner, ISAOA and R4 Capital LLC
- d) **Blanket Insurance Coverage:** Any of the insurance coverages required hereunder may be provided by a "blanket" insurance policy affording protection to multiple locations owned, operated by or affiliated with the Insureds or Additional Insureds, provided, however, that:
  - (i) Any such "blanket" policy shall make available to the Project on a "per-location" basis no less than the limit of protection, terms and conditions required hereunder as though the insurance were provided on a standalone basis; and
  - (ii) R4 determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy.
- e) **Deductible:** Maximum of \$25,000 per occurrence.
- f) **Property to be Covered:** Real and personal property to be insured hereunder shall include property owned by contractors during the course of construction and intended for permanent installation in the project, site work and general contractor's fees, excavation, underground pipes, conduits and foundations.

g) **Perils:** Perils insured against shall be at least as broad as those included in Insurance Services Organization (“ISO”) Special Form (CP 10 30 10 00), or its equivalent and shall also include coverage for the following perils:

(i) Resulting loss or damage to work which is not faulty, arising from faulty workmanship/materials and faulty design, and (ii) Collapse of any sort.

h) **Soft Costs:** Coverage shall be provided for consequential losses not directly caused by damage to property but which arise as a result of damage to the project by an insured peril, commonly referred to as “soft costs” or “delayed start up” coverage, as follows:

- (i) Additional costs resulting from the renegotiation of leases and other similar extra expenses incurred following interruption of the Project, including relocation expenses,
- (ii) Additional realty taxes and other assessments actually incurred for the period of time the construction has been extended beyond the projected completion date,
- (iii) Additional advertising and promotional expenses including lease up and marketing which become necessary because of the delay,
- (iv) Additional interest on money borrowed to finance construction or repair,
- (v) Additional architect, engineering, consulting, legal and accounting fees,
- (vi) Additional insurance premiums, and
- (vii) Extra costs incurred to continue construction and meet contract dates.
- (viii) “Increased Time to Rebuild” during the period of time when the policy’s period of recovery has been extended because of requirements to bring the project into compliance with current building laws and codes.

i) **Water Damage:** Coverage is to be provided for property damage and loss of income caused by rising waters, surface water and back-up of sewers and drains and seepage of underground water mains.

j) **Flood:** Coverage is to be provided:

- (i) If the Project is located in a “special flood hazard area” (as defined below), or is designated as “flood prone” under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973; and
- (ii) The limit is to be the completed value of the project. Coverage is to be provided by an NFIP policy with excess coverage provided under the property policy or a Difference in Conditions policy.

A special flood hazard area is that which is defined as being an area within the 100-year flood plain according to the most current flood insurance rate map issued by the Federal Emergency Management Agency (“FEMA”).

k) **Earthquake Insurance:** A Level 1 due diligence seismic risk assessment for damageability, performed by a qualified engineer conforming to current ASTM standards, will be required for all Projects in seismic zones 3 and 4 and for any Projects located in the states of California, Oregon, Washington. The study shall determine the Probable Maximum Loss (“PML”) assuming a 475 year return period event and 50 percent probability of non-exceedance, which shall be defined as the Scenario Expected Loss (“SEL”). R4 will decline investments in properties with an SEL of 30% or greater, using the above stated standard.

l) **Ordinance or Law insurance:** Coverage is to be provided for:

- (i) Demolition (10% of completed value),
- (ii) Increased Cost of Construction (10% of completed value),
- (iii) Contingent Coverage for the Operation of Building Laws insuring the value of the undamaged portion of the premises (completed value).

m) **Debris Removal:** Insurance is to be covered for a limit of 10% of the value of the property loss;

n) **Hail, windstorm or hurricane:** Coverage to apply subject to a maximum 3% deductible. Time element coverage is to be provided for a period of 12 months.

o) **Boiler and machinery:** Coverage to apply to damage or loss arising from testing of machinery and equipment.

p) **Unscheduled location coverage** for temporary, offsite storage of building materials, fixtures, machinery & equipment, and appliances awaiting installation;

q) **Transit:** Coverage for property in transit;

r) **Personal Property of Others:** Coverage to be provided for property which the insured may be liable;

s) **Mold:** Coverage is to be provided for loss resulting from a covered cause of loss.

t) **Time Element** coverage is to be extended to include:

- (i) Utilities Interruption covering all utilities including water, sewer, steam and telecommunications and must include overhead transmission lines
- (ii) Civil Authority

(iii) Ingress/Egress loss caused by inability to access insured property due to a covered loss at surrounding properties

## **2. Commercial General Liability (“CGL”) Insurance.**

a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

b) **Named Insured:** Partnership and their respective employees, agents, subsidiaries and affiliates.

c) **Additional Insureds:** Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

d) **Limits:**

- \$2,000,000 general aggregate per project
- \$2,000,000 products-completed operations aggregate
- \$1,000,000 per occurrence bodily injury and property damage liability
- \$1,000,000 personal injury and advertising injury liability
- \$50,000 fire damage (per fire) to rented property
- \$5,000 medical payments

e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent;

f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence

100 units or greater - \$25,000 maximum per occurrence

g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;

h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations under ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.

i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;

j) **Unacceptable Exclusions:**

- (i) "Limitation of Coverage to Designated Premises or Project", ISO CG 21 44 07 98, or its equivalent; and
- (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
- (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability;

**3. Vehicle Liability Insurance.**

a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent

b) **Named Insured:** Partnership and their respective employees, agents, subsidiaries, affiliates.

c) **Additional Insureds:** Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

d) **Limit:** \$1,000,000 per accident

e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

**4. Workers' Compensation and Employer's Liability Insurance.**

- a) **Named Insured for EL portion:** Partnership
- b) **Limits:**

Statutory WC benefits Employers

Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

**5. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Partnership and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.
- d) **Limits:**
  - 1-3 stories        \$3M per occurrence & aggregate
  - 4-10 stories      \$5M per occurrence & aggregate
  - 11-20 stories \$10M per occurrence & aggregate
  - + 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis*

**6. Environmental Pollution Liability Insurance (If contracts let by Partnership).**

- a) **Named Insured:** Partnership and all sub-contractors for pollution exposures.
- b) **Additional Insureds:** General Partner, Limited Partner and R4Capital LLC. Coverage is to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to apply to all bodily injury, property damage and environmental liability as well as cleanup cost for pollution conditions both on and migrating from the worksite.
- f) **Improper Supervision:** of subcontractors is to be covered.

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**INSURANCE REQUIREMENTS  
DURING CONSTRUCTION PERIOD  
FOR**

**GENERAL CONTRACTOR**

**General Requirements applicable to all policies**

(i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer's rights of recovery.

**NOTE** – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

(ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000.

(iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days' notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days' notice before cancellation for all others reasons;

(iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Commercial General Liability (“CGL”) Insurance.**

a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

b) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries and affiliates.

c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

d) **Limits:**

\$2,000,000 general aggregate per project

\$2,000,000 products-completed operations aggregate

\$1,000,000 per occurrence bodily injury and property damage liability

\$1,000,000 personal injury and advertising injury liability

\$50,000 fire damage (per fire) to rented property

\$5,000 medical payments

e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent;

f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence

100 units or greater - \$25,000 maximum per occurrence



- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations per ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability

## **2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

## **3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** General Contractor
- b) **Certificate Holder:** Limited Partner and R4 Capital LLC (waiver of subrogation to apply to both)
- c) **Limits:**

Statutory WC benefits Employers

Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury \$1,000,000 per

employee disease

*Or minimum limits required by Umbrella*

**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** General Contractor and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.

d) **Limits:**

- 1-3 stories        \$3M per occurrence & aggregate
- 4-10 stories      \$5M per occurrence & aggregate
- 11-20 stories    \$10M per occurrence & aggregate
- + 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis*

**5. Contractor’s Environmental Pollution Liability\*.**

- a) **Named Insured:** General Contractor and all sub-contractors for pollution exposures.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4Capital LLC. Coverage is to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to apply to all bodily injury, property damage and environmental liability as well as cleanup cost for pollution conditions both on and migrating from the worksite.
- f) **Improper Supervision:** of subcontractors is to be covered.

\* This insurance is required when the General Contractor is responsible for remediation.

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**INSURANCE REQUIREMENTS  
DURING CONSTRUCTION PERIOD  
FOR**

**ARCHITECTS, ENGINEERS, CONSTRUCTION MANAGERS, PROJECT MANAGERS OR  
CONSULTANTS**

**General Requirements applicable to all policies**

(i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer's rights of recovery.

**NOTE** – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

(ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000.

(iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days' notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days' notice before cancellation for all others reasons;

(iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Commercial General Liability (“CGL”) Insurance.**

a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

b) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries and affiliates.

c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

d) **Limits:**

\$2,000,000 general aggregate per project

\$2,000,000 products-completed operations aggregate

\$1,000,000 per occurrence bodily injury and property damage liability

\$1,000,000 personal injury and advertising injury liability

\$50,000 fire damage (per fire) to rented property

\$5,000 medical payments

e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 03, or its equivalent;

f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence

100 units or greater - \$25,000 maximum per occurrence

- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;
- h) **Additional interests coverage:** To be provided under ISO Endorsement CG 20 07, or its equivalent, for architects, engineers or surveyors and for construction managers, project managers or consultants. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;
- j) **Unacceptable Exclusions:**
  - (i) "Limitation of Coverage to Designated Premises or Project", ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability

## **2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries and affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

## **3. Workers' Compensation and Employer's Liability Insurance.**

- a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant
- b) **Certificate Holder:** Limited Partner and R4 Capital LLC (Waiver of subrogation to apply to both)
- c) **Limits:**

Statutory WC benefits

Employers Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

**4. Umbrella/Excess Liability Insurance.**

a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries and affiliates.

b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.

d) **Limits:**

1-3 stories        \$3M per occurrence & aggregate

4-10 stories      \$5M per occurrence & aggregate

11-20 stories \$10M per occurrence & aggregate

+ 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis*

**5. Professional/Errors & Omissions Liability.**

a) **Named Insured:** Architect, Engineer, Construction Manager, Project Manager or Consultant and their respective employees, agents, subsidiaries and affiliates.

b) **Certificate Holder:** Partnership, Limited Partner, ISAOA and R4 Capital LLC.

c) **Limit:** \$1,000,000 per claim or 10% of construction contract, whichever is greater

d) **Form:** Claims made

e) **Policy Description of Work:** If work is different than the primary licensing or certificate (i.e., architect performing engineering work, etc. then policy description of “scope of work” must be provided).

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**INSURANCE REQUIREMENTS  
DURING CONSTRUCTION PERIOD  
FOR**

**ENVIRONMENTAL REMEDIATION CONTRACTORS AND/OR CONSULTANTS**

**General Requirements applicable to all policies**

(i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer's rights of recovery.

**NOTE** – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

(ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000. (iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days' notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days' notice before cancellation for all others reasons;

(iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Commercial General Liability (“CGL”) Insurance.**

a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

b) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries and affiliates.

c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.

d) **Limits:**

\$2,000,000 general aggregate per project

\$2,000,000 products-completed operations aggregate

\$1,000,000 per occurrence bodily injury and property damage liability

\$1,000,000 personal injury and advertising injury liability

\$50,000 fire damage (per fire) to rented property

\$5,000 medical payments

e) **Aggregate:** If the policy covers multiple locations, a per project aggregate limit is required and must be endorsed onto the policy using ISO Endorsement CG 25 03, or its equivalent;

f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence 100 units or greater - \$25,000 maximum per occurrence

- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 10, or its equivalent, for the Additional Insureds listed above. Coverage is to be extended to include completed operations per ISO Endorsement CG 20 37. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability;

## **2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto Form CA 00 01, or its equivalent
- b) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries and affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a non-contributory basis when other insurance is available to the additional insureds
- d) **Limit:** \$1,000,000 per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

## **3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** Environmental Remediation Contractors or Consultants
- b) **Certificate Holder:** Limited Partner and R4 Capital LLC (Waiver of subrogation to apply to both)
- c) **Limits:**

Statutory WC benefits Employers

Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Environmental Remediation Contractors or Consultants and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.

d) **Limits:**

- 1-3 stories        \$3M per occurrence & aggregate
- 4-10 stories      \$5M per occurrence & aggregate
- 11-20 stories \$10M per occurrence & aggregate
- + 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis*

**5. Contractor’s Environmental Pollution Liability.**

- a) **Named Insured:** Environmental Remediation Contractor and/or Consultant for pollution exposures.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Form:** Claims Made
- d) **Limit:** \$3,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to apply to all bodily injury, property damage and environmental liability as well as cleanup cost for pollution conditions both on and migrating from the worksite.
- f) **Improper Supervision:** of subcontractors is to be covered.

**6. Professional/Errors & Omissions Liability (If contractor is consulting as well as remediating).**

- a) **Named Insured:** Environmental Remediation Contractor and/or Consultant and their respective employees, agents, subsidiaries and affiliates.
- b) **Certificate Holder:** Partnership, Limited Partner, ISAOA and R4 Capital LLC.
- c) **Limit:** \$1,000,000 per claim or 10% of construction contract, whichever is greater
- d) **Form:** Claims made
- e) **Scope of Work:** If work is different than the primary licensing or certificate (i.e., architect performing engineering work, etc. then policy description of “scope of work” must be provided).

Balance of this page left blank intentionally.



## PERMANENT INSURANCE REQUIREMENTS FOR

### PARTNERSHIP

#### **General Requirements applicable to all policies**

- (i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer's rights of recovery.

**NOTE** – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

- (ii) **Terrorism Insurance:**

**For Equity** - Certified (TRIA) and non-certified is only required for projects that exceed \$20,000,000 in total development costs.

**For Debt** - Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities.

(iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days' notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days' notice before cancellation for all others reasons;

- (iv) **Insurer Rating:**

**For Equity** - All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**For Debt** – All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher for loans of \$25MM or less and for loans in excess of \$25MM the A.M. Best Financial Size Category rating must be IX or higher.

- (v) **Compliance:**

**For Debt** – these requirements are intended to meet the minimums of Freddie Mac Multifamily Insurance Requirements and including coverage for any “special hazards” (i.e. swimming pools, garages, exercise rooms, restaurants, drug stores, etc.).

#### **1. Property Insurance.**

The Partnership is to insure damage to property on the following minimum terms, coverage extensions and conditions:

- a) **Policy Form:** All Risk
- b) **Named Insured:** Partnership
- c) **Loss Payee:**

**For Equity** - Limited Partner

**For Debt** - Trustee (mortgagee with first priority mortgage lien) with a standard mortgagee or mortgage holder's clause and loss payable clause in favor of, and in a form, acceptable to R4.

- d) **Limits:** Building (real property) is to be insured for 100% of Replacement Cost (“RC”) including an Inflation Guard endorsement, if available.

Contents (personal property) is to be insured for full Replacement Cost

Business Interruption / Loss of Rents / Extra Expense – see below

- e) **Blanket Insurance Coverage:** Any of the insurance coverages required hereunder may be provided by a “blanket” insurance policy affording protection to multiple locations owned, operated by or affiliated with the Insureds or Additional Insureds, provided, however, that:
- (i) Any such “blanket” policy’s All Risk limit must at all times be no less than the greater of the largest Total Insured Value (“TIV”) for any individual property covered by the blanket insurance policy limit or 10% of the aggregate TIV of the entire portfolio covered by the blanket insurance policy limit. The blanket policy shall make available to the Project on a “per-location” basis no less than the limit of protection, terms and conditions required hereunder as though the insurance were provided on a standalone basis; and
  - (ii) Additional requirements may apply for Windstorm, Flood, Earthquake, Ordinance or Law, Pollution and / or Boiler and Machinery coverages if also provided under a blanket insurance policy.
  - (iii) R4 determines, in the exercise of its sole and absolute discretion, that the amount of such coverage is sufficient in light of the other risks and properties insured under the blanket policy.
- f) **Deductible:** Maximum of \$25,000 per occurrence for property damage and business interruption. Waivers may be available at the sole discretion of R4 on a case by case basis.
- g) **Property to be covered:** Real and personal property
- h) **Perils:** Perils insured against shall be at least as broad as those included in Insurance Services Organization (“ISO”) Special Form (CP 10 30 10 00), or its equivalent.
- i) **Hail, windstorm or Named Storm:** Coverage to apply subject to a maximum 3% deductible. Time element coverage is to be provided for a period of 12 months.
- j) **Wind Insurance:** If the All Risk Property insurance policy excludes coverage for loss arising out of windstorm, a separate wind policy is acceptable. Coverage must insure the project at the full replacement cost and include business income and extra expense and loss of rents coverage (12 months). Additional requirements may apply if coverage is provided through a State Pool.
- k) **Boiler and machinery:** Coverage shall apply to all mechanical and electrical equipment, or any other objects typically insured under a boiler and machinery insurance policy, against direct physical damage, time element and extra expense. If coverage is provided under a separate boiler & machinery policy, a Joint Loss Agreement is required.
- l) **Transit:** Coverage for property in transit;
- m) **Personal Property of Others:** Coverage to be provided for property which the insured may be liable;
- n) **Mold:** Coverage is to be provided for loss resulting from a covered cause of loss.
- o) **Water Damage:** Coverage is to be provided for property damage caused by back-up of sewers and drains and seepage of underground water mains.
- p) **Flood:** Coverage is to be provided:
- (i) If the Project is located in a “special flood hazard area” (as defined below), or is designated as “flood prone” under the regulations for the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973; and
  - (ii) The limit is to be the full replacement cost value of the project. Coverage is to be provided by an NFIP policy with excess coverage provided under the property policy or a Difference in Conditions policy.

A special flood hazard area is that which is defined as being an area within the 100-year flood plain according to the most current flood insurance rate map issued by the Federal Emergency Management Agency ("FEMA") including zones A and V (and AE, A1-30, AH, AO, AR, A99, VE and V1-30).

- q) **Earthquake Insurance:** A Level 1 due diligence seismic risk assessment for damageability, performed by a qualified engineer conforming to current ASTM standards, will be required for all Projects in seismic zones 3 and 4 and for any Projects located in the states of California, Oregon, Washington. The study shall determine the Probable Maximum Loss ("PML") assuming a 475 year return period event and 50 percent probability of non-exceedance, which shall be defined as the Scenario Expected Loss ("SEL"). R4 will decline investments in properties with an SEL of 30% or greater, using the above stated standard. **For Debt only** – subject to Freddie Mac requirements.
- r) **Coinsurance** is to be waived, or the policy shall contain an agreed amount endorsement acceptable to R4.
- s) **Ordinance or Law** insurance (Building Laws Insurance) consisting of coverage for:
  - (i) Demolition (10% of full replacement cost),
  - (ii) Increased Cost of Construction (10% of full replacement cost),
  - (iii) Contingent Coverage for the Operation of Building Laws insuring the value of the undamaged portion of the premises (full replacement cost), and
  - (iv) "Increased Time to Rebuild" during the period of time when the policy's period of recovery has been extended because of requirements to bring the project into compliance with current building laws and codes;
- t) **Debris Removal** insurance is to be covered for a limit of 10% of the value of the property loss;
- u) **Pollution Clean-up and Removal** Coverage is to be provided under the property policy subject to a sublimit of no less than \$100,000.
- v) **Business Interruption / Loss of Rents / Extra Expense** insurance covering all income earned by the Partnership for the project, including rental income for a period of 12 months (for Debt – loans in excess of \$50MM require coverage limit of 18 months) (Time Element coverages) and extended period of indemnity endorsement for 90 days;

- w) **Time Element** coverage is to be extended to include:
  - (i) Utilities Interruption covering all utilities including water, sewer, steam and telecommunications and must include overhead transmission lines
  - (ii) Civil Authority
  - (iii) Ingress/Egress loss caused by inability to access insured property due to a covered loss at surrounding properties
- x) **Localized Perils** coverage such as Sinkhole (particularly in FL), Mine Subsidence (particularly in PA, OH, IL & CO), Volcanic Eruption and Avalanche.

## **2. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Partnership and their respective employees, agents, subsidiaries and affiliates.
- c) **Additional Insureds:** Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- d) **Limits:**
  - \$2,000,000 general aggregate per location
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per location aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 04, or its equivalent;
- f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence  
100 units or greater - \$25,000 maximum per occurrence
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. Coverage is to apply on a primary noncontributory basis when coverage under other policies are available to the additional insureds, using CG 20 01, or its equivalent. If coverage is written on any other forms, copies must be attached.
- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability;

## **3. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Partnership and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 per accident
- e) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

**4. Workers' Compensation and Employer's Liability Insurance.**

- a) **Named Insured:** Partnership
- b) **Certificate Holder:** Limited Partner and R4 Capital LLC (waiver of subrogation to apply to both)
- c) **Limits:**

Statutory WC benefits Employers

Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*

**5. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Partnership and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.
- d) **Limits:**

1-3 stories      \$3M per occurrence & aggregate

4-10 stories      \$5M per occurrence & aggregate

11-20 stories \$10M per occurrence & aggregate

+ 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per location basis*

**NOTE:** Additional limits may apply in situations where R4 is providing debt to multiple projects.

**6. Environmental Pollution Liability.**

- a) **Named Insured:** Partnership
- b) **Additional Insureds:** General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Form:** Claims Made
- d) **Limit:** \$1,000,000 per pollution incident. Limit may be revised depending on severity of work.
- e) **Perils:** Coverage for asbestos, lead-based paint, construction and remediation operations or as directed by R4 whether performed by contractor or sub-contractor or other third-party. Coverage is to

apply to all bodily injury, property damage and environmental liability as well as cleanup cost for pollution conditions both on and migrating from the worksite.

f) **Improper Supervision:** of subcontractors is to be covered.

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**PERMANENT INSURANCE REQUIREMENTS  
(Including “in-place” rehabs)**

**FOR  
PROPERTY MANAGERS**

**General Requirements applicable to all policies**

(i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer’s rights of recovery.

**NOTE** - – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

(ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000.

(iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days’ notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days’ notice before cancellation for all others reasons;

(iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Commercial General Liability (“CGL”) Insurance.**

a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.

b) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries and affiliates.

c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital

d) **Limits:**

\$2,000,000 general aggregate per location

\$2,000,000 products-completed operations aggregate

\$1,000,000 per occurrence bodily injury and property damage liability

\$1,000,000 personal injury and advertising injury liability

\$50,000 fire damage (per fire) to rented property

\$5,000 medical payments

e) **Aggregate:** If the policy covers multiple locations, a per location aggregate limit is required and must be endorsed onto the policy, using ISO Endorsement CG 25 04, or its equivalent;

f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence

100 units or greater - \$25,000 maximum per occurrence

g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;

h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. If coverage is written on any other forms, copies must be attached.

- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction related activities;
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability;

**2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 per accident
- e) **Form:** ISO Business Auto form CA 00 01, or its equivalent
- f) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

**3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** Property Manager
- b) **Certificate Holder:** Limited Partner and R4 Capital LLC (waiver of subrogation to apply to both)
- c) **Limits:**

Statutory WC benefits Employers

Liability:

\$1,000,000 each accident bodily injury

\$1,000,000 policy limit bodily injury

\$1,000,000 per employee disease

*Or minimum limits required by Umbrella*



**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Property Manager and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.
- d) **Limits:**
  - 1-3 stories        \$3M per occurrence & aggregate
  - 4-10 stories      \$5M per occurrence & aggregate
  - 11-20 stories \$10M per occurrence & aggregate
  - + 20 stories      \$25M per occurrence & aggregate

*Aggregates are to apply on a per location basis*

**5. Fidelity Bond (including in-place rehabs and properties in permanent insurance phase)**

- a) **Named Insured:** Property Manager
- b) **Joint Loss Payee:** Partnership
- c) **Coverage:** is to be provided for loss of General Partner and Limited Partners' money and securities resulting from dishonesty of Named Insured's employees.
- d) **Limit:** Amount equal to six months' gross rents.

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**PERMANENT INSURANCE REQUIREMENTS**  
**(Including “in-place” rehabs )**

**FOR**  
**SERVICES PROVIDERS**

**General Requirements applicable to all policies.**

- (i) **Waiver of Subrogation:** All insurance policies shall contain a waiver of subrogation on behalf of the Named Insureds and Additional Insured as noted hereunder to waive the insurer’s rights of recovery.

**NOTE** - – also applies to the Employers Liability portion of the Workers Comp / Employers Liability coverage.

- (ii) **Terrorism Insurance:** Certified (TRIA) and non-certified is required for those projects located in TRIA Designated Cities or if total development costs exceed \$20,000,000.
- (iii) **Notices, Changes and Renewals:** All policies shall state that the insurance carrier shall give the Named Insured and Additional Insureds / Interests a minimum of ten (10) days’ notice in before cancellation for non-payment of premium or non-renewal and a minimum of thirty (30) days’ notice before cancellation for all others reasons;
- (iv) **Insurer Rating:** All insurers must be A- or better rated according to A.M. Best & Company with a Financial Size Category rating by A.M. Best of VIII or higher.

**1. Commercial General Liability (“CGL”) Insurance.**

- a) **Policy Form:** An ISO-based occurrence form CGL policy (CG 00 01 or its equivalent) shall be used.
- b) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries and affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC.
- d) **Limits:**
  - \$2,000,000 general aggregate per project
  - \$2,000,000 products-completed operations aggregate
  - \$1,000,000 per occurrence bodily injury and property damage liability
  - \$1,000,000 personal injury and advertising injury liability
  - \$50,000 fire damage (per fire) to rented property
  - \$5,000 medical payments
- e) **Aggregate:** If the policy covers multiple locations, a per Project aggregate limit is required and must be endorsed onto the policy, using a designated location endorsement, ISO CG 25 04, or its equivalent;
- f) **Deductible:** Less than 100 units - \$15,000 maximum per occurrence  
100 units or greater - \$25,000 maximum per occurrence
- g) **Pollution:** Pollution exclusion must specify that hostile fire or building heating equipment and products is not excluded;
- h) **Additional Interests coverage:** To be provided under ISO Endorsement CG 20 26, or its equivalent, for the Additional Insureds listed above. If coverage is written on any other forms, copies must be

attached.

- i) **Construction-Related Activities:** Coverage shall not limit liability arising from construction-related activities;
- j) **Unacceptable Exclusions:**
  - (i) “Limitation of Coverage to Designated Premises or Project”, ISO CG 21 44 07 98, or its equivalent; and
  - (ii) Residential work exclusions or limitations, or subcontractor warranty provisions;
  - (iii) Professional Liability exclusions are not to apply to bodily injury, personal injury or property damage liability;

## **2. Vehicle Liability Insurance.**

- a) **Policy Form:** ISO Business Auto form CA 00 01, or its equivalent
- b) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries, affiliates.
- c) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a non-contributory basis when other insurance is available to the additional insureds.
- d) **Limit:** \$1,000,000 per accident
- e) **Form:** ISO Business Auto form CA 00 01, or its equivalent
- f) Insurance shall include coverage for **owned, leased, hired, and non-owned vehicles** used in the course of employment for the Named Insured.

## **3. Workers’ Compensation and Employer’s Liability Insurance.**

- a) **Named Insured:** Services Provider
  - b) **Certificate Holder:** Limited Partner and R4 Capital LLC (waiver of subrogation to apply to both)
  - c) **Limits:**
    - Statutory WC benefits
    - Employers Liability:
      - \$1,000,000 each accident bodily injury
      - \$1,000,000 policy limit bodily injury
      - \$1,000,000 per employee disease
- Or minimum limits required by Umbrella*

**4. Umbrella/Excess Liability Insurance.**

- a) **Named Insured:** Services Provider and their respective employees, agents, subsidiaries and affiliates.
- b) **Additional Insureds:** Partnership, General Partner, Limited Partner, ISAOA and R4 Capital LLC – Coverage to apply on a primary and non-contributory basis when other insurance is available to the additional insureds.
- c) **Coverage:** Must be no less broad than the underlying CGL, Vehicle and Employers Liability policies required above. If coverage is not following form, differences must be identified.
- d) **Limits:**
  - 1-3 stories      \$3M per occurrence & aggregate
  - 4-10 stories     \$5M per occurrence & aggregate
  - 11-20 stories    \$10M per occurrence & aggregate
  - + 20 stories     \$25M per occurrence & aggregate

*Aggregates are to apply on a per project basis*

**5. Professional/Errors & Omissions Liability.**

- a) **Named Insured:** Services Provider (or Consultant) and their respective employees, agents, subsidiaries and affiliates.
- b) **Certificate Holder:** Partnership
- c) **Limit:** \$1,000,000 per claim or 10% of construction contract, whichever is greater
- d) **Form:** Claims made
- e) **Policy Description of Work:** If work is different than the delivery of social and / or human services and / or the entity’s license / certification (i.e., social or service workers performing typical human services work, etc. then policy description of “scope of work” must be provided)

**6. Fidelity Bond – required for all entities that handle partnership funds (including in-place rehabs and properties in permanent insurance phase).**

- a) **Named Insured:** Services Provider
- b) **Joint Loss Payee:** Partnership
- c) **Coverage:** is to be provided for loss of General Partner and Limited Partners’ money and securities resulting from dishonesty of Named Insured’s employees. In addition, coverage is to be provided for theft of resident’s property and facility property.
- d) **Limit:** Regarding money and securities, the amount is equal to six months’ gross rents and for theft of resident’s property and facility’s property, the amount is a minimum of \$100,000.

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REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,

BOKF, NA,  
a national banking association,  
as Trustee,

and

LDG FORESTWOOD, LP,  
a Texas limited partnership,  
as Owner

Dated as of October 1, 2018

Relating to

\$20,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood)  
Series 2018A

\$3,000,000  
Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood)  
Series 2018B

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “**Agreement**” or this “**Regulatory Agreement**”) dated as of October 1, 2018 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “**Issuer**”), a public and official agency of the State of Texas (the “**State**”), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “**Trustee**”), and **LDG FORESTWOOD, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “**Owner**” or “**Borrower**”).

### RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue bonds and to use the proceeds thereof to provide monies to aid in financing the acquisition, construction and equipping of residential rental property for dwelling units in the State; and

WHEREAS, the Owner has requested the assistance of the Issuer in financing a multifamily residential rental housing development located on the real property described in Exhibit A hereto (the “**Development Site**”) and described in Exhibit B-1 hereto (the “**Development Facilities**”) and, together with the Development Site, the “**Development**”), and, as a condition to such assistance, the Owner has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Issuer has determined to assist in the financing of the Development by issuing its Multifamily Housing Revenue Bonds (Forestwood) Series 2018A in the aggregate principal amount of \$20,000,000 (the “**Tax-Exempt Bonds**”), and its Taxable Multifamily Housing Revenue Bonds (Forestwood) Series 2018B in the aggregate principal amount of \$3,000,000 (the “**Taxable Bonds**”) and together with the Tax-Exempt Bonds, the “**Bonds**”), and loaning the proceeds of such Bonds to the Owner, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Tax-Exempt Bonds to be excludable from gross income for federal income tax purposes under the Code (as defined herein) and rulings with respect to the Code, and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction and equipping of the Development and in order to ensure that the Development will be acquired, constructed and equipped in accordance with the Code and the Act.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Owner hereby agree as follows:

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Indenture, the Loan Agreement, or the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

“**Act**” means Chapter 2306, Texas Government Code, as amended from time to time.

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

“**Bond Counsel**” means counsel nationally recognized as having an expertise in connection with the exclusion of interest on obligations of states and local governmental units from gross income for federal income tax purposes and who is appointed by the Issuer, and initially means Bracewell LLP.

“**Closing Date**” means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

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

“**Compliance Monitoring Rules**” means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

“**Costs of Issuance**” means costs to the extent incurred in connection with, and allocable to, the issuance of the Bonds within the meaning of Section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; bond registrar, certification and authentication fees; accounting fees; printing costs for the Bonds; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

“**Development**” means the Development Facilities and the Development Site.

“**Development Amenities**” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

“**Development Facilities**” means the multifamily housing structure and related buildings and other improvements on the Development Site as more fully set forth in Exhibit B-1 hereto, and all fixtures



and other property owned by the Owner and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

**“Development Site”** means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

**“Eligible Tenants”** means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that under existing law such action or omission does not adversely affect the excludability of interest payable on the Tax-Exempt Bonds from gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Tax-Exempt Bonds or other customary exceptions acceptable to the recipient(s) thereof).

**“Housing Act”** means the United States Housing Act of 1937, as amended, or a successor thereto.

**“Indenture”** means the Indenture of Trust of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

**“Inducement Date”** means February 22, 2018.

**“Loan”** means the loan of the proceeds of the Bonds made by the Issuer to the Owner pursuant to the Loan Agreement.

**“Loan Agreement”** means the Loan Agreement of even date herewith between the Issuer and the Owner, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

**“Loan Documents”** means the Mortgage, the Note, the Loan Agreement, this Regulatory Agreement and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Loan.

**“Low-Income Tenant”** means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

**“Low-Income Unit”** means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

**“Mortgage”** means Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from the Owner, as the grantor, in favor of Issuer, as the beneficiary, and assigned to the Trustee, as the same may be supplemented, amended or modified.

**“Multifamily Tax Subsidy Program Income Limit”** (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

**“Persons with Special Needs”** means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

**“Qualified Project Period”** means, with respect to the Development, the period beginning on the first day on which 10% of the Units are occupied and ending on the latest of (i) the date that is 15 years after the date on which 50% of the Units in the Development are occupied, (ii) the first day on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, or (iii) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

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

**“Related Person”** has the meaning set forth in Section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under Sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Reserve”** means the Reserve for Replacement account required to be established by Section 8.1 of the Loan Agreement.

**“Set Aside Requirement”** means the requirement that at least 40% of the Available Units be occupied or held vacant and available for occupancy at all times by Low-Income Tenants.

**“State Conversion Date”** means the date of the first amortization payment on the note relating to the Loan.

**“State Reserve Period”** means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the Owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

**“State Restrictive Period”** means, with respect to the Development, the period beginning on the first day on which the Owner takes legal possession of the Development and ending on the latest of (a) the date that is 30 years after the first day of the State Restrictive Period, (b) the first date on which no

tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

“**Tax Exemption Agreement**” means the Tax Exemption Certificate and Agreement, dated as of even date herewith, by and among the Issuer, the Trustee and the Borrower.

“**Tenant Income Certification**” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“**Unit Status Report**” means the certified residential rental housing program compliance report with respect to the Development to be filed by the Owner with the Issuer electronically through the filing system available on the Issuer’s website in the form available on the Issuer’s website at the time of submission of the report or in such other form as the Issuer may reasonably prescribe in writing to the Owner pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1A. Acquisition, Construction and Equipping of the Development. The Owner hereby represents, covenants and agrees as follows:

(a) The Owner will submit to the Issuer and the Trustee evidence of construction completion as required in the Loan Agreement and within 30 days of completion in the format prescribed by the Issuer as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Owner further agrees to cause the architect of record to submit a certification that the Development was built in compliance with all applicable laws and the engineer of record (if applicable) must submit a certification that the Development was built in compliance with design requirements.

(b) The Owner is a qualified “housing sponsor” as defined in the Act.

(c) The Owner will not seek an exemption from ad valorem taxation for the Development without the prior written consent of the Issuer, which consent may be withheld at the sole discretion of the Issuer.

Section 2. Tax-Exempt Status of the Tax-Exempt Bonds. The Owner will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Tax-Exempt Bonds from gross income for federal income tax purposes under existing law (subject to the inclusion of any exceptions contained in the opinion delivered upon the original issuance of the Tax-Exempt Bonds). With the intent not to limit the generality of the foregoing, the Owner covenants and agrees that prior to the final maturity of the Tax-Exempt Bonds, unless it has received and filed with the Issuer and the Trustee a Favorable Opinion of Bond Counsel:

(a) That the Development will be owned, managed and operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Owner covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Development will be comprised of residential Units and facilities functionally related and subordinate thereto, in accordance with Section 142(d) of the Code;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., a living area, a sleeping area, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time during the Qualified Project Period will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than thirty days or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the

Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time during the Qualified Project Period will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Owner;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Loan Agreement) at all times during the Qualified Project Period, “that the Owner will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein,” and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that the Development will meet the Set Aside Requirement. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low Income Tenant is treated as rented and occupied by a Low Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant’s Annual Income increases to exceed the qualifying limit for Low Income Tenants; provided, however, that, should a Low Income Tenant’s Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low Income Tenant of the same family size and such Low Income Tenant constitutes a portion of the Set Aside Requirement, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the Development is rented to a tenant that does not qualify as a Low Income Tenant;

(x) that the Owner will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer’s website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Owner will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. The Owner will obtain such additional information as may be required in the future by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Owner will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Owner will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer’s Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Owner will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Owner will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with Section 4(e) hereof.

(b) That the Owner will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the Owner pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Owner will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That the Owner will provide to the Trustee and the Issuer a certificate certifying (i) within 90 days thereof, the date on which 10% of the Units are occupied; and (ii) within 90 days thereof, the date on which 50% of the Units are occupied. If such conditions are not met on the Closing Date, the Owner will provide to the Trustee and the Issuer a certification stating such fact within 90 days of the Closing Date.

(d) That the Owner will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Owner in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Owner, and which is required to be noticed, represented or certified by the Owner hereunder or in connection with any filings, representations or certifications required to be made by the Owner in connection with the issuance and delivery of the Tax-Exempt Bonds.

Section 3. Modification of Tax and State Restrictive Covenants. The Owner, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Owner, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Loan Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Owner, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Owner and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the Owner and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Owner hereby recognize and declare their understanding and intent that the Development is to be owned, managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Owner hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Owner from time to time that (i) such lease is subordinate to the Mortgage and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of this Regulatory Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Owner, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer’s website) and the Trustee by the tenth calendar day of each

January, April, July and October or other schedule as determined by the Issuer with written notice to the Owner, a certified quarterly Unit Status Report in a form available on the Issuer's website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Owner with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Owner pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements;

(g) that the Owner is qualified to be a "housing sponsor" as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer's website) the Annual Owner's Compliance Report to the Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2020;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C and agreed to in writing by the Issuer. The Owner must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during onsite visits beginning with the second onsite review and must be submitted to the Issuer upon request. The Owner must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, regarding tenant and manager selection, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's Uniform Physical Condition Standards and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Owner and the Lender, and the Owner will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Owner is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Owner has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Owner's participation in contracts with the agency and the amount of financial assistance awarded to the Owner by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;



(n) to ensure that Units intended to satisfy the Set Aside Requirement will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development; and

(o) to ensure that the Development conforms to the federal Fair Housing Act.

Section 4.A. Repairs and Maintenance Required by State Law. The Owner will maintain the Replacement Reserve Fund required by Section 8.1 of the Loan Agreement for the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Owner hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. [Reserved].

Section 6. Persons With Special Needs. The Owner represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Issuer has issued the Bonds to provide funds to make the Loan to finance the Development, all for the purpose, among others, of inducing the Owner to acquire, construct, equip and operate the Development. In consideration of the issuance of the Bonds by the Issuer, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Issuer, the Trustee and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all Persons interested in the legality and validity of the Bonds, and in the excludability from gross income for federal income tax purposes of the interest on the Bonds. In performing their duties and obligations hereunder, the Owner, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may rely upon statements and certifications by the Owner and upon audits of the books and records of the Owner pertaining to the Development. In addition, the Issuer, the Owner and the Trustee may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Owner and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Owner's compliance with this Regulatory Agreement or by the Owner or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Dallas County. The Owner hereby represents that the Development is located entirely within Dallas County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Owner covenants and agrees not to sell, transfer or otherwise dispose of the Development, prior to the expiration of the Qualified Project Period (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the

Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Owner under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (B) the Issuer receives a Favorable Opinion of Bond Counsel, with a copy to the Trustee, (C) the Issuer receives an assumption fee equal to 0.25% of the principal balance of the Bonds Outstanding at the time of such transfer, (D) the proposed purchaser or assignee executes any document requested by the Issuer with respect to assuming the obligations of the Owner under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents, (E) the Issuer has performed a previous participation review on the proposed purchaser or assignee or any affiliated party, the results of which are satisfactory to the Issuer in accordance with Title 10, Part 1, Chapter 1, Subchapter A, Section 1.5, and the Issuer does not further have any reason to believe the proposed purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Development, including but not limited to this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement, the Mortgage and other Loan Documents, and (F) none of the purchaser or assignee or any affiliated party of such purchaser or assignee is organized as a community housing development organization (as defined in 42 U.S.C. Section 12704) or an entity that qualifies for an exemption from ad valorem taxation under State or federal law. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers, but such provisions apply to any transfer subsequent to such involuntary transfers. Notwithstanding anything to the contrary contained herein, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, provided that written notice thereof has been provided to the Issuer, (a) the transfer by Investor Limited Partner (as defined in the Indenture) of its interest in Borrower in accordance with the terms of Borrower's Organizational Documents, (b) the removal of the general partner of Borrower in accordance with the Organizational Documents and the replacement thereof with Investor Limited Partner or any of its affiliates, (c) the transfer of ownership interests in Investor Limited Partner, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of Investor Limited Partner in Borrower to Borrower's general partner or any of its affiliates, and (e) any amendment to the Organizational Documents (as defined in the Indenture) to memorialize the transfers or removal described above. The Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Owner so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Loan Agreement, this Regulatory Agreement or any loan document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Owner as set forth in the Loan Agreement, this Regulatory Agreement or any loan document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Owner from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer will relieve the Owner of further liability for obligations under the Loan Agreement and this Regulatory Agreement arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Owner will not change its general partner by transfer, sale or otherwise without the prior written consent of the Issuer, which consent will not be unreasonably withheld. A change in the Owner's general partner includes any transfer of any controlling ownership interest in the general partner other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a "qualified residential rental project" that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Owner or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Owner upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Owner and its successors in interest.

Section 12. Covenants To Run With the Land. The Owner hereby subjects the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Regulatory Agreement. The Issuer, the Trustee and the Owner hereby declare that the covenants,

reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Owner's successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The 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 Development is rendered less valuable thereby. The Issuer, the Trustee 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 Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured by the Owner for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Owner and the Investor Limited Partner at the Notice Addresses set forth in the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer, will declare an "Event of Default" to have occurred hereunder; provided, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Owner delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Investor Limited Partner shall be deemed to be cure by the Owner, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Owner.

Following the declaration of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;
- (b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Development during regular business hours following reasonable notice; and

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Owner contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee and the Owner (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) Following the declaration of an Event of Default hereunder with respect to Sections 4(i) and 4(j) hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Owner to perform its obligations and covenants under Sections 4(i) and 4(j) hereof.

(b) If the Issuer, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Owner under Sections 4(i) and 4(j) hereof, such party has the right to recover attorney's fees directly from the Owner, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Owner hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Trustee. The Trustee will act only as specifically provided herein and in the Indenture and the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided herein and in the Indenture, the Trustee agrees to act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided will be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's rights under the Indenture, the Trustee will, at the direction of the Issuer, take reasonable actions to enforce compliance by the Owner with the terms of this Regulatory Agreement. The Trustee may rely on certificates and reports delivered to the Trustee by the Owner without independent investigation and the Trustee's responsibility to review and monitor compliance hereunder will not extend beyond the Trustee's receipt of the certificates, reports, and other documents required to be submitted to the Trustee by the Owner pursuant to this Regulatory Agreement.

The Trustee may resign only upon giving 60 days' prior written notice to the Issuer, the Owner and to each registered owner of Bonds then Outstanding as shown on the Bond Register. The Trustee may be removed at any time upon 30 days' prior written notice to the Trustee, (a) by the Issuer, (b) by the owners of not less than 51% in aggregate principal amount of Bonds then Outstanding, which written instrument must designate a successor Trustee or (c) by the Owner, with the prior written consent of the Issuer or the owners of 100% in aggregate principal amount of Bonds then Outstanding. Such resignation or removal will not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment. The Trustee's right to indemnification provided in the Loan Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Trust Indenture, the Owner will pay to the Trustee a fee for the performance of the Trustee's duties under this Agreement for the remaining term of this Regulatory Agreement. The amount of such fee to be paid by the Owner to the Trustee will be in an amount mutually agreed upon by the Owner and the Trustee at the time of the discharge of the Trust Indenture.

Section 18. Recording and Filing. The Owner will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Dallas County, Texas and in such other places as the Issuer or the Trustee may reasonably request. A file-stamped copy of this Regulatory Agreement and all amendments and supplements thereto will be delivered to the Trustee. The Owner will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Loan and notwithstanding a discharge of the Indenture and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Owner will continue to pay to the Issuer and the Trustee all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Owner pursuant to the Loan Agreement and the Tax Exemption Agreement.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Loan Agreement, the Indenture, and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto, or their successors in title, and duly recorded in the real property records of Dallas County, Texas, and only upon receipt by the Issuer (with a copy to the Trustee) of a Favorable Opinion of Bond Counsel and an opinion of Bond Counsel that such action is not contrary to the provisions of the Act.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee or the Owner will be given in the manner and to the address (or facsimile numbers) set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Owner to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Loan Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Loan Agreement. In addition, the Issuer hereby authorizes the Owner to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer agrees to cooperate with the Owner and execute any form of statement required by the Code or the Regulations to perfect any such election.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

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

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair

(SEAL)

Attest:

\_\_\_\_\_  
Secretary

**ACKNOWLEDGMENT**

STATE OF TEXAS            §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by J.B. Goodwin, Chair of the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)



**BOKF, NA,**  
as Trustee

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

This instrument was acknowledged before me on \_\_\_\_\_, 2018 by  
\_\_\_\_\_, \_\_\_\_\_ of BOKF, NA, a national  
banking association, on behalf of said banking association.

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

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

ACKNOWLEDGMENT

STATE OF KENTUCKY       §  
  §  
COUNTY OF JEFFERSON   §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, personally appeared Chris Dischinger, Manager, of LDG Forestwood GP, LLC, a Texas limited liability company, the general partner of LDG Forestwood, LP, a Texas limited partnership, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

Notary's Name (Printed): \_\_\_\_\_

Notary Seal:

EXHIBIT "A"

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: LDG Forestwood, LP, a Texas limited partnership

Development: The Development is a 220-unit affordable multifamily community to be known as Forestwood and to be located at 4012 S. Beltline Road, Balch Springs, Texas 75181. It consists of four (4) residential apartment building[s] with approximately 190,149 net rentable square feet. The unit mix will consist of:

58	one-bedroom/one-bath units
126	two-bedroom/two-bath units
36	three-bedroom/two bath units
220	Total Units

Unit sizes will range from approximately 668 square feet to approximately 1,355 square feet.

## EXHIBIT B-2

### DEVELOPMENT AMENITIES

“Development Amenities” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process.

Development Common Amenities must include at least twenty-two (22) points selected from the following list. The Owner may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Owner.

- (i) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas); (2 points);
- (ii) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development’s tenancy (2 points);
- (iii) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
- (iv) Accessible walking/jogging path separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (v) Community laundry room with at least one washer and dryer for every 40 Units (3 points);
- (vi) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);
- (vii) Swimming pool (3 points);
- (viii) Splash pad/water feature play area (1 point);
- (ix) Furnished fitness center. Equipped with a variety of fitness equipment that includes at least one of the following for every 40 Units: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control. (2 points);
- (x) Equipped business/computer center. Must be equipped with 1 computer for every 40 Units (maximum of 5 computers needed) loaded with basic applications/programs to enable email/internet access, word processing, Excel, etc., 1 laser printer per computer lab and at least one scanner which may be integrated with printer (2 points);
- (xi) Furnished Community room (2 points);
- (xii) Library with an accessible sitting area (separate from the community room) (1 point);

- (xiii) Enclosed community sun porch or covered community porch/patio (1 point);
- (xiv) Service provider office in addition to leasing offices (1 point);
- (xv) Regularly staffed service provider office in addition to leasing offices (3 points);
- (xvi) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
- (xvii) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (xviii) Horseshoe pit; putting green; shuffleboard court; pool table; or video game console(s) with a variety of games and a dedicated location accessible to all tenants to play such games (1 point);
- (xix) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
- (xx) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xxi) of this subparagraph is not selected; or
- (xxi) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (xx) of this subparagraph is not selected;
- (xxii) Sport Court (Tennis, Basketball or Volleyball) (2 points);
- (xxiii) Furnished and staffed Children's Activity Center that must have age appropriate furnishings and equipment. Appropriate levels of staffing must be provided during after-school hours and during school vacations (3 points);
- (xxiv) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to tenants; and theater seating (3 points);
- (xxv) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);
- (xxvi) Wi-Fi (with coverage throughout the clubhouse and/or community building) (1 point);
- (xxvii) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site. (3 points);
- (xxviii) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(xxix) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(xxx) Porte-cochere (1 point); or

(xxxi) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of three categories: Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than two (2) points total under this clause.

**(I) Enterprise Green Communities.** The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

**(II) LEED.** The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

**(III) ICC 700 National Green Building Standard.** The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NAHB Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

Development Unit Amenities must include at least seven (7) points selected from the following list. Owner may change, from time to time, the amenities offered; however, the overall points must remain the same.

(i) Covered entries (0.5 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (0.5 point);

(iii) Microwave ovens (0.5 point);

(iv) Self-cleaning or continuous cleaning ovens (0.5 point);

(v) Refrigerator with icemaker (0.5 point);

(vi) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the property site (0.5 point);

(vii) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(viii) Covered patios or covered balconies (0.5 point);

(ix) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

- (x) 14 SEER HVAC (or greater) or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1.5 points);
- (xi) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);
- (xii) Built-in (recessed into the wall) shelving unit (0.5 point);
- (xiii) Recessed or track LED lighting in kitchen and living areas (1 point);
- (xiv) Thirty (30) year roof (0.5 point);
- (xv) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (xvi) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 points);
- (xvii) Walk-in closet in master bedroom (0.5 points);
- (xviii) Electric Vehicle Charging Station (0.5 points); and
- (xix) Ceiling fans in all bedrooms (0.5 points).



## EXHIBIT C

### TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Development Owner.

(A) partnership with local law enforcement to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (3 points);

(B) weekday character building program (shall include at least on a monthly basis a curriculum based character building presentation on relevant topics, for example teen dating violence, drug prevention, bullying, teambuilding, internet/social media dangers, stranger danger, etc.) (2 points);

(C) daily transportation such as bus passes, cab vouchers, specialized van on-site (4 points);

(D) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a tenant. While it is possible that transportation may be provided to a local food bank to meet the requirement of this tenant service, the tenant must not be required to pay for the items they receive at the food bank (1 point);

(E) GED preparation classes (shall include an instructor providing on-site coursework and exam) (2 points);

(F) English as a second language classes (shall include an instructor providing on-site coursework and exam) (1 point);

(G) quarterly financial planning courses (i.e. homebuyer education, credit counseling, investing advice, retirement plans, etc.). Courses must be offered through an on-site instructor; a CD or online course is not acceptable (1 point);

(H) annual health fair provided by a health care professional(1 point);

(I) quarterly health and nutritional courses (1 point);

(J) organized youth programs or other recreational activities such as games, movies or crafts offered by the Development (1 point);

(K) scholastic tutoring (shall include daily (Monday – Thursday) homework help or other focus on academics) (3 points);

(L) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(M) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(N) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (2 points);

(O) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) (1 point);

(P) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

(Q) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, etc.) (1 point);

(R) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (2 points);

(S) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(T) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(U) contracted career training and placement partnerships with local worksorce offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(V) external partnerships for provision of weekly substance abuse meetings at the Development Site (2 points);

(W) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(X) a full-time resident services coordinator with a dedicated office space at the Development (2 points);

(Y) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (1 point); and

(Z) Development Sites located within a one mile radius of one of the following can also qualify for one (1) point provided they also have a referral process in place and provide transportation to and from the facility:

(i) Facility for treatment of alcohol and/or drug dependency;

(ii) Facility for treatment of PTSD and other significant psychiatric or psychological conditions;

(iii) Facility providing therapeutic and/or rehabilitative services relating to mobility, sight, speech, cognitive, or hearing impairments; or

(iv) Facility providing medical and/or psychological and/or psychiatric assistance for persons of limited financial means.

**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

October 1, 2018

among

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

and

**BOKF, NA,**  
as Trustee

and

**LDG FORESTWOOD, LP,**  
as Borrower

regarding

**[\$20,000,000]**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(FORESTWOOD),  
SERIES 2018A**

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of October 1, 2018, but effective as of the Closing Date (as defined in the Indenture described below) is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **LDG Forestwood, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “Borrower”), and is entered into in connection with the issuance of the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood Apartments), Series 2018A (the “Bonds”) being issued in the original principal amount of \$[20,000,000].

### RECITALS

WHEREAS, the Issuer has determined to issue the Bonds to provide for the financing of the acquisition, construction, and equipping of a multifamily rental housing development known as Forestwood Apartments (as more particularly described herein, the “Project”) to be owned and operated by the Borrower; and

WHEREAS, the Issuer desires to use the Proceeds (as defined herein) of the Bonds to fund a mortgage loan to the Borrower (i.e., the Loan, as defined herein) upon the terms and conditions set forth in the Loan Agreement (as defined herein) in order to finance the cost of acquiring, constructing, and equipping the Project; and

WHEREAS, the Issuer and the Borrower desire that interest on the Bonds be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Project and to establish the expectations of the Issuer, the Borrower, and the Trustee as to future events regarding the Bonds, the Project, and the use and investment of Proceeds of the Bonds.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Issuer, the Borrower, and the Trustee (but not in their individual capacities), respectively, as follows:

1. **Definitions.** Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the meaning or is in the amount therein specified. All capitalized terms used but not defined herein, to the extent that such terms are defined in the Indenture, the Loan Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same

meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially means Bracewell LLP.

**“Bond Fund”** means the “Bond Fund” established pursuant to the Indenture.

**“Bond Year”** means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final Maturity Date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final Maturity Date of the Bonds.

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

**“Computation Date”** means each Installment Computation Date and the Final Computation Date.

**“Costs of Issuance”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

**“Costs of Issuance Fund”** means the “Costs of Issuance Fund” established pursuant to the Indenture.

**“Favorable Opinion of Bond Counsel”** means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

**“Final Computation Date”** means the date on which the final payment in full of the Bonds is made.

**“Financial Advisor”** means George K. Baum & Company.

“**Form 8038**” means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

“**Gross Proceeds**” means any Proceeds and any Replacement Proceeds.

“**Hedged Bonds**” means that portion of the Bonds covered by the Swap.

“**Indenture**” means the Indenture of Trust by and between the Issuer and the Trustee, dated as of October 1, 2018.

“**Inducement Date**” means February 22, 2018.

“**Initial Purchaser**” means Cedar Rapids Bank and Trust Company, the initial purchaser of the Bonds.

“**Installment Computation Date**” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“**Investment Proceeds**” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

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

“**Issue Date**” means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation. The Issue Date of the Bonds is the Closing Date.

“**Issue Price**” has the meaning ascribed to such term in section 1.148-1(f) of the Regulations.

“**Loan**” means the mortgage loan made by the Issuer to the Borrower pursuant to the Loan Agreement in the aggregate principal amount of \$[20,000,000] and evidenced by a multifamily note.

“**Loan Agreement**” means the Loan Agreement among the Issuer, the Trustee, and the Borrower, dated as of October 1, 2018.

“**Maturity Date**” means October 1, 2058.

“**Median Gross Income for the Area**” means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

“**Minor Portion**” means that portion of the Gross Proceeds of the Bonds that does not exceed in the aggregate \$100,000.



“**Net Proceeds**” means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

“**Nonpurpose Investment**” means any “investment property,” within the meaning of section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Bonds.

“**Original Issue Discount**” means the excess of the Stated Redemption Price at Maturity over the Issue Price.

“**Original Issue Premium**” means the excess of the Issue Price over the Stated Redemption Price at Maturity.

“**Permitted Investments**” has the meaning set forth in the Indenture.

“**Placed in Service**” has the meaning set forth in section 1.150-2(c) of the Regulations and means the date on which, based on all the facts and circumstances, (a) a facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) a facility is, in fact, in operation at such level.

“**Pre-Issuance Accrued Interest**” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

“**Preliminary Expenditures**” are described in section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition and construction of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction.

“**Proceeds**” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

“**Project**” means an approximately 220-Unit multifamily housing development to be located at 4540 Lasater Road, Balch Springs, Texas, in Dallas County, Texas, and to be known as Forestwood Apartments.

“**Project Costs**” means, to the extent authorized by the Act, any and all costs incurred by the Borrower with respect to the acquisition, construction, and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the Issue Date of the Bonds, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and Borrower’s overhead and supervisor’s fees and costs directly allocable to the Project, and administrative and other expenses necessary or incident to the Project and the financing thereof.

**“Project Fund”** means the “Project Fund” established pursuant to the Indenture, with the Bond Proceeds Account, the Costs of Issuance Account (containing a Bond Proceeds Subaccount and an Equity Subaccount therein), the Equity Account, the Capitalized Interest Account, the Insurance and Condemnation Proceeds Account and the Swap Payments Account therein.

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Loan.

**“Qualified Project Costs”** means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the construction of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being constructed by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in constructing the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the construction of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) In the case of any amounts paid by the Borrower prior to the Issue Date of the Bonds that are being reimbursed with Proceeds of the Bonds, (i) the costs were paid no earlier than 60 days prior to the Inducement Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to an amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Bonds.

**“Qualified Project Period”** means, with respect to the Project, the period beginning on the Closing Date and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding for federal

income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

**“Qualifying Tenant”** means a tenant whose Annual Income (as defined in the Regulatory Agreement) is 60 percent or less of Median Gross Income for the Area, as determined under sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under section 152(f)(2) of the Code), not one of whom is entitled to file a joint return under section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

**“Rebate Amount”** has the meaning set forth in section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations.

**“Rebate Analyst”** means a Person that is (a) qualified and experienced in the calculation of rebate payments under section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

**“Rebate Fund”** means the “Rebate Fund” established pursuant to the Indenture.

**“Redemption Fund”** means the “Redemption Fund” established pursuant to the Indenture.

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

**“Regulatory Agreement”** means the Regulatory and Declaration of Restrictive Covenants, among the Issuer, the Trustee, and the Borrower, dated as of October 1, 2018.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 267 or 707(b) of the Code or such persons are members of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Proceeds”** has the meaning set forth in section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

**“Replacement Reserve Fund”** means the “Replacement Reserve Fund” established pursuant to the Indenture.

**“Sale Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or

compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

“**State**” means the State of Texas.

“**Stated Redemption Price at Maturity**” means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

“**Surplus Fund**” means the “Surplus Fund” established pursuant to the Indenture.

“**Swap**” means the variable-to-fixed interest rate swap transaction entered into by the Borrower with the Swap Provider with respect to the Hedged Bonds.

“**Swap Provider**” means Cedar Rapids Bank and Trust Company.

“**Tax and Insurance Escrow Fund**” means the “Tax and Insurance Escrow Fund” established pursuant to the Indenture.

“**Taxable Bonds**” means the Issuer’s Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

“**Weighted Average Maturity**” means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Issue Price of such obligation.

“**Yield**” on (a) an issue of obligations has the meaning set forth in section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal, interest and fees for qualified guarantees to be paid on the obligation produces an amount equal to the Issue Price of such issue and (b) any investment has the meaning set forth in section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments to be received on the investment produces an amount equal to all payments for the investment.

“**40-60 Test**” means the requirement set forth in section 142(d)(1)(B) of the Code providing that 40 percent or more of Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

2. Authorized Representatives.

(a) Issuer. The undersigned representative of the Issuer represents that such representative (i) is charged, along with others, with the responsibility for the Bonds and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Issuer to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Issuer personnel and consultants to the Issuer, the undersigned representative of the Issuer has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Trustee. The undersigned representative of the Trustee represents that such representative is a duly chosen, qualified and acting officer or other representative of the Trustee and is authorized on behalf of the Trustee to execute and deliver this Agreement.

3. Reasonable Expectations. The Issuer and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Issuer and the Borrower have also relied, to the extent appropriate and applicable, on the (a) Certificate of Initial Purchaser attached hereto as Exhibit A, (b) Certificate of Financial Advisor attached hereto as Exhibit B, (c) Issuer's Qualified Hedge Identification Certificate attached hereto as Exhibit C, (d) Borrower's Qualified Hedge Identification Certificate attached hereto as Exhibit D, and (e) Certificate of Swap Provider attached hereto as Exhibit E. The undersigned representatives of the Issuer and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower's Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Issuer concerning the use and investment of the Proceeds of the Bonds and certain other matters described in this Agreement are based solely upon representations, expectations, certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Issuer has not made any independent investigations of the matters pertaining thereto. The Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Bonds, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to Issuance of the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) Governmental Purpose. The Borrower has applied to the Issuer and been approved for the Loan to be made from the Proceeds of the Bonds. The proceeds of the Loan (and, thus, the Proceeds of the Bonds) will be used to finance a portion of the Project Costs [and a portion of the Costs of Issuance of the Bonds].

(b) Public Hearing and Approval. A public hearing with respect to the Bonds was conducted by the Issuer on August 14, 2018, in the City of Balch Springs, Texas, which location is no farther than 100 miles from the Project. Written notice of the applicable date, hour, place and subject of such public hearing was published no less than 14 days before the date such public hearing was held. The Attorney General of the State approved the issuance of the Bonds as required under section 147(f) of the Code.

(c) Volume Cap. The Issuer has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Bonds (or if greater, the Issue Price of the Bonds) for the purpose of issuing the Bonds to finance the acquisition, construction, and equipping of the Project.

(d) Issue. Except for the Taxable Bonds, there are no other obligations that (i) were sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) were sold pursuant to the same plan of financing with the Bonds, and (iii) will be paid out of substantially the same source of funds as the Bonds. Pursuant to section 1.150-1(c)(2) of the Regulations, the Bonds will not be considered part of the same issue as the Taxable Bonds.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Bonds, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was furnished by the Borrower, is true, correct, and complete. The Issuer will cause Form 8038 with respect to the Bonds to be filed timely with the IRS.

(f) Substantial User. Neither the Borrower nor any Related Person to the Borrower was a "substantial user" (within the meaning of section 1.103-11 of the Regulations) of the Project at any time during the five-year period before the Issue Date of the Bonds.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Bonds in an amount related to the amount of the Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Issuer.

(h) No Federal Guarantee. Neither the Issuer nor the Borrower will take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of section 149(b)(2) of the Code.

7. Sale Proceeds of the Bonds. The total amount of Sale Proceeds of the Bonds is \$[20,000,000], which is the amount actually or constructively received by the Issuer from the sale (or other disposition) of the Bonds to the Initial Purchaser. The Sale Proceeds of the Bonds will be loaned to the Borrower and deposited in the Bond Proceeds Account of the Project Fund and used to pay a portion of the Project Costs.

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Bonds.

9. Use of Proceeds of the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Bonds actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Bonds will be expended for or allocated to Project Costs that are not Qualified Project Costs.

For purposes of this subparagraph (a), the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living,

sleeping, eating, cooking and sanitation that will be used on other than a transient basis by one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the longer of the term of the Bonds or the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. [No Costs of Issuance are expected to be paid out of Proceeds of the Bonds.] The Costs of Issuance financed out of Net Proceeds of the Bonds will not exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$[400,000]). In the event any Costs of Issuance are paid from Proceeds of the Bonds, the Borrower covenants that Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds.

(ii) No Acquisition of Existing Property. No portion of the Net Proceeds of the Bonds will be used to pay or reimburse the cost of acquiring any property or an interest therein unless, except for land, the first use of such property is pursuant to such acquisition.

(iii) Limitation on Land Acquisition. Less than 25 percent of the Net Proceeds of the Bonds will be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Bonds will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest therein) to the extent of that portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project.

(iv) Prohibited Facilities. None of the Proceeds of the Bonds will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that any fitness room functionally related to and subordinate to the Project for use by tenants of the



Project or their guest is not considered a health club facility for purposes of this subparagraph.

(v) Payments to Related Persons. Any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Bonds that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vi) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Bonds (and that is directly related to the Project), the Proceeds of the Bonds will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Issuer's income were subject to federal income taxation; (B) interest on the Bonds in an amount that does not cause the aggregate amount of interest paid on the Bonds to exceed that amount of interest on the Bonds that is attributable to the period that commences on the Issue Date of the Bonds and ends on the later of (1) the date that is three years from the Issue Date of the Bonds or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Bonds or payment for a qualified hedge on the Bonds.

(vii) No Pooling. The Issuer will not use the Proceeds of the Bonds directly or indirectly to make or finance loans to two or more ultimate unrelated borrowers.

(viii) Weighted Average Economic Life. The Weighted Average Maturity of the Bonds, as calculated by the Financial Advisor and as set forth in Exhibit B hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds is at least [WAM/1.2] years. Thus, the Weighted Average Maturity of the Bonds is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds. Such weighted average estimated economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Bonds or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under section 167 of the Code prior to the enactment of the ACRS system under section 168 of the Code (i.e., the mid-point lives under the Class Life Asset Depreciation

Range System of section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Bonds to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Bonds.

(c) Reimbursement. The Borrower expects that it will use Proceeds of the Bonds in the amount of approximately \$[ ] to reimburse itself for expenditures paid prior to the Issue Date of the Bonds. In the event that any amounts are used for such purpose, other than (i) the amount of \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Sale Proceeds of the Bonds, no portion of the Proceeds of the Bonds will be disbursed to reimburse the Issuer, the Borrower or any Related Person to the Borrower for any expenditures paid or incurred prior to the date that is 60 days before the Inducement Date, which is the date the Issuer adopted a resolution describing the Project, stating the maximum principal amount of obligations expected to be issued for the Project and stating the Issuer's reasonable expectation that expenditures for costs of the Project would be reimbursed with Proceeds of an obligation. Such resolution was not an official intent declared as a matter of course or in an amount substantially in excess of the amount expected to be necessary for the Project. Neither the Issuer nor the Borrower has engaged in a pattern of failure to reimburse actual original expenditures covered by official intents. Such reimbursed portion will be treated as spent for purposes of the "Funds—Project Fund" subparagraph herein and the "Compliance with Rebate Requirements; Rebate Fund" paragraph herein.

(d) Allocations and Accounting. The Proceeds of the Bonds will be allocated to expenditures not later than 18 months after the later of the date the original expenditure is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Bonds or the retirement of the Bonds, if earlier; provided that if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Bonds to Qualified Project Costs of the Project. No Proceeds of the Bonds will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price; Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Issuer and the Borrower hereby identify in the books and records maintained for the Bonds the rule that will be used to determine the Issue Price for the Bonds as the rule set forth in the in the second sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the price paid by the single buyer. Based on the representations of the Initial Purchaser set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$[20,000,000], which amount represents the Stated Redemption Price at Maturity of the Bonds.

(b) The Yield on the Bonds will be computed separately for each computation period. For the purposes of this Agreement, the Yield on the Bonds for each computation period is the discount rate that, when used in computing the present value as of the first day of the computation period of all payments of principal and interest and fees for qualified guarantees on the Bonds that are attributable to the computation period, produces an amount equal to the present value, using the same discount rate, of the aggregate Issue Price (or deemed Issue Price, as determined by section 1.148-4(c)(2)(iv) of the Regulations) of the Bonds as of the first day of the computation period. For each group of substantially identical Bonds, the Issue Price is the first price at which the Bonds were sold to the Initial Purchaser.

(c) The Borrower and the Swap Provider have entered into the Swap. The Borrower has entered into the Swap primarily to modify the risk of interest rate changes on the Bonds. As described more fully in the Qualified Hedge Identification Certificates attached hereto as Exhibit C and D, respectively, (i) payments under the Swap will be made to coincide with interest payments on the Hedged Bonds, (ii) the Swap will be for a period of years not longer than the term of the Hedged Bonds, (iii) all of the terms of the Swap are at fair market value, (iv) the Swap will not contain a significant investment element, (v) no payments have been or will be made or received to acquire the Swap, and (vi) the Swap Provider is not a related party to the Issuer or the Borrower. By executing the Qualified Hedge Identification Certificates, the Swap was identified by the Issuer and the Borrower on the books and records maintained for the Bonds not later than fifteen days after the date on which the Borrower and the Swap Provider entered into the Swap. Therefore, the Swap will be treated by the Issuer and the Borrower as a qualified hedge. The Borrower will not enter into a different hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel. The Swap Provider has made certifications relevant to the treatment of the Swap for federal income tax purposes, such certificate being attached as Exhibit E.

11. Yield on the Loan. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Loan is allocated to the Bonds. The Yield on the Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Bonds. For the purposes of this Agreement, the Yield on the Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds of all receipts with respect to the Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Loan as of the Issue Date of the Bonds. The aggregate payments made to the Borrower with respect to the Loan include no payments other than the “purchase price” of the Loan. The purchase price of the Loan is the amount loaned to the Borrower by the Issuer on the Issue Date of the Bonds, i.e. \$[20,000,000].

(b) The Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments

acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents (i.e., the Loan Agreement) prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Loan as a program investment.

(c) The receipts from the Borrower with respect to the Loan include interest and principal payments with respect to the Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by 1.148-5(e) of the Regulations, for purposes of computing the Yield on the Loan. Because the Issuer intends to treat the Loan as a “program investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Loan, which amounts are set forth in Exhibit F hereto.

(d) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Loan, calculated in the manner set forth above, does not exceed than the Yield on the Bonds by more than 1.5 percentage points.

12. Investment of Proceeds Pending Expenditure; No Arbitrage. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) Investment Proceeds. Amounts on deposit in the Project Fund may be comprised of Proceeds of the Bonds and amounts that are not Proceeds of the Bonds or any tax-exempt obligation. If Proceeds of the Bonds and amounts that are not Proceeds of the Bonds are commingled, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Bonds and amounts that are not Proceeds of the Bonds have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Bonds pending expenditure of such Proceeds for Project Costs will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Bonds will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such amounts will be

invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Bonds and, provided further, that the Yield restriction requirements may be satisfied by making Yield reduction payments to the federal government to the extent permitted by section 1.148-5(c) of the Regulations.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in a Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Bonds are reasonably expected to be used to carry out the governmental purposes of the Bonds within the three-year period beginning on the Issue Date of the Bonds.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Issuer and the Borrower that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Issuer and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Indenture and the Loan Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Loan Agreement or the note relating to the Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any investment (or to use Gross Proceeds of the Bonds 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 Bonds to stated maturity, except as permitted by section 148 of the Code. The Issuer and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of section 148 of the Code relating to the Bonds and the interest thereon.

13. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Notwithstanding any other provisions of the Indenture or of this Agreement, the Trustee will not make or cause to be made any investment or other use of the moneys in the funds or accounts that would cause the Bonds to be classified as “arbitrage bonds” within the meaning of section 148 of the Code or would cause the interest on the Bonds to be includable in gross income for federal income tax purposes. This covenant will extend, throughout the term of the Bonds, to all funds created under the Indenture, and all moneys on deposit to the credit of any fund. Pursuant

to this covenant, with respect to the investments of the funds and accounts under the Indenture, the Trustee obligates itself to comply throughout the term of the Bonds with the requirements of section 148 of the Code.

Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Loan Agreement, as applicable) to the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming “arbitrage bonds.”

The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent the Trustee materially follows the written directions of the Borrower or the Issuer.

14. Compliance with Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that “rebateable arbitrage earnings” on the investment of the Gross Proceeds of the Bonds, within the meaning of section 148(f) of the Code, be rebated to the federal government.

(b) Rebate Fund. The Indenture established the Rebate Fund which will be maintained and held in trust by the Trustee and which will be disbursed and applied only as herein authorized in this “Compliance with Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Indenture relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Trustee is afforded all the rights, protections and immunities otherwise accorded to it thereunder as if the provisions set forth in this “Compliance with Rebate Requirements; Rebate Fund” paragraph were set forth in the Indenture.

(c) Delivery of Documents and Money by Borrower on Computation Dates. The Borrower will deliver to the Trustee and the Issuer, within 55 days after each Computation Date:

(i) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date; and

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate

Fund, is equal to the Rebate Amount as of such Final Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Trustee will deposit or transfer to the credit of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower’s duties and responsibilities with respect thereto except to follow the Borrower’s specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(iv) The Borrower will provide to the Trustee and the Trustee will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Bond and any tax-exempt obligations issued to refinance the Bonds are retired. The Trustee will keep and make available to the Issuer and the Borrower such records concerning the investments of Gross Proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Issuer or the Borrower in order to enable the Borrower to make the computations required under section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of

section 148(f) of the Code or section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Issuer, or the Trustee), the Borrower will (i) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States of America from the Rebate Fund (A) the Rebate Amount that the Borrower failed to pay, plus any interest specified in section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Trustee within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 50 percent penalty required by section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Trustee and the Issuer a Form 8038-T completed as of such date. If such Rebate Amount, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Bonds from becoming “arbitrage bonds” within the meaning of section 148 of the Code.

(f) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount.

(g) No Diversion of Rebateable 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 Bonds that is not purchased at fair market value or includes terms that the Borrower would not have included if the Bonds was not subject to section 148(f) of the Code.

(h) Rebate Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if the Borrower has not earned any rebateable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent that it is determined that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee and the Issuer within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Trustee to the United States of America if the Borrower furnishes to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.



(i) Trustee Reliance on Written Directions. The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Issuer, or the Rebate Analyst.

15. Funds.

(a) Project Fund – Bond Proceeds Account and Capitalized Interest Account. All of the Proceeds of the Bonds in the Bond Proceeds Account and the Capitalized Interest Account of the Project Fund are expected to be invested and disbursed as described in the Indenture to pay Project Costs. The Borrower (i) reasonably expects to allocate at least 85 percent of the Net Proceeds of the Bonds to expenditures on capital projects of the Project prior to the date that is three years after the Issue Date of the Bonds, (ii) has incurred, or reasonably expects to incur within six months after the Issue Date of the Bonds, a binding obligation to a third party that is not subject to any contingencies within the control of the Borrower pursuant to which the Borrower is obligated to expend at least five percent of the Net Proceeds of the Bonds on capital projects of the Project, and (iii) reasonably expects that the acquisition, construction, and equipping of the Project will proceed with due diligence to completion and the Net Proceeds of the Bonds are reasonably expected to be expended on the Project with reasonable dispatch; therefore, all of such amounts may be invested without regard to Yield restriction. Any amounts not so expended prior to the applicable dates set forth in the preceding sentence will thereafter be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Project Fund – Costs of Issuance Account. Amounts on deposit in the Costs of Issuance Account of the Project Fund will be used for the purpose of paying Costs of Issuance of the Bonds. After the payment of all Costs of Issuance, amounts remaining (i) in the Bond Proceeds Subaccount of the Costs of Issuance Account of the Project Fund will be transferred to the Bond Proceeds Account of the Project Fund and (ii) in the Equity Subaccount of the Costs of Issuance Account of the Project Fund will be returned to the Borrower. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(c) Bond Fund and Project Fund-Swap Payments Account. Amounts on deposit in the Bond Fund and the Project Fund – Swap Payments Account will be used for the purposes set forth in Section 4.2 of the Indenture. The Bond Fund Project Fund – Swap Payments Account will be used primarily to achieve a proper matching of payments made pursuant to the Loan Agreement and debt service on the Bonds within each Bond Year. Any amounts in the Bond Fund and Project Fund – Swap Payments Account held for longer than 13 months will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(d) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

(e) Surplus Fund. Amounts on deposit in the Surplus Fund will be used for the purposes set forth in Section 4.4 of the Indenture. The Surplus Fund will be used to effect a redemption of the Bonds in accordance with Section 3.4(b)(i) of the Indenture. Any amounts in the Surplus Fund will be used within 13 months of receipt of amounts in such fund.

(f) Redemption Fund. Amounts on deposit in the Redemption Fund will be used for the purposes set forth in Section 4.5(a) of the Indenture. The Redemption Fund will be used to effect a redemption of the Bonds in accordance with Section 3.4 of the Indenture. Any amounts in the Redemption Fund will be used within 13 months of receipt of amounts in such account.

(g) Other Funds and Accounts. Amounts on deposit in the Equity Account of the Project Fund, the Insurance and Condemnation Proceeds Account of the Project Fund, Replacement Reserve Fund, and the Tax and Insurance Escrow Fund and the Operating Reserve Fund funded by the Borrower and used for the purposes and in the order set forth in Section 4.3 and Section 4.5 of the Indenture, as applicable. There is no assurance that amounts on deposit in such funds will be available to pay debt service on the Bonds.

16. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than as described in paragraph 15 above, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than as described in paragraph 15 above, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds. Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding

longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

17. Not an Abusive Transaction. The Issuer and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Bonds is or will be an abusive arbitrage device by having the effect of (i) enabling the Issuer or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Bonds over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Bonds are not invested in higher yielding investments over the term of the Bonds) and (ii) overburdening the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bonds, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Bonds is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Bonds would reasonably be taken to accomplish the governmental purposes of the Bonds if the interest on the Bonds were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Bonds); and (C) the Proceeds of the Bonds will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Bonds and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Bonds.

(b) No Sinking Fund. No portion of the Bonds has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Bonds.

(c) No Window. No portion of the Bonds has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Issuer to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.

(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Bonds are outstanding.

18. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project is located at 4540 Lasater Road, Balch Springs, Texas and comprised of 220 Units, none of which will be owner-occupied other than any functionally related and subordinate Units used by management for the purpose of housing any resident managers, security personnel or maintenance personnel that is reasonably required for the Project, and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units in the Project will be rented to individuals or families for residential occupancy.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Bonds for purposes of satisfying the requirements of section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Loan Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests, and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(f) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(g) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph.

(h) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

19. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period; provided that compliance with such requirement will not be required, if applicable, during the twelve-month “transition period” beginning on the Issue Date of the Bonds, as set forth in Revenue Procedure 2004-39, 2004 C.B. 49.

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of section 142(d)(7) of the Code to file timely, the annual certifications described in section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Bonds are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

20. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant’s physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

21. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax purposes for interest paid by the Borrower with respect to the portion of the Loan that is allocable to Proceeds of the Bonds that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Bonds, if any, and will use such amount to redeem or, if not permitted by the terms of the Bonds, defease the Bonds, all in accordance with the requirements of section 1.142-2 of the Regulations, the Indenture and the Loan Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

22. Cashflow Sufficiency. The Borrower reasonably expects that all principal of and interest on the Loan will be paid as due and that after such payments are made there will be significant cash flow that will be available to the Borrower. Furthermore, the Borrower expects that debt service on the Loan will not be paid, directly or indirectly, from non-operating or other investment funds maintained by the Borrower or any “related person” (as such term is defined for purposes of section 147(a)(2) of the Code) to the Borrower. The Borrower does not expect to create or establish, or otherwise set aside or dedicate, any fund or account that is expected to be used to pay principal of or interest on the Bonds or to be pledged, directly or indirectly, to the payment of principal of or interest on the Bonds, except for the funds and accounts established under the Indenture. Moneys received from the investment of moneys received from the sale of the Bonds and from the investment of such investment income will not be commingled with other receipts or revenues of the Borrower.

23. Record Retention. The Issuer, the Borrower and the Trustee will retain or cause to be retained all pertinent and material records relating to the investment, use and expenditure of the Proceeds of the Bonds and the calculation of rebate in connection therewith until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Issuer to retrieve and reproduce such books and records in the event of an examination of the Bonds by the IRS.

24. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the exclusion of interest on the Bonds from the gross income of the owners thereof for federal tax purposes, the Issuer will likely be treated as the “taxpayer”, and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Issuer (and in consultation with the Trustee, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Issuer to provide a defense regarding the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE ISSUER AND THE TRUSTEE (INCLUDING THE COST OF THE ISSUER’S AND THE TRUSTEE’S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE ISSUER (WITH RESPECT TO INDEMNIFICATION OF THE ISSUER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE TRUSTEE (WITH RESPECT TO INDEMNIFICATION OF THE TRUSTEE).

25. Post-Issuance Compliance Procedures. The Borrower has been provided with a copy of the Issuer’s written post-issuance compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements under the Code and Regulations and to monitor the requirements of section 148 of the Code. The Borrower has reviewed such written post-issuance compliance procedures and agrees to take such actions as required therein to maintain compliance with requirements in the Code. A copy of the current version of such procedures is attached hereto as Exhibit G.

26. Term. The obligations of the Issuer, the Borrower and the Trustee, under this Agreement will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the exclusion from gross income of interest on the Bonds for federal income tax purposes.

27. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but

only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

28. Remedies. The Issuer, the Trustee, and the Borrower each hereby agree that the remedies available under Article VI of the Indenture and Article 7 of the Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Loan Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

29. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provision hereof.

(b) Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid, addressed to such parties at the addresses set forth in the Indenture and the Loan Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Issuer, the Borrower, and the Trustee.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

[EXECUTION PAGES FOLLOW]



**IN WITNESS WHEREOF**, the Issuer, the Borrower and the Trustee have caused this Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

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

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

Name: Monica Galuski

Title: Director of Bond Finance/Chief Investment  
Officer

**LDG Forestwood, LP**, a Texas limited  
partnership

By: LDG Forestwood, GP, LLC, a Texas  
limited liability company, sole general  
partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

*Signature Page to Tax Exemption Agreement*

**BOKF, NA, as Trustee**

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

Name:

Title:

## EXHIBIT A

### CERTIFICATE OF INITIAL PURCHASER

I, the undersigned officer of Cedar Rapids Band & Trust Company (the “Initial Purchaser”), make this certificate in connection with the \$[20,000,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood Apartments), Series 2018A (the “Bonds”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”).

1. I hereby certify as follows as of the Issue Date of the Bonds:
  - (a) I am the duly chosen, qualified and acting officers of the Initial Purchaser for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Initial Purchaser. I am the officer of Initial Purchaser charged, along with other officers of the Initial Purchaser, with responsibility for the Bonds.
  - (b) The Initial Purchaser is not acting as an Underwriter with respect to the Bonds. The Initial Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Bonds (or any portion of the Bonds or any interest in the Bonds).
  - (c) The Initial Purchaser has purchased the Bonds from the Issuer for an aggregate purchase price of \$[20,000,000], which price includes no amount of Pre-Issuance Accrued Interest.
  - (d) The Initial Purchaser is not a Related Party to LDG Forestwood, LP.

2. For purposes of paragraph 1 of this Certificate of Initial Purchaser, the following definitions apply:

- (a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.
- (b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

- (c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the 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 Initial Purchaser’s interpretation of any laws, including specifically sections 103 and 148 of the Code and the Regulations thereunder. The undersigned understand 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 Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP 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 Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Initial Purchaser has been duly executed as of the Closing Date.

**[R4 CAPITAL FUNDING]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature Page to Certificate of Initial Purchaser*

## EXHIBIT B

### CERTIFICATE OF THE FINANCIAL ADVISOR

I, the undersigned officer of George K. Baum & Company (the “Financial Advisor”), make this certificate in connection with the \$[20,000,000] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood Apartments), Series 2018A (the “Bonds”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price of the Bonds, based on the representations of the Underwriter attached as Exhibit A to the Tax Exemption Agreement, is not more than \$19,241,653.33.

3. The Financial Advisor has calculated the Yield on the Bonds to be [Bond Yield] percent.

4. The Financial Advisor has calculated the Yield on the Mortgage Loan to be [Loan Yield] percent. Accordingly, the Yield on the Mortgage Loan does not exceed the Yield on the Bonds by more than 1.5 percentage points.

5. For purposes of determining the Yields in paragraphs 3 and 4 above, the Financial Advisor has performed certain calculations relating to the Bonds and the Mortgage Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Issue Price; Yield on the Bonds” and “Yield on the Mortgage Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Issuer, which the Financial Advisor has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of my knowledge, as of the date hereof, no fact or circumstance has come to my attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

6. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

7. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the

conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]



The foregoing Certificate of Financial Advisor has been duly executed as of the Closing Date.

**GEORGE K. BAUM & COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Signature Page to Certificate of Financial Advisor*

**EXHIBIT C**

**ISSUER'S QUALIFIED HEDGE IDENTIFICATION CERTIFICATE**

[See Attached]

**EXHIBIT D**

**BORROWER'S QUALIFIED HEDGE IDENTIFICATION CERTIFICATE**

[See Attached]

**EXHIBIT E**  
**CERTIFICATE OF SWAP PROVIDER**

[See Attached]

**EXHIBIT F**  
**SCHEDULE OF LOAN COSTS**

**Paid Prior to Closing**

Application Fee \$4,400

**Paid at Closing**

Issuer Issuance Fee \$115,000

Issuer Administration Fee  
(first two years) \$[\_\_\_\_\_]

Issuer Compliance Fee  
(first year) \$5,500

**Annual Fees**

Issuer Administration Fee  
(beginning October 1, 2020) .10% per annum of the aggregate principal  
amount of the Bonds outstanding

Issuer Compliance Fee  
(beginning October 1, 2021) \$25 per unit in the Development

**EXHIBIT G**  
**POST-ISSUANCE COMPLIANCE PROCEDURES**

[See Attached]

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**BOND PURCHASE AGREEMENT**

**by and among**

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

**LDG FORESTWOOD, LP**

**and**

**CEDAR RAPIDS BANK AND TRUST COMPANY**

**Dated October \_\_, 2018**

**Relating to:**

**\$20,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood), Series 2018A**

**and**

**\$3,000,000**

**Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood), Series 2018B**

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## **BOND PURCHASE AGREEMENT**

CEDAR RAPIDS BANK AND TRUST COMPANY, a state chartered banking corporation duly organized and validly existing under the laws of the State of Iowa (together with its successors, assigns or designees hereunder, the “Purchaser”), hereby offers to enter into the following agreement with TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public, and official agency of the State of Texas (together with its successors and assigns, the “Issuer”) and LDG FORESTWOOD, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”), for the sale by the Issuer and the purchase by the Purchaser or its designee of the Bonds described below, which are being issued by the Issuer for the benefit of the Borrower. Upon your acceptance of this offer and your execution and delivery of this Agreement, this Agreement will be binding upon each of you and the Purchaser. This offer is made subject to your acceptance, evidenced by your execution and delivery of this Agreement to the Purchaser, at or prior to 1 p.m., eastern time, on October \_\_, 2018 and will expire if not so accepted at or prior to such time (or such later time as the Purchaser may agree in writing).

Section 1. Definitions. The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto.

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Agreement, and in reliance on the representations, warranties and covenants contained herein, the Purchaser hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Purchaser when, as and if issued, all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto in exchange for delivery by the Purchaser of the Purchase Price for the Bonds set forth as Item 2 in Exhibit B attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Resolution and the Indenture and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate, interest payment dates and redemption provisions) set forth in Item 3 in Exhibit B attached hereto and in the Indenture.

Section 3. Closing. The Closing will take place at the time and on the date set forth in Item 5 in Exhibit B or at such other time or on such other date as may be mutually agreed upon by you and the Purchaser. At the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Purchaser, in definitive physical form, duly executed and authenticated by the Trustee. Subject to the terms and conditions hereof, the Borrower will deliver or cause to be delivered at the offices of Bracewell LLP in Austin, Texas, the other documents and instruments to be delivered pursuant to this Agreement (the “Closing Documents”) and the Purchaser will accept delivery of the Tax-Exempt Bonds and Closing Documents and simultaneously will deliver the Purchase Price for the Tax-Exempt Bonds, by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Tax-Exempt Bonds will be made available to the Purchaser one business day before the Closing at the closing location for purposes of inspection. The Purchaser shall fund the future installments of the Taxable Bonds on the dates and in the amounts set forth on Exhibit B attached hereto, subject to Section 12 hereof, the terms and conditions contained in the Indenture, the Loan Agreement and the other Borrower Documents. The Tax-Exempt Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture. The Tax-Exempt Bonds should be registered by the Trustee in the name of Cedar Rapids Bank and Trust Company.



Section 4. Representations and Warranties of Issuer.

4.1 The Issuer hereby makes the following representations and warranties to the Purchaser, for its benefit and the benefit of the Purchaser and the Holders from time to time of the Bonds, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Issuer is a public, and official agency, duly organized, validly existing and in good standing under the laws of the State and is authorized to execute and deliver this Agreement and the other Issuer Documents and to issue, sell and deliver the Bonds pursuant to the laws of the State, including particularly the Act.

(b) The Issuer has, and as of the Closing Date will have, all necessary power and authority to (i) execute and deliver this Agreement and the Issuer Documents, (ii) issue the Bonds in the manner contemplated by the Resolution, this Agreement and the Indenture, and (iii) otherwise consummate the transactions contemplated by the Resolution, this Agreement and the Issuer Documents.

(c) At the time of its adoption, the Issuer had all necessary power and authority to adopt the Resolution.

(d) The Issuer has duly adopted the Resolution at a meeting or meetings duly called and held in accordance with applicable law and procedures of the Issuer, and since that time the Resolution has not been rescinded, amended or modified.

(e) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized the (i) execution and delivery of this Agreement, the Bonds and the Issuer Documents, (ii) performance by the Issuer of the obligations contained in this Agreement, in the Bonds and in the Issuer Documents, and (iii) consummation by the Issuer of all of the transactions contemplated hereby and by the Issuer Documents.

(f) Assuming the valid authorization, execution and delivery of this Agreement and the Issuer Documents by the other parties hereto and thereto and the authentication of the Bonds by the Trustee, this Agreement is, and the Bonds and the other Issuer Documents will be, the legal, valid and binding obligations of the Issuer, 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 or by the principles of sovereign immunity.

(g) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any court or governmental authority, board, agency, commission or body having jurisdiction which are required by or on behalf of the Issuer for the execution and delivery by the Issuer of this Agreement, the Issuer Documents or the Bonds, or the consummation by the Issuer of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing, except for the filing of the IRS Form 8038 (which will be timely filed after Closing).

(h) The execution and delivery by the Issuer of this Agreement, the Bonds and the Issuer Documents, and the consummation by the Issuer 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 Act, the Constitution of the State or the organizational documents of the Issuer, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement applicable to the

Issuer, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Issuer is a party or by which the Issuer or its properties is bound.

(i) 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 Issuer, threatened against or affecting the Issuer or its officials, in their respective capacities as such, (i) which would restrain or enjoin the issuance or delivery of the Bonds or the collection of revenues pledged under the Indenture, (ii) which would in any way contest or affect the organization or existence of the Issuer or the entitlement of any officers of the Issuer to their respective offices or (iii) which may reasonably be expected to contest or have a material and adverse effect upon (A) the due performance by the Issuer of this Agreement or the Issuer Documents or the transactions contemplated hereby or thereby, (B) the validity or enforceability of the Bonds, the Resolution, this Agreement, the Issuer Documents or any other agreement or instrument to which the Issuer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, or (C) the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes. The Issuer is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(j) When delivered to the Purchaser after receipt of payment therefor in accordance with the provisions of this Agreement, the Bonds will be duly authorized, executed, issued, and delivered and will constitute the Issuer's legal, valid and binding special, limited obligations, enforceable in accordance with their 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), and will be entitled to the benefit and security of the Indenture.

(k) Other than the Issuer Documents, the Issuer has not entered into any contract or arrangement that might give rise to any lien or encumbrance on the revenues or other assets, properties, funds or interests pledged pursuant to the Indenture.

(l) The Issuer has not taken or omitted to take on or prior to the date hereof any action, that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes.

(m) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is an issuer whose arbitrage certifications may not be relied upon.

(n) On the Closing Date, each of the representations and warranties of the Issuer contained herein and in the Issuer Documents shall be true, correct and complete.

(o) The Purchaser has not provided any municipal advisory services to the Issuer within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

## Section 5. Representations and Warranties of Borrower.

5.1 The Borrower makes the following representations and warranties to the Issuer and the Purchaser for its benefit and for the benefit of the Purchaser and the Holders from time to time of the Bonds, as of the date hereof, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is, and at all times will be, a limited partnership duly organized, validly existing and in good standing under the laws of the State. The General Partner is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the State.

(b) The Borrower has, and on the Closing Date will have, full legal right, power and authority (i) to execute and deliver this Agreement and the other Borrower Documents and (ii) to consummate the transactions contemplated by this Agreement and the other Borrower Documents. The General Partner has, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower.

(c) The Borrower has duly authorized the execution and delivery of this Agreement and the performance by the Borrower of the obligations contained herein, and prior to the Closing Date the Borrower will have duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, and (iii) consummation by the Borrower of all transactions contemplated hereby and by the Borrower Documents.

(d) All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower or for the execution and delivery by the Borrower of this Agreement and the other Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby have been obtained or will be obtained prior to the Closing Date.

(e) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for purposes of federal income taxation.

(f) All information concerning the Project, the Borrower, the General Partner and the Guarantors submitted to the Purchaser by the Borrower, the General Partner or the Guarantors, is true and correct in all material respects as of the date hereof and does not omit to state a material fact necessary to make the statements therein not misleading.

(g) There is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or threatened against or affecting the Borrower, the General Partner or the Guarantors or, to the knowledge of the Borrower, any basis therefor (i) in any way affecting the organization and existence of the Borrower, the General Partner or the Guarantors, (ii) contesting or materially affecting the validity or enforceability of this Agreement, the other Borrower Documents or the Guarantor Documents, (iii) contesting the powers of the Borrower or its authority with respect to the Borrower Documents, (iv) contesting the authority of the General Partner to act on behalf of the Borrower, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the operations of the Borrower, the General Partner or the Guarantors, (B) the due performance by the Borrower of the Borrower Documents to which it is a party or by the Guarantors of the Guarantor Documents to which such Guarantors are a party, (C) the validity or enforceability of any of the Borrower Documents or the transactions contemplated hereby or by any Borrower Document or Guarantor Document or (vi) in any way contesting the exclusion from the gross income of the holders thereof for purposes of federal income taxation of the interest on the Bonds.

(h) This Agreement is, and, when executed and delivered by the other Borrower and the other parties hereto, and the other Borrower Documents will be, the legal, valid and binding obligations of the Borrower, enforceable against the Borrower 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.

(i) The execution and delivery by the Borrower of this Agreement and the Borrower Documents and the consummation by the Borrower of the transactions contemplated thereby and hereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) organizational documents of the Borrower, (ii) any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

(j) The Purchaser has not provided any municipal advisory services to the Borrower within the meaning of Rule 15Ba1-1 of the Securities Exchange Act of 1934, as amended.

5.2 Each of the representations and warranties set forth in this Section will survive the Closing.

5.3 Any certificate signed by the Borrower or the General Partner and delivered to the Purchaser shall be deemed a representation and warranty by the Borrower to the Purchaser for its benefit and for the benefit of the Purchaser and the Holders from time to time of the Bonds, as to the statements made therein.

## Section 6. Covenants.

6.1 The Issuer hereby makes the following covenants with the Purchaser:

(a) Prior to the Closing, the Issuer, to the extent within its power, 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 and the other Issuer Documents.

(b) After all conditions have been met with respect to the issuance of the Bonds (including without limitation the payment of the Purchase Price and delivery of the opinion of the Texas Attorney General), the Issuer will cause the Bonds to be delivered in accordance with this Agreement, and upon receipt of evidence that the Trustee has received the Purchase Price set forth in Section 2.1 hereof, to the address and at the time specified by the Purchaser in conjunction with the Closing.

(c) The Issuer will not knowingly 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 or which would cause the interest on the Bonds to be included in the gross income of the holders thereof for federal income tax purposes.

(d) Prior to the Closing, the Issuer will, to the extent within its power, 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 obligations under the Resolution, this Agreement, the other Issuer Documents and the Bonds.

6.2 The Borrower hereby makes the following covenants with the Issuer and the Purchaser:

(a) The Borrower will not take or omit to 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 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.

(b) Prior to the Closing, the Borrower will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency, if any, that would constitute a condition precedent to the performance by it of its obligations under this Agreement and the Borrower Documents.

(c) The Borrower will not voluntarily undertake any course of action inconsistent with the satisfaction by the Borrower of the requirements applicable to it, as set forth in this Agreement and the other Borrower Documents.

Section 7. Conditions of Closing.

7.1 The Purchaser has entered into this Agreement in reliance upon representations, covenants and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Purchaser's obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds will be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations, covenants and agreements of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and will also be subject to the following additional conditions:

(a) There shall not have occurred any material error, misstatement or omission in the representations and warranties made by either of you in this Agreement, 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) Each of the Issuer and the Borrower shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by you at or prior to Closing.

(c) This Agreement, the other Issuer Documents, the other Borrower Documents and the Guarantor Documents shall 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, shall be in form and substance satisfactory to the Originator, and no event of default shall exist under any such documents.

(d) Each of the Subordinate Debt Documents shall have been executed and delivered, shall be in full force and effect, shall be in form and substance acceptable to the Originator, and shall be subject to subordination agreements in form and substance satisfactory to the Purchaser.

7.2 On the Closing Date, (a) the Originator shall have received, in immediately available funds, an amount equal to the fees set forth in Section 10, and the costs and expenses of the Originator incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts.

7.3 In addition to the conditions set forth above, the obligations of the Originator to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Originator of the following items:

(a) A certificate of the Borrower, dated the Closing Date and reasonably satisfactory to the Originator, signed by the General Partner, that: (1) each of the attached organizational documents, certificate of good standing, and partner consents (if any), is true, correct and complete and has not been amended, modified or rescinded; (2) each of the Borrower's representations and warranties contained herein and in the other Borrower Documents is true and correct in all material respects on and as of the Closing Date; (3) the Borrower has performed and complied in all material respects with all agreements and conditions required of the Borrower by this Agreement to be performed and complied with by it at or prior to the Closing; and (4) such other matters reasonably requested by the Originator;

(b) A certificate of the General Partner, dated the Closing Date and in form and substance reasonably satisfactory to the Originator, signed by an authorized officer of the General Partner, that (1) each of the attached organizational documents, certificate of good standing, authorizing resolution and evidence of incumbency is true, correct and complete and has not been amended, modified or rescinded; (2) the General Partner is a limited liability company duly organized, validly existing and is in good standing under the laws of the State of Texas, with full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower as its general partner; (3) the General Partner has, by all necessary corporate action, duly authorized the execution and delivery, on its own behalf and on behalf of the Borrower, as its general partner, of this Agreement and the other Borrower Documents; (4) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the General Partner for the execution and delivery by the General Partner, on behalf of the Borrower, as its general partner, of this Agreement and the other Borrower Documents and the performance by the General Partner thereunder; (5) the execution and delivery by the General Partner, on its own behalf and/or on behalf of the Borrower, as its general partner, of this Agreement and the other Borrower Documents and the performance by the General Partner thereunder do not violate the organizational documents of the General Partner, any applicable law, rule or regulation, or any court order by which the General Partner is bound, and such actions do not constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the General Partner is a party or by which it or its properties is bound; (6) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to its knowledge, threatened against the General Partner nor, to the best knowledge of the General Partner, any basis therefor (i) in any way contesting the existence of the General Partner, (ii) in any way contesting the authority of the General Partner to act on behalf of the Borrower or the authority of the officers of the General Partner to act on behalf of the General Partner, (iii) which would have a material adverse effect on the financial condition or operations of the General Partner or the consummation of the transactions on the part of the General Partner or the Borrower contemplated hereby or by any Borrower Document; and (7) such other matters reasonably requested by the Originator;

(c) A certificate of each of the Guarantors, dated the Closing Date and in form and substance reasonably satisfactory to the Originator, signed by an authorized officer of

such Guarantor, that, as applicable, (1) each of the attached organizational documents, good standing certificate, authorizing resolution and evidence of incumbency is true, correct and complete and has not been modified, amended or rescinded; (2) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Guarantor for the execution and delivery by the Guarantor of the Guarantor Documents and the performance by the Guarantor thereunder; (3) the execution and delivery by the Guarantor of the Guarantor Documents and the performance by the Guarantor thereunder do not violate any applicable law, rule, or regulation or any court order by which the Guarantor is bound, and such actions do not in any material respect constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Guarantor is a party or by which it is bound; (4) there is no legal action, suit, proceeding, inquiry or investigation 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 knowledge of the Guarantor, threatened against the Guarantor, nor any basis therefor, which would have a material adverse effect upon the financial condition of the Guarantor or the consummation of the transactions on the part of the Guarantor contemplated by the Guarantor Documents; and (5) such other matters reasonably requested by the Originator;

(d) Opinions of counsel to the Borrower, the General Partner and the Guarantors dated the date of issuance of the Bonds and addressed to the Issuer, the Trustee and the Purchaser as to the matters on Exhibit D attached hereto;

(e) A tax opinion of Bond Counsel from Bracewell LLP, dated the date of issuance of the Bonds and addressed to the Purchaser, the Originator, the Trustee and the Issuer, in substantially the form of Exhibit D;

(f) An opinion of counsel to the Issuer, dated the date of issuance of the Bonds and addressed to the Trustee, the Purchaser and the Originator, in substantially the form of Exhibit E;

(g) A pro forma mortgagee title insurance policy issued by the Title Company to the Trustee, dated effective as of the date of recording of the Mortgage, in form, scope and substance satisfactory to the Originator, insuring the lien of the Mortgage in an amount equal to the initial face amount of the Bonds, subject only to such liens and encumbrances as the Originator may approve;

(h) Evidence of the insurance required under the Loan Agreement, including, without limitation, flood insurance to the extent that any portion of the Improvements is located in a Special Flood Hazard area as defined by the United States Department of Housing and Urban Development;

(i) A certified legal description and as-built ALTA/ACSM Land Title Survey of the land included in the Project by a surveyor approved by the Originator in form and substance acceptable to the Originator;

(j) Evidence in such form as the Purchaser may reasonably require of (i) satisfactory subdivision of the Project and zoning for all buildings and improvements; (ii) the valid issuance of all necessary permits and licenses to construct, occupy and operate the buildings and improvements, including without limitation all permits and licenses required under applicable law with respect to subdivision, zoning, safety, building, occupancy, fire protection, environmental, energy and similar matters; (iii) the availability of all utility and municipal services required for the operation of the buildings and improvements; and (iv) the availability of means of access to and from such property, by means of public ways or easements benefiting such property;

(k) Evidence reasonably satisfactory to the Originator that building permits have been provided or will be provided upon the payment of fees;

(l) A budget detailing the costs of the proposed construction of the Project, and plans and specifications detailing the scope of such construction, all satisfactory to the Originator;

(m) Copies of contracts with an architect and a general contractor or prime contractors, satisfactory to the Originator, for the performance of the construction, plus consents of the assignments of all such contracts to the Trustee by each professional;

(n) A report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the final plans and specifications, (b) the construction contract(s) satisfactorily provide for the construction of the Project, and (c) in the opinion of the Engineering Consultant, construction of the Project can be completed within thirty (30) months following closing for an amount not greater than the amounts allocated for such purpose on the submitted budget;

(o) An environmental audit satisfactory to the Originator in scope, form and substance, and performed and certified to the Originator by an environmental engineer satisfactory to the Originator;

(p) An engineering report satisfactory to the Originator in scope, form and substance, and prepared and certified to the Originator by a structural engineer satisfactory to the Originator, and a report showing no infestation by wood-destroying insects;

(q) For each of the Borrower, the General Partner and the Guarantors, a certified copy of its organizational documents as in effect on the date of closing, including copies of all filed documents, which shall, with respect to the Borrower and the General Partner, contain provisions denoting its single purpose entity status, and evidence that all action necessary for the valid execution, delivery and performance by the Borrower, the General Partner and the Guarantors of this Agreement and the other Borrower Documents or the Guarantor Documents, as applicable, to which it is or is to become a party shall have been duly and effectively taken;

(r) A certificate of the Borrower, dated the Closing Date and signed by the General Partner, in form and substance reasonably satisfactory to the Originator and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion;

(s) A tax exemption certificate and agreement among the Issuer, the Borrower and the Trustee, in form and substance acceptable to Bond Counsel;

(t) A certificate of the Trustee, dated the Closing Date, in form and substance satisfactory to the Originator, signed by an authorized officer of the Trustee, that (1) the Trustee has all necessary power and authority to accept the trusts granted under the Indenture and to perform its duties under the Trustee Documents; (2) the Trustee Documents have been duly authorized, executed and delivered by an authorized officer of the Trustee; (3) the Bonds have been authenticated by an authorized representative of the Trustee and delivered to or at the direction of the Originator; and (4) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental agency or body is required on behalf of the Trustee for the execution and delivery by the Trustee of the Trustee Documents or the performance by the Trustee of its obligations thereunder;



(u) A properly completed IRS Form 8038 as to the Bonds to be filed with the IRS promptly following the Closing Date;

(v) Such other documents, certificates, approvals, assurances and opinions as the Purchaser or the Originator may reasonably request.

7.4 If any of the conditions set forth in Sections 7.1, 7.2 or 7.3 has not been met on the Closing Date, the Purchaser may, at its sole option, terminate this Agreement or proceed to Closing upon waiving any rights under this Agreement with respect to any such condition (but with the consent of the Purchaser and the Originator as to any condition subject to their approval or receipt). If this Agreement is terminated pursuant to this Section, no party will have any rights or obligations to the other parties hereto, except as provided in Section 10.

Section 8. Actions and Events at the Closing. The following events will take place at the Closing:

(a) The Issuer will deliver the Bonds to or at the direction of the Purchaser. The Bonds so delivered will be in the form required by the Indenture, duly executed on behalf of the Issuer and authenticated by the Trustee, and will be fully registered in the name of the Purchaser.

(b) The Issuer will deliver or cause to be delivered to the Originator at the place set forth in Item 5 in Exhibit B, by posting to an electronic file share site, or at such other place or places as you and the Originator may mutually agree upon, the materials described in Section 7.3.

(c) The Purchaser will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the Tax-Exempt Bonds, by wire transfer to the Trustee, in immediately available federal funds, to be deposited in the funds and accounts set forth in the Indenture upon the issuance of the Tax-Exempt Bonds, and applied as set forth in the Indenture.

Section 9. Termination of Agreement. The Purchaser may terminate this Agreement, without liability therefor, by notifying you at any time prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee or be pending in committee, or any decision is rendered by any court of competent jurisdiction, or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable judgment of the Purchaser, has the purpose or effect of causing interest on the Bonds to be includable in gross income of the holders thereof for purposes of federal income taxation or to be an item of tax preference for purposes of the federal alternative minimum tax; or

(b) Any legislation is introduced in, or enacted by the United States Congress or any action is taken by, or on behalf of, the Securities and Exchange Commission, that, in the opinion of counsel to the Purchaser has the effect of requiring (i) the Bonds or the interests in the Loan Agreement or other financing documents to be registered under the 1933 Act or the Indenture to be qualified under the 1939 Act, or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Agreement, the Issuer Documents, the Borrower Documents or the Guarantor Documents which cannot, without undue expense, be obtained prior to the Closing Date.

Section 10. Fees and Expenses; Costs of Issuance. The Borrower shall pay or cause to be paid all costs of issuance of the Bonds, including all reasonable expenses incident to the performance of the Purchaser's obligations hereunder in connection with its purchase of the Bonds, including, but not limited to, (i) the fees set forth in Section 2.2(a) of the Loan Agreement, (ii) the cost of the preparation, printing or other reproduction of the Resolution, this Agreement, the Issuer Documents, the Borrower Documents and the Guarantor Documents, in reasonable quantities for distribution, (iii) the cost of producing, authenticating and delivering the Bonds, (iv) the fees and disbursements of the Issuer, Bond Counsel, Issuer's counsel, Purchaser's counsel and Trustee's counsel, (v) the fees and expenses, including without limitation all initial and continuing fees and expenses, of the Trustee and all paying agents, transfer agents and bond registrars and (vi) the fees and expenses, including travel expenses, incurred by your representatives in connection with the issuance, sale and delivery of the Bonds.

Section 11. Miscellaneous.

11.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following addresses or such other address as any of the parties shall specify:

If to the Purchaser	Cedar Rapids Bank and Trust Company 500 First Avenue Northeast Cedar Rapids, Iowa 52401 Attention: Sam Kramer
With a copy to:	R4 Capital Funding LLC 780 Third Avenue, 10th Floor New York, New York 10017 Attention: James D. Spound
and:	Kutak Rock LLP 1760 Market Street, Suite 1100 Philadelphia, Pennsylvania 19103 Attention: Andrew P. Schmutz
If to the Issuer:	Texas Department of Housing and Community Affairs P.O. Box 13941 Austin, Texas 78711-3941 Attention: Teresa Morales
If to the Borrower:	LDG Forestwood, LP c/o LDG Development, LLC 1305 E. 6 <sup>th</sup> Street, Unit 13 Austin, Texas 78702 Attention: Justin Hartz
With a copy to:	Coats Rose, P.C. 901 South MoPac Expressway Building 1, Suite 500 Austin, Texas 78746 Attention: S. Shannon David Hunter

and

R4 FW Acquisition LLC  
c/o R4 Capital LLC  
780 Third Avenue, 10th Floor  
New York, New York 10017  
Attention: Marc Schnitzer

11.2 This Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns and will not confer any rights upon any other person except as provided herein with respect to the Purchaser and the Holders of the Bonds.

11.3 This Agreement may not be assigned by the Issuer or the Borrower. This Agreement may be assigned by the Purchaser upon written notice of such assignment from the Purchaser to the Issuer and the Borrower. The Purchaser may designate the entity in whose name the Bonds are to be registered at Closing by providing registration information to the Trustee on or prior to the Closing Date.

11.4 This Agreement may not be amended without the prior written consent of the Issuer, the Borrower and the Purchaser.

11.5 The representations, covenants and agreements of the Issuer and the Borrower will not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of (a) any investigations made by or on behalf of the Purchaser (or statements as to the results of such investigations) concerning such representations, covenants and agreements and (b) delivery of and payment for the Bonds.

11.6 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Agreement.

11.7 This Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of the Bonds.

11.8 This Agreement will become effective and binding upon the respective parties hereto upon the execution and delivery hereof by the parties hereto and will be valid and enforceable as of the time of such execution and delivery.

11.9 If any provision of this Agreement 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 Agreement invalid, inoperative or unenforceable to any extent whatever.

11.10 This Agreement will be governed by and construed in accordance with the laws of the State applicable to agreements to be performed wholly therein, without regard to conflict of laws principles.

11.11 The obligations of the Purchaser hereunder shall be without recourse to any shareholder, trustee, officer, employee, agent or manager of the Purchaser and no shareholder, trustee,

officer, employee, agent or manager of the Purchaser shall be personally liable for the payment of any obligation of the Purchaser hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Purchaser shall be enforced only against the assets of the Purchaser and not against any property of any trustee or manager of the Purchaser.

11.12 As an inducement to the agreement of the Purchaser to purchase the Bonds pursuant to the terms of this Agreement, the Borrower agrees not to obtain or seek to obtain financing or credit of any kind or nature whatsoever from any other sources in lieu of the financing to be provided by the issuance of the Bonds by the Issuer and the purchase of the Bonds by the Purchaser. In the event of a breach of this covenant, the Purchaser shall be entitled to all remedies available to it, at law and in equity, including specific performance and damages. As a further inducement, the Borrower agrees to indemnify and hold harmless the Purchaser from any and all litigation or claims arising out of transactions contemplated herein, except for any litigation or claims directly resulting from the gross negligence or willful misconduct of the Purchaser.

11.13 The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's length commercial transaction between the Issuer and the Purchaser, (ii) in connection with such transaction, the Purchaser is acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Issuer or the Borrower, (iii) the Purchaser has not assumed a fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering of the Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Issuer or the Borrower on other matters) or any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Agreement, (iv) the Purchaser has financial and other interests that differ from those of the Issuer and the Borrower, and (v) each of the Issuer and the Borrower has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

Section 12. Definitions. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture.

Section 13. Contingency Draw Down. In the event either the Originator or the Borrower, with the consent of the Originator, determines that legislative, judicial or other developments have occurred or other circumstances have emerged such that the requesting party determines that it is in the requesting party's best interest to cause the remaining authorized amount of the Bonds to be fully funded (the "Remaining Authorized Amount"), then the Majority Owner may provide a written letter of direction (a "Draw-Down Notice") to the Trustee, with a copy to the Borrower and the Purchaser, to cause the Remaining Authorized Amount of the Bonds to be funded. The Draw-Down Notice, if given, shall take effect on the fifth (5th) Business Day following the date of such notice (or such greater number of Business Days to which the Originator, Borrower and the Purchaser may agree in writing, with written notice to the Trustee) and contain substantially the following words: "The Majority Owner elects to fund the Remaining Authorized Amount of the Bonds (\$ \_\_\_\_\_) to be funded effective \_\_\_\_\_ (the "Draw-Down Date")." The Draw-Down Notice will be delivered in the manner provided for notices under the Indenture and the Loan Agreement. After the delivery of a Draw-Down Notice, the Purchaser shall advance proceeds of the Bonds in the Remaining Authorized Amount to the Trustee for deposit in the Bond Proceeds Account of the Construction Fund and, if applicable, the Capitalized Interest Account of the Construction Fund, to be held and disbursed pursuant to the Indenture and the Loan Agreement. The Borrower agrees to pay to the Trustee, on the Draw-Down Date, an amount of funds to be agreed upon by the Originator and the Borrower prior to the Draw-Down Date to cover the expected interest costs for the period between the Draw-Down Date and the date of each expected draw in accordance with

the then-approved draw schedule set forth on Exhibit B hereto (the “Capitalized Interest Deposit”), to be deposited by the Trustee into the Capitalized Interest Account of the Construction Fund.

Section 14. Fees and Expenses; Costs of Issuance. Purchaser Not Engaged with Foreign Terrorist Organizations.

The Purchaser hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Purchaser understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Purchaser and exists to make a profit.

The Purchaser represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Purchaser and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Purchaser understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Purchaser and exists to make a profit.

{signatures on next page}

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate your acceptance by executing this Agreement and returning this executed Agreement to the undersigned.

**CEDAR RAPIDS BANK AND TRUST COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURES CONTINUED ON NEXT PAGE]

Accepted as of the date first above written:

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name:  
Title:

**LDG FORESTWOOD, LP**, a Texas  
limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability  
company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

## **EXHIBIT A**

### Glossary of Terms

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

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Accounts” means all of the funds and accounts to be established under, and defined in, the Indenture.

“Act” means Chapter 2306, Texas Government Code, as amended.

“Agreement” means this Bond Purchase Agreement, as amended from time to time.

“Assignment of Capital Contributions” means that certain Assignment of Capital Contributions to be dated as of October 1, 2018, from the Borrower to the Trustee.

“Assignment of Management Agreement and Consent” shall mean that certain Assignment of Management Agreement to be dated as of October 1, 2018, from the Borrower to the Trustee, together with the consent of the manager of the Project.

“Assignment of Project Documents” means that certain Assignment of Project Documents to be dated as of October 1, 2018, from the Borrower to the Trustee.

“Bonds” means, collectively, the Tax-Exempt Bonds and the Taxable Bonds.

“Borrower” means LDG Forestwood, LP, a limited partnership duly organized, validly existing and in good standing under the laws of the State, together with its permitted successors and assigns hereunder.

“Borrower Documents” means, collectively, this Agreement, the Loan Agreement, the Regulatory Agreement, the Mortgage, the Note, the Environmental Indemnity, the Assignment of Project Documents, the Assignment of Capital Contributions, the General Partner Pledge, the Assignment of Management Agreement and Consent, the Regulatory Agreement, the Replacement Reserve, and all other agreements, documents and certificates as may be required to be executed and delivered by the Borrower to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Borrower Documents.

“Closing” means the proceeding at which the actions described in Section 8 are performed.

“Closing Date” means the date on which the Closing takes place.

“Engineering Consultant” means an engineering consultant approved by the Controlling Person.

“Environmental Indemnity” means that certain Environmental Indemnity Agreement to be dated as of October 1, 2018, from the Borrower and the Guarantors named therein for the benefit of the Trustee.

“General Partner” means LDG Forestwood GP, LLC, a limited liability company duly organized and validly existing under the laws of the State, together with its permitted successors and assigns hereunder.



“General Partner Pledge” means that certain Limited Guaranty, Pledge of Partnership Interests and Security Agreement to be dated as of October 1, 2018 from the General Partner to the Trustee.

“Guarantors” means, collectively, jointly and severally, LDG Multifamily LLC, a Kentucky limited liability company, and Xpert Design and Construction LLC, a Kentucky limited liability company, together with their respective permitted successors and assigns.

“Guarantor Documents” means, collectively, the Guaranty of Recourse Obligations to be dated as of October 1, 2018 from the Guarantors for the benefit of the Trustee, the Guaranty of Completion to be dated as of October 1, 2018 from the Guarantors for the benefit of the Trustee, the Guaranty of Debt Service and Stabilization to be dated as of as of October 1, 2018 from the Guarantors for the benefit of the Trustee, and the Environmental Indemnity.

“Indenture” means that certain Indenture of Trust to be dated as of October 1, 2018, between the Issuer and the Trustee.

“Issuer” means Texas Department of Housing and Community Affairs, a public, and official agency of the State of Texas, together with its successors and assigns.

“Issuer Assignment” means, collectively, the Issuer’s endorsement of the Note and that certain Assignment of Deed of Trust Documents to be dated as of October 1, 2018, from the Issuer to the Trustee.

“Issuer Documents” means, collectively, the Indenture, the Loan Agreement, the Regulatory Agreement, the Issuer Assignment and this Agreement.

“Loan Agreement” means that certain Loan Agreement to be dated as of October 1, 2018, between the Issuer and the Borrower.

“Mortgage” means that certain Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (With Power of Sale) to be dated as of October 1, 2018, from the Borrower to the Trustee.

“Note” means the promissory note of the Borrower to be dated the date of issuance of the Bonds from the Borrower to the Issuer and endorsed to the Trustee.

“Originator” means R4 Capital Funding LLC, a Delaware limited liability company.

“Project” means that certain 220-unit multifamily housing facility with related amenities and site improvements and related personal property and equipment located in Balch Springs, Texas, the acquisition, construction and equipping of which are being financed with the proceeds of the Bonds.

“Purchaser” means Cedar Rapids Bank and Trust Company, or its designee or nominee, together with their respective permitted successors and assigns hereunder.

“Regulatory Agreement” means that certain Regulatory and Land Use Restriction Agreement dated as of October 1, 2018, among the Issuer, the Trustee and the Borrower.

“Replacement Reserve” means that certain Replacement Reserve and Security Agreement dated as of October 1, 2018, between the Borrower and the Trustee.

“Resolution” means the resolution adopted by the Issuer on October 11, 2018, relating to the transactions contemplated by this Agreement.

“State” means the State of Texas.

“Subordinate Debt” means that certain loan in the original principal amount of \$1,000,000 from LDG Forestwood GP, LLC, a Texas limited liability company to the Borrower.

“Subordinate Debt Documents” means, collectively, all loan agreements, notes, deeds of trust and other agreements, documents and instruments executed by the Borrower to evidence or secure, or otherwise in connection with, the Subordinate Debt.

“Tax-Exempt Bonds” means \$20,000,000 in aggregate principal amount of Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A.

“Taxable Bonds” means \$3,000,000 in aggregate principal amount of Texas Department of Housing and Community Affairs Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B.

“Title Company” means Stewart Title Guaranty Company.

“Trustee” means BOKF, NA, a national banking association duly organized and validly existing under the laws of the United States of America, or its successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

“Trustee Documents” means the Indenture, the Loan Agreement, the Regulatory Agreement and all other agreements, documents and certificates as may be required to be executed and delivered by the Trustee to carry out, give effect to, and consummate the transactions contemplated by this Agreement and the other Trustee Documents.

“You” and similar terms refer collectively to the Issuer and the Borrower.

**EXHIBIT B**

**Terms of Bonds**

1. Title of Bonds: \$20,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Forestwood), Series 2018A and \$3,000,000 Texas Department of Housing and Community Affairs Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B

2. Purchase Price of Bonds: \$23,000,000

3. Basic Bond Terms:

- (a) Date of the Bonds: October \_\_, 2018
- (b) Interest Payment Dates: First day of each month commencing December 1, 2018
- (c) Aggregate Principal Amount of Bonds: \$20,000,000 – Tax-Exempt Bonds  
\$3,000,000 - Taxable Bonds
- (a) Maturity Date for Bonds: October 1, 2058 – Tax-Exempt Bonds  
October 1, 2021 - Taxable Bonds
- (b) Bondholder right to demand redemption: Bondholders will have a right to require redemption of Bonds in whole at par on or after: April 1, 2037
- (c) Interest Rate for Tax-Exempt Bonds: one-month LIBOR plus 2.00% until October 1, 2021 and 79% of one-month LIBOR plus 2.05% thereafter
- Interest Rate for Taxable Bonds: Wall Street Journal Prime Rate plus 0.25%
- (d) Special Redemption Provisions:
  - (i) sinking fund: on a monthly basis to be deposited into the Redemption Fund on the dates and in the amounts shown on Schedule 3 to Loan Agreement .
  - (ii) optional prepayment: no optional prepayment will be permitted prior to April 1, 2031; thereafter, the Tax-Exempt Bonds may be optionally redeemed as follows:

<u>Redemption Date</u>	<u>Redemption Price</u>
April 1, 2031 to March 31, 2033	103%
April 1, 2033 to March 31, 2035	102%
April 1, 2035 to March 31, 2036	101%
April 1, 2036 and thereafter	100%

(iii) mandatory redemption: as set forth in the Indenture.

4. Taxable Bonds Draw-down Installments

<u>Purchase Date</u>	<u>Amount</u>
February 1, 2020	\$500,000
March 1, 2020	1,300,000
May 1, 2020	500,000
August 1, 2020	700,000

5. Certain Required Funded Accounts:

- (a) Tax and Insurance Escrow
- (b) Replacement Reserve - deposits to commence upon final completion
- (c) Project Fund - funds sufficient to pay all estimated costs of construction shall be deposited into the Indenture at Closing or be paid pursuant to the Assignment of Capital Contributions and/or Subordinate Debt Documents

6. Time of Closing: 1 p.m., eastern time

- (a) Date of Closing: On or before October \_\_, 2018
- (b) Place of Closing: Electronic share file site - Bracewell LLP
- (c) Delivery of Bonds: Physical

## EXHIBIT C

### Matters to be Covered by Opinions of Counsel to the Borrower, the General Partner and the Guarantors

1. Organization and Qualification. The Borrower is duly formed and validly existing as a limited partnership under the laws of the State of Texas. The General Partner is duly formed and validly existing as a limited liability company under the laws of the State of Texas. Each corporate Guarantor is duly formed and validly existing as a limited liability company under the laws of the State of Kentucky.

2. Authority and Authorization. Each of the Borrower and the General Partner has all requisite power and authority to execute and deliver the Borrower Documents to which it is a party and to perform its obligations under the Borrower Documents to which it is a party, and all such action has been duly and validly authorized by all necessary action on its part. Each Guarantor has all requisite power and authority to execute and deliver the Guarantor Documents and to perform its obligations under the Guarantor Documents, and all such action has been duly and validly authorized by all necessary action on its part.

3. Execution and Binding Effect. The Borrower Documents to which the Borrower is a party have been duly and validly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights. The Guarantor Documents have been duly and validly executed and delivered by the Guarantors and constitute the legal, valid and binding obligation of the Guarantors, enforceable in accordance with the terms thereof, except as such, enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights.

4. Authorization and Filings. No authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any governmental authority is or will be necessary in connection with the execution and delivery of the Borrower Documents or the Guarantor Documents, or the consummation of the transactions contemplated or performance of or compliance with the terms and conditions thereof, other than the recordings and filings referred to in paragraphs 7, 8 and 9 below.

5. Absence of Conflicts. Neither the execution and delivery of the Borrower Documents and the Guarantor Documents, nor consummation of the transactions therein contemplated, nor performance of or compliance with the terms and conditions thereof will (a) violate any Legal Requirement, (b) conflict with or result in a breach of or a default under the partnership agreement of the Borrower, the operating agreement of the General Partner or the operating agreement of each Guarantor, or, to the best of counsel's knowledge after due inquiry, any agreement or instrument to which any of such parties or by which any of such parties or any of their properties (now owned or hereafter acquired) may be subject or bound or (c) to the best of counsel's knowledge after due inquiry, result in the creation or imposition of any lien, charge, security interest or encumbrance upon any property (now owned or hereafter acquired) of the Borrower, other than the liens created by the Borrower Documents.

6. Litigation. There is no pending or, to the best of counsel's knowledge after due inquiry, threatened proceeding by or before any governmental authority against or affecting the Borrower, the General Partner, the Guarantors or the Project which, if adversely decided, would have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantors or on the ability of the Borrower or the Guarantors to perform their

respective obligations under the Borrower Documents and the Guarantor Documents, as applicable, or on the operation of the Project.

7. Validity of Mortgage Liens. The Mortgage is in appropriate form for recording and, when recorded in [SPECIFY RECORDING OFFICE], will create in favor of the Trustee a valid mortgage lien upon and security interest in the Project.

8. Perfection of Security Interests. The Borrower Documents and, when filed with the Secretary of State of the State of Texas, and in the real estate records of Dallas County, the UCC financing statements, will create in the Trustee valid and perfected security interests in the collateral described therein.

9. Remedies. The Borrower Documents and the Guarantor Documents do not omit essential remedies that in the opinion giver's experience are generally found in similar documents for mortgage loans in the State of Texas.

**EXHIBIT D**

**Form of Bond Counsel Opinion**

**EXHIBIT E**

**Form of Issuer Counsel Opinion**



## PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

\$23,000,000

\_\_\_\_\_ 1, 20\_\_\_\_  
(40 year max)

FOR VALUE RECEIVED, LDG FORESTWOOD, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “Borrower”), by this promissory note hereby promises to pay to the order of the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”) the principal sum of Twenty Three Million, and no/100 Dollars (\$23,000,000), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and acceleration premium, if any, on the Bonds. All such payments of principal, interest and acceleration premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of BOKF, NA, a national banking association, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable on the dates and in the amounts set forth on the Sinking Fund Schedule (as defined in the Indenture) and on such other dates, that principal and redemption price of, and interest on the Bonds, and the acceleration premium, if any, are payable, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Note” referred to in the Loan Agreement, dated as of October 1, 2018 (as the same may be amended, modified or supplemented from time to time, the “Agreement”) between the Borrower and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to BOKF, NA, a national banking association, as trustee under the Indenture of Trust, dated as of October 1, 2018 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), by and between the Issuer and BOKF, NA, a national banking association, as trustee (the “Trustee”), and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$20,000,000 in aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (Forestwood), Series 2018A (the “Tax-Exempt Bonds”) and \$3,000,000 in aggregate principal amount of the Issuer’s Taxable Multifamily Housing Revenue Bonds (Forestwood), Series 2018B (the “Taxable Bonds” and, together with the Tax-Exempt Bonds, the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

The obligations of the Borrower to pay any and all amounts due on this Note is a non-recourse obligation as provided in Section 10.13 of the Loan Agreement.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

**LDG FORESTWOOD, LP**, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

By: \_\_\_\_\_  
Name: Chris Dischinger  
Title: Manager

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

Name: J.B. Goodwin

Title: Chair

Dated: \_\_\_\_\_, 20\_\_

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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND  
FIXTURE FILING (WITH POWER OF SALE)**

**From**

**LDG FORESTWOOD, LP,  
the Grantor,**

**to**

**STEWART TITLE GUARANTY COMPANY,  
as Deed of Trust Trustee,**

**for the benefit of**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
the Beneficiary**

**Dated as of October 1, 2018**

**Relating to:**

**\$20,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018A**

**and**

**\$3,000,000**

**Texas Department of Housing and Community Affairs  
Taxable Multifamily Housing Revenue Bonds  
(Forestwood),  
Series 2018B**

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This instrument prepared by and  
when recorded return to:

Kutak Rock LLP  
1760 Market Street, Suite 1100  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

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**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND  
FIXTURE FILING (WITH POWER OF SALE)**

This **DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**, dated as of October 1, 2018 (as amended, modified, supplemented or assigned from time to time, this “Mortgage”), by LDG FORESTWOOD, LP, a limited partnership, duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “Grantor”), whose address is c/o LDG Development, LLC, 1305 E. 6<sup>th</sup> Street, Unit 13, Austin, Texas 78702 and its U.S. employer identification number is \_\_\_\_\_ for the benefit of TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, having an address at P.O. Box 13941, Austin, Texas 78711-3941, Attention: Teresa Morales (the “Issuer”) (together with its successors and assigns, the “Beneficiary”),

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

**WHEREAS**, Grantor is the owner of a 220-unit multifamily residential facility including related personal property and equipment, known as “Forestwood Apartments” (the “Project”) located in Balch Springs, Dallas County, Texas, which is being acquired and constructed with the proceeds of certain bonds known as Multifamily Housing Revenue Bonds (Forestwood Project), Series 2018A in the principal amount of \$20,000,000 (the “Series A Bonds”) and Taxable Multifamily Housing Revenue Bonds (Forestwood Project), Series 2018B in the principal amount of \$3,000,000 (the “Series B Bonds” and, together with the Series A Bonds, the “Bonds”), issued by the Issuer;

**WHEREAS**, the Bonds are being issued pursuant to a certain Indenture of Trust dated as of October 1, 2018, between the Issuer and BOKF, NA, as trustee (the “Trustee”) (as amended, modified or supplemented from time to time, the “Indenture”); and

**WHEREAS**, pursuant to a Loan Agreement dated as of October 1, 2018, by and between the Issuer and the Grantor (as amended, modified or supplemented from time to time, the “Loan Agreement”), the Grantor is obligated to make loan payments to the Issuer in accordance with a certain note evidencing such loan dated as of the date of issuance of the Bonds (as amended, modified or supplemented from time to time, the “Note”) maturing on October 1, 2058 in the amounts and at the times corresponding to the debt service and other payments required in respect of the Bonds; and

**WHEREAS**, the rights of the Issuer under the Loan Agreement (other than the Reserved Rights) and the Note are being assigned contemporaneously with the execution and delivery hereof to the Beneficiary; and

**WHEREAS**, the Indenture, the Loan Agreement, the Note and any other document or instrument given by the Grantor at any time to evidence or further secure any obligations assumed or undertaken by the Grantor in connection with the Bonds are sometimes hereinafter collectively referred to as the “Bond Documents”; and

**WHEREAS**, simultaneously with the delivery of the Bond Documents, the Mortgagor will enter into a Swap Agreement (defined in the Indenture) and will be obligated to make payments thereunder; and

**WHEREAS**, all capitalized terms used herein without definition have the meanings given to such terms in the Indenture or the Loan Agreement.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of issuance of the Bonds and the loan of the proceeds thereof by the Issuer to the Grantor, of the respective representations, covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, for the purpose of securing payment and performance of the Secured Obligations (defined below), and subject to the terms of this Mortgage, the Grantor hereby irrevocably and unconditionally grants, bargains, sells, transfers, conveys and assigns to the Deed of Trust Trustee, its successors and assigns, with power of sale, and with right of entry and possession, in trust for the benefit of Beneficiary, and its respective successors and assigns, and grants the Beneficiary a lien and a security interest in all estate, right, title and interest which the Grantor now has or may later acquire in and to the following property:

ALL OF Grantor's interest in the land which is described in Exhibit A (hereinafter sometimes called the "Land");

TOGETHER WITH all right, title and interest of the Grantor in and to, and remedies under (a) any and all leases, subleases, license agreements, concessions, tenancies and other use or occupancy agreements (whether oral or written), or any part thereof, now or hereafter existing, covering or affecting any or all of the Property (as hereinafter defined), all extensions and renewals thereof, and all modifications, amendments and guaranties thereof (each of which is hereinafter called a "Lease"), and (b) any and all rents, income, receipts, revenues, royalties, issues, profits, contract rights, accounts receivable, or general intangibles growing out of or in connection with the Leases (whether from residential or non-residential space) and other payments, payable to the Grantor pursuant to any Lease, including, without limitation, cash or securities deposited under any Lease to secure performance by the tenants of their obligations under the Leases, whether such cash or securities are to be held until the expiration of the term of such Leases or are to be applied to one or more of the installments of rent coming due prior to the expiration of such terms and further including subsidy payments received from any source (collectively, the "Rents"), subject, however, to the provisions hereof; and

TOGETHER WITH any and all rights, alleys, ways, tenements, hereditaments, easements, passages, waters, water rights, water courses, riparian rights, licenses, franchises, privileges and appurtenances now or hereafter to the same belonging or in any way appertaining, as well as any after-acquired right, title, interest, franchise, license, reversion and remainder, and

TOGETHER WITH all right, title and interest of the Grantor, including any after-acquired right, title or reversion, in and to the right of ways, streets, avenues and alleys, open or proposed, located wholly or partially within the boundary of the Land or adjacent thereto, and

TOGETHER WITH all buildings, structures, surface parking and other improvements of every kind and description now or hereafter erected or placed on the Land, all additions, alterations and replacements thereto or thereof, and all materials now owned or hereafter acquired by the Grantor and intended for the operation, construction, reconstruction, alteration and repair thereof, all of which materials shall be deemed to be included within the Property (hereinafter defined) immediately upon the delivery thereof to the Land (all of which are hereinafter called collectively the "Improvements" and, the Improvements and the Land are hereinafter called the "Premises"), and

TOGETHER WITH all of the walks, fences, shrubbery, driveways, fixtures, machinery, apparatus, equipment, fittings, and other goods of every kind and description whatsoever, now owned or hereafter acquired by the Grantor and attached to or contained in and used for any present or future operation or management of the Land or the Improvements, including, without limitation, all lighting, laundry, incinerating and power equipment; all engines, boilers, machines, motors, furnaces, compressors and transformers; all generating equipment; all pumps, tanks, ducts, conduits, wires, switches, fans,



switchboards, and other electrical equipment and fixtures; all telephone equipment; all piping, tubing, plumbing equipment and fixtures; all heating, refrigeration, air conditioning, cooling, ventilating, sprinkling, water, power and communications equipment, systems and apparatus; all water coolers and water heaters; all fire prevention, alarm and extinguishing systems and apparatus; all cleaning equipment; all lift, elevator and escalator equipment and apparatus; all partitions, shades, blinds, awnings, screens, screen doors, storm doors, exterior and interior signs, gas fixtures, stoves, ovens, refrigerators, garbage disposals and compactors, dishwashers, cabinets, mirrors, mantles, floor coverings, carpets, rugs, draperies and other furnishings and furniture installed or to be installed or used or usable in any way in the operation of any Improvements or appurtenant facilities erected or to be erected in or upon the Land; and every renewal, replacement or substitution therefor, whether or not the same are now or hereafter attached to the Land in any manner; all except for any right, title or interest therein held by any tenant of any or all of the Land or the Improvements, or by any other person, so long as such tenant or other person is not a party hereto or bound, with respect to such right, title or interest, by the provisions hereof (it being agreed by the parties hereto that all personal property owned by the Grantor and placed by it on the Land shall, so far as permitted by law, be deemed to be affixed to the Land, appropriated to its use, and covered by this Mortgage), and

TOGETHER WITH all of the Grantor's right, title and interest in and to any and all easements and appurtenances, including, without limitation, any easements and agreements which are or may be established to allow satisfactory ingress to, egress from and operation of the Land and the Improvements, and

TOGETHER WITH any and all judgments, awards of damages (including but not limited to severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of (a) any condemnation, either temporarily or permanently, (b) any change or alteration of the grade or widening of any street or road, and (c) any other damage, destruction, or injury to, or decrease in value of, the Land or the Improvements or any part thereof, to the extent of all Secured Obligations at the date of receipt by the Beneficiary of any such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and of the counsel fees, costs and disbursements, if any, incurred by the Beneficiary in connection with the collection of such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and

TOGETHER WITH all of Grantor's rights in and to policies of insurance including any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Land or the Improvements or any portion thereof, and

TOGETHER WITH all right, title and interest of the Grantor in and to the Management Agreement by and between the Grantor and Capstone Real Estate Services, Inc. dated \_\_\_\_\_, 20\_\_, and any modifications, amendments, extensions, renewals, replacements or substitutions thereof thereafter made, and

TOGETHER WITH all contract rights (including any contract deposits), but not any contract obligations or liabilities, relating to or arising out of any agreement to sell, transfer, assign, convey or encumber the Land, the Improvements, any portion thereof, any interest therein, and

TOGETHER WITH all right, title and interest in the Swap Agreement, and

TOGETHER WITH all plans and specifications, surveys, reports, diagrams, drawings, service contracts, accounting records, invoices, change orders, licenses, authorizations, certificates, variances,

approvals and other permits necessary or appropriate to permit the construction, reconstruction, repair or alteration, addition, improvement, use, operation and management of the Land and the Improvements, and

TOGETHER WITH all of the Grantor's cash, bank accounts, notes and other instruments, documents, accounts receivable, contract rights, permits, receipts, sales and promotional literature and forms, advertising materials and the like, trademarks, names, logos, copyrights and other items of intangible personal property now or hereafter owned by the Grantor relating to the ownership, operation, development, leasing or management of the Land or the Improvements,

TO HAVE AND TO HOLD the Land, the Improvements, fixtures, personal property, tenements, hereditaments, appurtenances and other property interests granted hereinabove (hereinafter collectively called the "Property") unto the Deed of Trust Trustee, its successors and assigns, for the benefit of the Beneficiary, its successors and assigns, subject only to the Permitted Encumbrances.

FOR THE PURPOSE OF SECURING:

(a) payment and performance of each and every obligation, covenant and agreement of the Grantor contained in the Note, the Loan Agreement and Swap Agreement from and after the execution and delivery thereof;

(b) performance of every obligation, covenant and agreement of the Grantor contained in any other Bond Document or in any other agreement or instrument now or hereafter executed by the Grantor which recites that the obligations thereunder are secured by this Mortgage; and

(c) payment of all sums, with interest thereon at the rate set forth in the Loan Agreement or the Swap Agreement that may become due and payable to or for the benefit of the Beneficiary pursuant to the terms of this Mortgage; and

(d) the reimbursement of the Beneficiary for all money advanced, as provided herein, and all expenses (including attorneys' fees) incurred or paid by, the Beneficiary on account of any action (whether formal litigation or otherwise) that may arise in connection with this Mortgage, the Bond Documents or the Property, or in obtaining possession of the Property as hereinafter provided.

The obligations described in subparagraphs (a) through (d) above shall hereinafter be referred to collectively as the "Secured Obligations."

TO PROTECT THE SECURITY GRANTED BY THIS MORTGAGE, THE GRANTOR, AGREES AS FOLLOWS:

## ARTICLE 1 COVENANTS AND AGREEMENTS OF THE GRANTOR

Section 1.01. Payment and Performance of Secured Obligations. The Grantor shall pay and perform when due all of the Secured Obligations, including all of the Grantor's obligations under the Loan Agreement and all of the other Bond Documents, in accordance with the terms thereof.

Section 1.02. Maintenance, Repair, Alterations. The Grantor (i) shall maintain, keep and preserve the Property in accordance with the terms of the Loan Agreement and this Mortgage; (ii) shall not commit or permit any waste or deterioration of the Property; (iii) shall comply with the provisions of all Leases in all material respects; (iv) shall not abandon the Property or any portion thereof or leave the Premises vacant or deserted; (v) shall not initiate, join in or consent to any change in any zoning

ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Premises other than Permitted Encumbrances; (vi) shall secure and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Premises; (vii) shall not cause or permit any fixture or any article of Personal Property (as defined in Article 4 below) to be removed from the Premises without the prior written consent of the Controlling Person except in accordance with Section 4.02 (a); and (viii) except as otherwise prohibited or restricted by the Bond Documents, shall do any and all other acts which may be reasonably necessary to protect and preserve the value of the Property and the rights of the Beneficiary with respect thereto.

Section 1.03. Required Insurance. The Grantor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, at no expense to the Beneficiary, policies of insurance in form and amounts, issued by such insurance companies, associations or organizations, and covering such casualties, risks, perils, liabilities and other hazards as are required under Section 6.4 of the Loan Agreement.

Section 1.04. Casualties; Insurance Proceeds.

(a) The Grantor shall give prompt written notice to the Beneficiary and the Controlling Person of the occurrence of any casualty to or in connection with the Premises or any part thereof that exceeds \$50,000 to repair (a "Material Casualty"), whether or not covered by insurance. The Controlling Person is hereby authorized and empowered by the Grantor to settle, adjust or compromise any and all claims for loss, damage or destruction that constitute a Material Casualty under any policy or policies of insurance without the consent of the Grantor. So long as no Event of Default has occurred and is continuing beyond any applicable notice, grace or cure period, the Grantor shall have the right to settle, adjust or compromise any casualty that is not a Material Casualty without the consent of the Beneficiary or the Controlling Person.

(b) In the event of a Material Casualty, all proceeds of insurance shall be payable to the Beneficiary for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Indenture, and the Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to the Beneficiary. If the Grantor receives any proceeds of insurance resulting from a Material Casualty, the Grantor shall promptly pay over such proceeds to the Beneficiary. In the event of any Material Casualty, the Controlling Person shall direct the Beneficiary in writing to apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including attorneys' and adjustor's fees and expenses, to the restoration of the Improvements, so long as (i) no Event of Default, or event or conditions that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists and is continuing beyond any applicable cure period; (ii) such loss proceeds (including proceeds of property and rental interruption insurance) shall be in an amount sufficient to complete the restoration of the Improvements and, pay during the period of restoration and re-leasing all debt service or, if such loss proceeds are insufficient, the Grantor shall have deposited with the Beneficiary an amount equal to any deficiency within ten (10) business days of the determination of such deficiency and in any event prior to application of any loss proceeds to restoration of the Improvements; (iii) the plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Controlling Person in writing; (iv) the Controlling Person determines, in its reasonable discretion, that the Premises are capable of being fully restored by the earlier of (A) the date which is twelve (12) months from the occurrence of the loss or damage and (B) the Maturity Date (as set forth in the Indenture); (v) upon completion of restoration, the Property will be in compliance with the Land Use Restriction Agreement and (vi) the Grantor shall deliver to the Beneficiary and the Controlling Person an opinion of Bond Counsel (as defined in the Indenture) to the effect that restoration of the Property will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

If the foregoing conditions are met, the Beneficiary shall disburse the loss proceeds in accordance with customary construction loan practices upon submission of requisitions approved by the Controlling Person, and only as restoration is effected and continuing and expenses become due and payable.

(c) If any one or more of the above conditions are not met, the Beneficiary may direct that all or part of the loss proceeds, after deductions as herein provided, shall be applied to the mandatory redemption of the Bonds in accordance with Section 3.4(b)(ii) of the Indenture. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact for the purpose of executing and delivering such notices, certificates and other documents and instruments, in the name of the Grantor, as may be required under the Bond Documents to effect such redemption. If the loss proceeds are not sufficient to satisfy fully the Secured Obligations, the Grantor shall pay to the Beneficiary any deficiency with respect thereto within twenty (20) business days of the determination of said deficiency. The application or release by the Beneficiary of any insurance proceeds shall not cure or waive any default or notice of default or Event of Default under this Mortgage or invalidate any act done pursuant to such notice.

Section 1.05. Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage, exercise of the power of sale hereunder or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of the Grantor in and to all policies of property insurance maintained with respect to all or any portion of the Property and all other policies of insurance required by the Loan Agreement and relating to the Property shall inure to the benefit of and pass to the successor in interest to the Grantor or the purchaser or mortgagee of the Property, to the extent the same may be assigned.

Section 1.06. Condemnation.

(a) The Grantor shall promptly notify the Beneficiary and the Controlling Person if the Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Premises, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by Agreement of interested parties in lieu of such condemnation (all the foregoing herein called a “taking”); shall keep the Beneficiary and the Controlling Person currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to the Beneficiary copies of all notices, pleadings, judgments, determinations and other papers received or delivered by the Grantor therein. For purposes of this Mortgage, a taking that will decrease the value of the Premises by more than \$50,000, will materially restrict access to the Property, or will affect more than ten percent (10%) of the rentable square footage of the Improvements shall be a “Material Taking”. The Controlling Person shall have the right to direct the Grantor to appear and participate in any proceedings or negotiations in connection with a Material Taking (or in connection with any taking if at such time an Event of Default has occurred and is continuing), and in connection with such proceedings the Controlling Person and the Beneficiary may be represented by counsel of their choice. The Grantor will not, without the Controlling Person’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, enter into any agreement in a Material Taking for the taking of the Premises, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

(b) In the event of any Material Taking, the awards payable in connection therewith are hereby assigned to the Beneficiary, and the Grantor shall pay over such awards remaining after deduction of all expenses of collection and settlement, to the Beneficiary for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Indenture. Subject to the satisfaction of the conditions set forth in Section 1.04(b)(i)-(vi) hereof, the Controlling Person shall cause such awards to be applied to the costs to repair, rebuild or replace the portion of the Premises that was not

subject to the taking, upon the terms and conditions as set forth in Section 1.04(b). If any of the conditions set forth in Section 1.04(b)(i)-(vi) hereof are not met, the Controlling Person may cause such awards to be applied to the mandatory redemption of the Bonds pursuant to Section 3.4(b)(ii) of the Indenture.

(c) If, in the event of the happening of any permanent taking, the Beneficiary shall be obligated to apply any awards received by it in connection with such taking towards the restoration of the Premises, the Grantor shall promptly, whether or not the awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Premises that was not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

Section 1.07. Obligations Unconditional; Waiver of Offset. All sums payable by the Grantor under this Mortgage shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein or in any of the Bond Documents) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Beneficiary, or any action taken with respect to this Mortgage by a trustee or receiver of the Beneficiary, or by any court, in any such proceeding; (v) any claim which the Grantor has or might have against the Beneficiary; (vi) any default or failure on the part of the Beneficiary to perform or comply with any of the terms hereof; (vii) any default or failure on the part of the Beneficiary to perform or comply with any of the terms of any other agreement with the Grantor; (viii) any homestead or similar rights; or (ix) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not the Grantor has notice or knowledge of any of the foregoing. Except as expressly provided herein, the Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Grantor.

Section 1.08. Taxes and Impositions; Deposits into Tax and Insurance Escrow Fund.

(a) In accordance with Section 8.2 of the Loan Agreement, the Grantor shall deposit with the Beneficiary the monthly tax and insurance amount required by the Controlling Person. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may be then or subsequently due for the payment of all Impositions and the insurance premiums for policies required hereunder and under the Loan Agreement, the Controlling Person may, without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to the Beneficiary for the reimbursement of the Controlling Person as herein elsewhere provided.

(b) The Grantor shall not suffer, permit or initiate the joint assessment of any real or personal property which may constitute all or a portion of the Property or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien; provided, however, that the Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such taxes, assessments or charges by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the Grantor's covenant to pay any such taxes, assessments or charges at the time and in the manner provided in this Section 1.08, unless the Grantor has

given prior written notice to the Controlling Person of the Grantor's intent to so contest or object to a tax, assessment or charge, and unless, at the Controlling Person's sole option, (i) the Grantor shall demonstrate to the Controlling Person's satisfaction that the proceedings to be initiated by the Grantor shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such tax, assessment or charge prior to final determination of such proceedings; and (ii) the Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Controlling Person; and (iii) the Grantor shall demonstrate to the Controlling Person's satisfaction that the Grantor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(c) The Grantor hereby agrees to pay and indemnify the Beneficiary, the Bondholders and the Controlling Person from the payment of all documentary stamp taxes and intangible taxes that may be levied upon the holder of the Secured Obligations, the indebtedness evidenced by the other Bond Documents, the making or recording of this Mortgage or any evidence of indebtedness secured hereby, or, except as otherwise expressly provided therein, the transactions contemplated by the Loan Agreement, this Mortgage or any of the other Bond Documents, including interest, penalties and costs. The Grantor agrees to pay the Beneficiary and the Controlling Person attorneys' fees and costs incurred in connection with any inquiry from or assertion by governmental authority that any such taxes have not been paid promptly when due.

Section 1.09. Utilities. The Grantor shall pay or cause to be paid prior to delinquency all utility charges incurred by the Grantor for the benefit of the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Premises or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon. The Grantor may contest any such change in good faith and by appropriate proceedings promptly initiated and diligently conducted if (i) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the Property subject to such lien or interfere with the operation of the Premises, (ii) the Grantor shall have established a reserve or made other appropriate provision as requested by and satisfactory to the Controlling Person, and (iii) any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed.

Section 1.10. Actions Affecting Property. The Grantor shall give the Beneficiary and the Controlling Person prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect, the Property, the security of this Mortgage or the rights or powers of the Deed of Trust Trustee or Beneficiary. The Grantor shall appear in and contest, in accordance with the written direction of the Controlling Person, any such action or proceeding and shall pay all costs and expenses, including costs of evidence of title and attorneys' fees, in any such action or proceeding.

Section 1.11. Actions by the Beneficiary to Preserve Property. If an Event of Default occurs and is continuing beyond any applicable cure period (or prior to an Event of Default if the Controlling Person determines in its sole judgment that the same is necessary to preserve the Premises or the lien of this Mortgage or the other Bond Documents thereon or on any other collateral securing the Secured Obligations, or is necessary to protect the life, health or safety of any persons on or near the Premises or the property of any such person), the Controlling Person in its reasonable discretion, without obligation to do so and without releasing the Grantor from any obligation, and, except as provided in the next succeeding sentences, may make any such payment, or perform any other act or take any appropriate action, including, without limitation, entry on the Premises and performance of work thereon, or direct the Beneficiary in writing to do the same in such manner and to such extent as it may deem necessary to protect the security hereof. The Beneficiary shall use reasonable efforts to notify the Grantor prior to making any such payment or doing any such act; provided, however, that the failure to provide such

notice shall not in any way affect the Grantor's obligation to reimburse the Beneficiary or the Controlling Person in accordance with this Section nor shall either the Beneficiary or the Controlling Person incur any liability to the Grantor as a result of such failure. In connection therewith (without limiting its general powers, whether conferred herein, in any other of the Bond Documents, or by law), the Beneficiary acting at the written direction of the Controlling Person shall have and is hereby given the right, but not the obligation, at any time after the occurrence of an Event of Default (i) to enter upon the Premises and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which it may consider necessary or proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security of this Mortgage or the rights or powers of the Beneficiary; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including attorneys' fees and costs or other necessary or desirable consultants. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary or the Controlling Person an amount equal to all of their respective costs and expenses incurred in connection with the exercise by the Beneficiary of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's, and attorneys' fees, together with interest thereon from the date of such expenditures to the date of payment at the Default Rate.

Section 1.12. Transfer of Property by the Grantor. The Grantor agrees that, except for Permitted Transfers, and except for the making of residential leases, the Grantor shall not transfer the Property or any portion thereof or interest therein without the prior written consent of the Controlling Person, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of any transfer of the Property or any portion thereof or interest therein (other than Permitted Transfers or as expressly permitted hereunder or under the Bond Documents, or with the prior written consent of the Controlling Person), the Beneficiary shall have the absolute right at the option of the Controlling Person, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the Controlling Person's right to require consent to future or successive transfers. With respect to any transfer that requires the consent of Controlling Person, the Controlling Person may grant or deny such consent in its sole and absolute discretion, and may charge a fee in connection with such request for consent. If consent is given, and if this Mortgage is not released to the extent of the transferred portion of the Property by a writing executed by the Beneficiary and recorded in the proper city, town, or county records, then any such transfer shall be subject to this Mortgage, and any such transferee shall, by accepting such transfer, assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release the Grantor or any maker or guarantor of any of the Secured Obligations from any liability hereunder or thereunder prior to the date of such transfer without the prior written consent of the Controlling Person. The covenants contained in this Section shall run with the Land and shall remain in full force and effect until all of the Secured Obligations are fully paid and fully performed. The Beneficiary may, without notice to the Grantor, deal with any transferees with reference to the Secured Obligations in the same manner as the Grantor, without in any way altering or discharging the Grantor's liability with respect thereto.

Section 1.13. Full Performance Required; Survival of Warranties. All obligations, representations, warranties and covenants of the Grantor contained in any Bond Document shall survive the execution and delivery of this Mortgage and shall remain continuing obligations, warranties, representations and covenants of the Grantor so long as any portion of the Secured Obligations remains outstanding, and the Grantor shall fully and faithfully satisfy and perform all such obligations, representations, warranties and covenants.

Section 1.14. Liens. Except for Permitted Encumbrances, the Grantor shall not create, incur, or permit to exist any lien, encumbrance or charge upon the Property, or any portion thereof or interest therein (individually, a “Lien” or “Encumbrance” and collectively, “Liens or Encumbrances”). If the Grantor fails to remove and discharge any Lien or Encumbrance or contest the same in good faith after the same shall have been bonded over to the satisfaction of the Controlling Person, then, in addition to any other right or remedy of the Beneficiary, (i) the Beneficiary may, but shall not be obligated to, take such action at the written direction of the Controlling Person as the Controlling Person deems warranted to discharge any Lien or Encumbrance either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law and (ii) the Beneficiary shall have the absolute right, at the Controlling Person’s written direction, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary an amount equal to all costs and expenses incurred by the Beneficiary in connection with the exercise by the Beneficiary of the foregoing right to discharge any such Lien or Encumbrance, together with interest thereon from the date of such expenditure to the date of payment at the Default Rate.

Section 1.15. Beneficiary’s Powers. None of the following actions by or caused by the Beneficiary, with or without notice to any person, shall have any effect on either (a) the liability of any other person liable for the payment of any of the Secured Obligations, or (b) the lien or charge of this Mortgage upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid or unperformed Secured Obligations: (i) the release of any person so liable, (ii) the extension of the maturity or the alteration of any of the terms of any of the Secured Obligations, (iii) the grant of any other indulgences, (iv) the release or reconveyance of all or any portion of the Property, (v) the taking or release of any other or additional security for any of the Secured Obligations, or (vi) the making of arrangements with debtors in relation thereto.

Section 1.16. Trade Names. At the request of the Beneficiary, the Grantor shall execute a certificate in form reasonably satisfactory to the Beneficiary listing all of the trade names and fictitious business names under which the Grantor operates, or intends to operate, any portion of the Property or any business located thereon and representing and warranting that the Grantor does business under no other trade names or fictitious business names with respect to any portion of the Property. The Grantor shall immediately notify the Beneficiary and the Controlling Person in writing of any change in said trade names or fictitious business names, and will, upon request of the Beneficiary, execute any additional financing statements and other certificates necessary to reflect any change in said trade names or fictitious business names.

Section 1.17. Grantor Remains Liable. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under all contracts and agreements relating to the Property, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Mortgage had not been executed, (b) the exercise by the Beneficiary of any of its rights hereunder shall not release the Grantor from any of the Grantor’s duties or obligations under any contracts and agreements related to the Property, and (c) the Beneficiary shall not have any obligations or liability under any of the contracts or agreements related to the Property by reason of this Mortgage and shall not be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 1.18. Warranties and Representations of Grantor. The Grantor represents and warrants to the Beneficiary as follows:



(a) The Grantor is the owner of a fee simple interest in the Land and the Improvements and the owner of the remainder of the Property free and clear of any lien, security interest, charge or encumbrance, except for the lien and charge of this Deed of Trust and the Permitted Encumbrances and will warrant and defend title to the Property against all claims and demands (subject to the Permitted Encumbrances).

(b) The Grantor has good, right and lawful authority to encumber the Property with and grant the lien and charge created by this Deed of Trust, and the execution, delivery and performance by the Grantor of this Deed of Trust have been duly authorized by all necessary parties and do not and will not (i) violate the partnership agreement, articles of incorporation, charter or by-laws of the Grantor or any direct or indirect constituent partner of the Grantor or any provision of any law, rule or regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Grantor, or (ii) result in a breach of or constitute a default under any material indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Grantor is a party or by which the Grantor or its properties may be bound or affected. The Grantor will warrant and defend its title to the Property against claims of all persons and entities whomsoever (other than Permitted Encumbrances), and the Grantor will maintain and preserve the lien and charge of this Deed of Trust so long as any of the Secured Obligations is outstanding.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body, other than the recordation of this Deed of Trust in the official records of the city, town or county in which the Property is located, is required (i) for the grant by the Grantor of the lien created hereby or for the execution, delivery and performance by the Grantor of this Deed of Trust, or (ii) for the perfection of the security interests granted hereunder or the exercise by the Beneficiary of the rights and remedies conferred hereunder (except as may be required by the express terms of this Deed of Trust).

Section 1.19. Other Instruments. The Grantor shall punctually pay all amounts due and payable under, and shall promptly and faithfully perform or observe each and every other obligation or condition to be performed or observed under the Bond Documents, each mortgage, deed to secure debt, deed of trust, security agreement or other lien or security interest, or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement which affects the Property, in law or in equity.

Section 1.20. Further Acts. The Grantor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof and to carry into effect its objectives and purposes, in order to protect the Deed of Trust Trustee and Beneficiary. Promptly upon written request, from time to time, of the Beneficiary or the Controlling Person and at the Grantor's expense, the Grantor shall execute, acknowledge and deliver to the Beneficiary such other and further instruments and do such other acts as in the opinion of the Beneficiary or the Controlling Person may be necessary or appropriate to (a) grant to the Beneficiary the priority perfected lien and security interest in respect of the Property to secure all of the Secured Obligations, (b) grant to the Deed of Trust Trustee, to the fullest extent permitted by applicable law, the right to foreclose on the Property judicially or nonjudicially or to exercise the power of sale, (c) correct any defect, error or omission which may be discovered in the contents of this Mortgage (including all exhibits and/or schedules hereto) or any of the other Bond Documents, (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby and properly intended by the terms hereof to be covered hereby (including any renewals, additions, substitutions, replacements or appurtenances to the Property), (e) assure the intended priority of this Mortgage and of such liens, encumbrances, security interests and assignments, and (f) otherwise effect the intent of this Mortgage. Without limiting the generality of the foregoing, the Grantor, upon the Beneficiary's or the Controlling Person's written request, at such times and as often as may be reasonably

necessary, and, to the extent consistent with applicable law, at the Grantor's own expense, shall promptly record, rerecord, file and refile in such offices, this Mortgage, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests (and priority thereof) intended to be created hereby and the rights and remedies of the Beneficiary hereunder. Upon written request by the Deed of Trust Trustee and Beneficiary or the Controlling Person, the Grantor shall supply evidence of fulfillment of its obligations under this Section 1.20.

## ARTICLE 2 ASSIGNMENT OF RENTS, LEASES AND OTHER AGREEMENTS

Section 2.01. Assignment of Rents and Leases, Issues and Profits. As part of the consideration for the Secured Obligations, and not as additional security therefor, the Grantor hereby irrevocably, absolutely, presently, and unconditionally assigns to the Beneficiary all of the Rents and hereby gives to and confers upon the Beneficiary the right, power and authority to collect such Rents. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, acting at the written direction of the Controlling Person, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in its name or in the name of the Grantor, for all such Rents, and apply the same to the payment of the Secured Obligations; provided, however, that the Grantor shall have and is hereby granted the right, in the form of a revocable license, to enforce payment, give satisfactions, sue for and collect such Rents (but not more than one month in advance unless the written approval of the Controlling Person has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing. The assignment of the Rents in this Article 2 is intended to be an absolute assignment from the Grantor to the Beneficiary and not merely the passing of a security interest. The Grantor and the Beneficiary further agree that, solely for the purposes of any bankruptcy of the Grantor or its general partners, during the term of this Mortgage, the Rents shall not constitute property of the Grantor (or of any estate of the Grantor) within the meaning of 11 U.S.C. §541, as amended from time to time.

Section 2.02. Collection Upon Default. Upon the occurrence and during the continuation of an Event of Default hereunder, the license granted to the Grantor in Section 2.01 shall be automatically revoked without notice. The Beneficiary may, at any time without notice, upon the written direction of the Controlling Person, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Premises, or any part thereof, and, with or without taking possession of the Premises or any part hereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with the Grantor by any lessee or tenant of the Grantor to secure the payment of any rent or for any services thereafter to be rendered by the Grantor for any other obligation of any tenant to the Grantor arising under any Lease). The Grantor agrees that, upon the occurrence and continuance of any Event of Default hereunder beyond all applicable notice, grace and/or cure periods, the Grantor shall promptly deliver all such Rents and monies to the Beneficiary. The Beneficiary shall apply such Rents and monies (other than security deposits), in the following manner:

First, to the cost of receivership;

Second, to the payment of all taxes and lien assessments levied against the Premises, where provision for paying such is not otherwise made;

Third, to the payment of any amounts due and owing under the Secured Obligations;

Fourth, to the payment of current operating costs and expenses (including repairs, maintenance and necessary acquisitions of property and expenditures for capital improvements) arising in connection with the Premises;

Fifth, to Grantor or its designee.

All Rents collected by Beneficiary shall be applied to the items above according to those priorities set forth in Chapter 654 of the Texas Code.

The collection of such Rents, or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make the Beneficiary a mortgagee-in-possession of the Premises or any portion thereof.

Section 2.03. Assignment of Leases.

(a) As part of the consideration for the Secured Obligations, Grantor absolutely and unconditionally assigns and transfers to Beneficiary all of Grantor's right, title and interest in, to and under the Leases, including Grantor's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Grantor to establish a present, absolute and irrevocable transfer and assignment to Beneficiary of all of Grantor's right, title and interest in, to and under the Leases. Grantor and Beneficiary intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Property," as that term is defined in the granting clauses. However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the State of Texas (the "State"), then the Leases shall be included as a part of the Property and it is the intention of the Grantor that in this circumstance this Mortgage create and perfect a lien on the Leases in favor of Beneficiary, which lien shall be effective as of the date of this Mortgage.

(b) Until the occurrence and continuance of an Event of Default beyond any applicable cure period, Grantor shall have all rights, power and authority granted to Grantor under any Lease (except as otherwise limited by this Section or any other provision of this Mortgage), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence and continuance of an Event of Default beyond any applicable notice, grace or cure period, the permission given to Grantor pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Grantor shall comply with and observe Grantor's obligations under all Leases, including Grantor's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Grantor acknowledges and agrees that the exercise by Beneficiary, either directly or by a receiver, of any of the rights conferred under this Section 2.03 shall not be construed to make Beneficiary a mortgagee-in-possession of the Property so long as Beneficiary has not itself entered into actual possession of the Land and the Improvements. The acceptance by Beneficiary of the assignment of the Leases pursuant to Section 2.03(a) shall not at any time or in any event obligate Beneficiary to take any action under this Mortgage or to expend any money or to incur any expenses. Beneficiary shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Property. Prior to Beneficiary's actual entry into and taking possession of the Property, Beneficiary shall not (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be

obligated to appear in or defend any action or proceeding relating to the Lease or the Property; or (iii) be responsible for the operation, control, care, management or repair of the Property or any portion of the Property. The execution of this Mortgage by Grantor shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Property is and shall be that of Grantor, prior to such actual entry and taking of possession.

(d) From and after the occurrence of an Event of Default, and without the necessity of Beneficiary entering upon and taking and maintaining control of the Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the State, Beneficiary immediately shall have all rights, powers and authority granted to Grantor under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Grantor shall, promptly upon Controlling Person's request, deliver to Controlling Person an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Controlling Person, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Controlling Person's prior written consent.

(f) Grantor shall not lease any portion of the Property for non-residential use, for leases for services associated with residential rental properties (such as laundry and cable lease) and minor service leases entered into in the ordinary course of business in an amount not to exceed \$25,000, except with the prior written consent of Controlling Person and Controlling Person's prior written approval of the Lease agreement, which consent and/or approval shall not be unreasonably withheld, conditioned or delayed. Grantor shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Mortgage) without the prior written consent of Controlling Person. Grantor shall, without request by Controlling Person, deliver an executed copy of each non-residential Lease to Controlling Person promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Mortgage (unless waived in writing by Controlling Person); (2) the tenant shall attorn to Controlling Person and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Property by any purchaser at a foreclosure sale or by Controlling Person in any manner; (3) the tenant agrees to execute such further evidences of attornment as Controlling Person or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Property; (5) after a foreclosure sale of the Property, Controlling Person or any other purchaser at such foreclosure sale may, at Controlling Person's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Controlling Person, pay all Rents payable under the Lease to Controlling Person.

(g) Grantor shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

Section 2.04. Further Assignments. Upon written demand of the Beneficiary or the Controlling Person, the Grantor shall, from time to time hereafter, execute and deliver to the Beneficiary recordable assignments of any other agreements relating to, or affecting the use, occupancy, management or maintenance of, or services provided to, the Property or now or hereafter affecting the Property or any portion thereof. Each such assignment shall be made by an instrument (herein, an "Assignment") in form and substance satisfactory to the Controlling Person. The Beneficiary may, at the written direction of the Controlling Person, exercise its rights hereunder or under any such Assignment, and such exercise shall

not constitute a waiver of any right hereunder or thereunder. To the extent not inconsistent, all rights and remedies of the Beneficiary under any such Assignment and under this Mortgage shall be cumulative.

### ARTICLE 3 REMEDIES UPON DEFAULT

Section 3.01. Event of Default. The term “Event of Default”, as used herein means an “Event of Default” as defined in the Loan Agreement. The General Partner shall have the right, but not the obligation, to cure any default hereunder and all parties agree to accept such performance as if done by the Grantor itself.

Section 3.02. Acceleration Upon Default. Upon the occurrence of an Event of Default, the Beneficiary, acting at the written direction of the Controlling Person, may declare all Secured Obligations to be immediately due and payable upon ten (10) days’ written notice or demand; provided no such declaration shall be required, and acceleration shall be deemed to have occurred, if the default is an event set forth in Section 7.1(g) of the Loan Agreement. Grantor acknowledges that the power of sale granted in this Mortgage may be exercised by Beneficiary without prior judicial hearing. Beneficiary will be entitled to collect all costs and expenses incurred in pursuing such remedies, including attorneys’ fees and costs, costs of documentary evidence, abstracts and title report.

Section 3.03. Remedies.

(a) Upon the occurrence and continuance of an Event of Default beyond any applicable notice, grace or cure period, the Beneficiary, acting at the written direction of the Controlling Person, may either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security,

(i) enter upon the Premises and take possession of the Property, or any part thereof, in its own name, and do any act which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof;

(ii) with or without taking possession of the Premises, sue for or otherwise collect the Rents including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys’ fees, to the payment of any Secured Obligations, all in such order as the Beneficiary may determine;

(iii) deliver to the Deed of Trust Trustee a written declaration of default and demand for sale, and a written notice of default and of election to cause the Property to be sold, and cause any or all of the Property to be sold under the Power of sale granted by this Mortgage in any manner permitted by applicable law;

(iv) specifically enforce any of the covenants hereof; or

(v) exercise all other rights and remedies provided herein, in any of the other Bond Documents, or provided by law or equity.

(b) The entering upon the Premises and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession, by the Beneficiary or a receiver of

all or any portion of the Property or the collection, receipt and application of any of the Rents thereby, the Beneficiary shall be entitled to exercise every right provided for in any of the Bond Documents or by law upon occurrence of any Event of Default that extends beyond the expiration of all notice, grace or cure periods.

Section 3.04. Foreclosure.

(a) When the Secured Obligations, or any part thereof, shall become due, whether upon maturity, by acceleration, or otherwise, the Deed of Trust Trustee on behalf of the Beneficiary, acting at the written direction of the Controlling Person, may institute an action of foreclosure against the Property, or take such other action at law or in equity of the enforcement of this Mortgage and realization on the Property or any other security herein or elsewhere provided for as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Secured Obligations, with interest from and after the occurrence and continuance of the Event of Default beyond any applicable cure period at the Default Rate together with all other sums due by the Grantor in accordance with the provisions of this Mortgage and the other Bond Documents including all sums which may have been paid, incurred or advanced by or on behalf of the Beneficiary or the Controlling Person for taxes, water or sewer rents, charges or claims, payments of prior liens, insurance appraiser's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Beneficiary or the Controlling Person may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Property, all costs of suit, together with interest at the Default Rate on any judgment obtained by the Beneficiary from and after the date of such judgment including the period from and after the date of any judicial sale until actual payment is made of the full amount due the Beneficiary as a result of such sale, and an attorney's commission for collection.

(b) If any or all of the Premises or any estate or interest therein is to be sold under the provisions of this Mortgage, by virtue of a judicial sale, it may be sold, as an entirety or in one or more parcels, by one sale or by several sales held at one time or at different times, with such postponement of any such sale as the Beneficiary, acting at the written direction of the Controlling Person, may deem appropriate and without regard to any right of the Grantor or any other person to the marshaling of assets. The Beneficiary or the Controlling Person may bid and become the purchaser at any such sale.

(c) Upon any sale of the Grantor's interest in any or all of the Property, whether by other foreclosure or judicial proceedings, the proceeds of such sale, together with any other sum then held as security hereunder or due under any of the provisions hereof as part of the Property (after paying all expenses of sale, including attorneys' fees, and all taxes, assessments or impositions in connection with the Property which the Beneficiary deems it advisable or expedient to pay and all sums advanced, with interest thereon, as herein provided shall be applied) to the payment of the Secured Obligations then due and owing under the Bond Documents and secured hereby and interest thereon to the date of payment and prepayment fees, if any, paying over the surplus, if any, less the expense, if any, of obtaining possession, to the Grantor or any person entitled thereto upon the surrender and delivery to the purchaser of possession of the Property.

Section 3.05. Appointment of Receiver. The Beneficiary, acting at the written direction of the Controlling Person, may apply for the appointment of a receiver of the Premises and/or the Rents, without notice except as required by law, and shall be entitled to the appointment of the receiver as a matter of right, without consideration of the value of the Premises, the solvency of any person liable for the

payment of the Secured Obligations, or the effect of the receivership on the operation of the Premises or the Grantor's business thereon.

Section 3.06. Application of Funds After Default. Except as otherwise herein provided or provided in the other Bond Documents, upon the occurrence and continuance of an Event of Default beyond all applicable notice, grace or cure periods hereunder, the Beneficiary, acting at the written direction of the Controlling Person, may, at any time without notice, apply any or all sums or amounts received and held by the Beneficiary (other than the security deposits from tenant leases) to pay insurance premiums, taxes, assessments and other impositions in connection with the Property, or apply amounts received as rents or income of the Property, or as insurance or condemnation proceeds, and all other sums or amounts received by the Beneficiary from or on account of the Grantor or the Property, or otherwise, to any of the Secured Obligations then due and payable, in such manner and order as the Beneficiary, acting at the written direction of the Controlling Person, may elect, notwithstanding that said indebtedness or the performance of said obligation may not yet be due. The receipt, use or application of any such sum or amount shall not be construed (i) to affect the maturity of any Secured Obligations or any of the rights or powers of the Beneficiary hereunder or under the terms of the Bond Documents; or (ii) any of the obligations of the Grantor or any guarantor hereunder or under the Bond Documents; or (iii) to cure or waive any default or notice of default hereunder or under any of the Bond Documents; or (iv) to invalidate any act of the Beneficiary.

Section 3.07. Costs of Enforcement. If any Event of Default occurs and continues beyond all applicable notice, grace or cure periods, the Beneficiary and the Controlling Person may employ an attorney or attorneys to protect their respective rights hereunder. The Grantor agrees to pay to the Beneficiary or the Controlling Person (as applicable), on demand, the fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby, including recording fees, receivers' fees and expenses, and all other expenses, of whatever kind or nature, incurred by the Beneficiary, in connection with the enforcement of the Secured Obligations, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest, from date of expenditure, at the Default Rate.

Section 3.08. Remedies Not Exclusive. The Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Mortgage or under any Bond Documents or other agreement or any law now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, deed to secure debt, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Beneficiary's rights to realize upon or enforce any other security now or hereafter held by the Beneficiary, it being agreed that the Beneficiary shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Beneficiary in such order and manner as the Controlling Person in its sole discretion may direct in writing. No remedy herein conferred upon or reserved to the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute. Every power or remedy given hereunder or under any of the Bond Documents to the Beneficiary or to which the Beneficiary may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Beneficiary or the Controlling Person, and the Beneficiary and the Controlling Person may pursue inconsistent remedies.

Section 3.09. Power of Sale. During an Event of Default, the Beneficiary, upon the direction of the Controlling Person, may request the Deed of Trust Trustee to proceed with foreclosure under the

power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(a) The Deed of Trust Trustee is hereby authorized and empowered, and it shall be the Deed of Trust Trustee's special duty, upon such request of the Beneficiary, acting upon the direction of the Controlling Person, to sell the Property, or any part thereof, at public auction to the highest bidder for cash at public auction, with or without having taken possession of same. Such sale will be made at the courthouse door of the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of having any personalty present at such sale). Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code, as amended, or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust.

(b) Subject to any applicable requirements at the time of sale governing sales of Texas real property under the powers of sale conferred by deeds of trust, at any time during the bidding, the Deed of Trust Trustee may require a bidding party (i) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable); and (ii) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Deed of Trust Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Deed of Trust Trustee, acting upon the direction of the Controlling Person, in the Controlling Person's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Deed of Trust Trustee may continue the bidding with reservation; and in such event (1) the Deed of Trust Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Deed of Trust Trustee, all bids by the Questioned Bidder shall be null and void.

(c) The Deed of Trust Trustee, acting upon the direction of the Controlling Person, in the Controlling Person's sole and absolute discretion, may determine that a credit bid may be in the best interest of the Grantor and the Beneficiary, and elect to direct the Deed of Trust Trustee to sell the Property for credit or for a combination of cash and credit; provided, however, (i) the Deed of Trust Trustee shall have no obligation to accept any bid except an all cash bid, and (ii) the Deed of Trust Trustee shall be required to accept the highest bid. In the event the Deed of Trust Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Deed of Trust Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced provided that it is recommenced within the time frame set forth in the Notice of Sale given pursuant to Section 51.002 of the Texas Property Code, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(d) Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid in full. It is intended by each of the foregoing



provisions of this subsection that the Deed of Trust Trustee may, after any request or direction by Controlling Person, sell the Land and the Improvements and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(e) After any sale under this subsection, the Deed of Trust Trustee shall make good and sufficient the deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of the Grantor, conveying the Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by the Grantor. It is agreed that in any the deeds, assignments or other conveyances given by the Deed of Trust Trustee, any and all statements of fact or other recitals therein made as to the identity of the Beneficiary, the occurrence and continuance of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute the Deed of Trust Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of the Beneficiary or by or on behalf of the Deed of Trust Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and the Grantor does hereby ratify and confirm any and all acts that the Deed of Trust Trustee may lawfully do in the premises by virtue hereof.

(f) The following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (ii) and/or (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

#### **ARTICLE 4** **SECURITY AGREEMENT**

Section 4.01. Creation of Security Interest. The Grantor hereby grants to the Beneficiary a security interest in all rights, titles, interests, estates, power and privileges that the Grantor now has or may hereafter acquire in and to that portion of the Property, which, under applicable law, may be subject to a security interest under the Uniform Commercial Code of the State of Texas (the "Personal Property") to secure the Secured Obligations.

Section 4.02. Representations, Warranties and Covenants of the Grantor. The Grantor hereby represents, warrants and covenants as follows:

(a) The tangible portion of the Personal Property shall be kept on or at the Premises and the Grantor shall not, without the prior written consent of the Controlling Person, which consent shall not be unreasonably withheld, conditioned or delayed, remove the Personal Property or any portion thereof therefrom except as set forth in the Plans and Specifications and such portions or items of Personal Property as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by the Grantor with similar items of comparable value if required for the efficient operation of the Premises.

(b) The Grantor shall promptly notify the Controlling Person of any material claim against the Personal Property adverse to the interest of the Beneficiary therein.

(c) Without the prior written consent of the Controlling Person, the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed, shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in the Personal Property, including replacements and additions thereto.

Section 4.03. Use of Personal Property by the Grantor. Until the occurrence and continuance of an Event of Default beyond all applicable notice, grace and cure periods hereunder, the Grantor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Mortgage and not inconsistent with any policy of insurance covering the Premises or the Personal Property.

Section 4.04. Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Article 3, upon the occurrence of an Event of Default and during the continuation thereof beyond all applicable notice, grace and cure periods, the Beneficiary may, acting at the written direction of the Controlling Person, at the Controlling Person's option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom the Grantor and all others claiming under the Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Grantor with respect to the Personal Property or any part thereof;

(ii) Without notice to or demand upon the Grantor, make such payments and do such acts as the Controlling Person may direct in writing to protect the Beneficiary's security interest in the Personal Property (including paying, purchasing, contesting or compromising any Lien or Encumbrance (other than Permitted Encumbrances), whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including litigation costs and attorneys' fees) incurred in connection therewith;

(iii) Require the Grantor from time to time to assemble the Personal Property, or any portion thereof, at a place designated by the Beneficiary and promptly deliver such Personal Property to the Beneficiary or an agent or representative designated by the Beneficiary;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred

upon the Beneficiary by this Mortgage or by any of the other Bond Documents or by law, either concurrently or in such order as the Controlling Person may determine;

(v) Sell or cause to be sold in such order as the Controlling Person may determine, as a whole or in such parcels as the Controlling Person may determine, the Personal Property;

(vi) Sell, lease or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as the Controlling Person may determine, and the Beneficiary or the Controlling Person may be a purchaser at any sale; and

(vii) Exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

The Beneficiary, the Controlling Person and their respective agents and representatives shall have the right to enter upon any or all of the Premises to exercise the Beneficiary's rights hereunder.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Beneficiary shall give the Grantor at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made, which notice the Grantor agrees is reasonable. Such notice may be mailed to the Grantor at its address set forth in the opening paragraph of this Mortgage.

(c) Subject to the terms of Section 6.7 of the Indenture, the proceeds of any sale under Section 4.04(a)(vi) shall be applied as follows:

(i) to the repayment of the costs and expenses of taking, holding and preparing for the sale and the selling of the Personal Property (including costs of litigation and attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) the payment of the Secured Obligations, including interest, in such order as the Controlling Person shall determine;

(iii) to be held as collateral for any obligation of the Grantor to the Beneficiary under the Bond Documents; and

(iv) the surplus, if any, shall be paid to the Grantor or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) The Beneficiary, acting upon the written direction of the Controlling Person, shall have the right to enforce one or more remedies under this Section 4.04 successively or concurrently and such action shall not operate to stop or prevent the Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the provisions hereof shall not operate to release the Grantor until full payment of any deficiency has been made in cash.

Section 4.05. Security Agreement. This Mortgage constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code; and the Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Uniform Commercial Code as to any Personal Property. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph of this Mortgage.

Section 4.06. Fixture Filing. Some of the Personal Property is or is to become fixtures on the Premises and this instrument is to be recorded in the real estate records. This Mortgage is effective as a financing statement filed as a fixture filing, executed by the Grantor, as debtor, in favor of the Beneficiary, as secured party, with respect to all fixtures included in the Property and the Personal Property. Products of the collateral are also covered. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph of this Mortgage. The Grantor's organizational identification number is 32064180907.

Section 4.07. Financing Statements. The Grantor hereby authorizes the Beneficiary or Controlling Person to file any financing statements, as well as extensions, renewals and amendments thereof, and any reproductions of this Mortgage in such form as the Beneficiary or Controlling Person may require to perfect a security interest with respect to such items. The Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements as the Beneficiary or the Controlling Person may require. The filing of such financing statements shall under no circumstance be construed as impairing either the Beneficiary's remedies or the priority of the lien granted hereby, and the Grantor agrees that all items of Personal Property are, and at all times, for all purposes and in all proceedings (both legal and equitable) shall be, at the election of the Beneficiary or Controlling Person, regarded as part of the real estate encumbered by this Mortgage. It is understood and agreed that the Beneficiary shall have no duty or obligation to file financing statements hereunder, and such duty shall be solely that of the Grantor.

## ARTICLE 5 MISCELLANEOUS

Section 5.01. Amendments. No amendment or waiver of any provision of this Mortgage nor consent to any departure by the Grantor herefrom shall in any event be effective unless the same shall be in writing and signed by the Beneficiary with the prior written consent of the Controlling Person, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. All amendments shall be made in accordance with any applicable provisions of Article VIII of the Indenture.

Section 5.02. Future Advances. Until this Mortgage is released of record, the Beneficiary may advance or re-advance additional sums of money (consisting of the proceeds of bonds) to the Grantor from time to time and such advances or re-advances shall become part of the Secured Obligations secured hereby to the fullest extent permitted by law.

Section 5.03. Business Purpose. The Grantor hereby stipulates and warrants that the Secured Obligations are a commercial facility and that such facility is being granted solely to acquire or carry on a business, professional or commercial enterprise or activity.

Section 5.04. Grantor Waiver of Rights. The Grantor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the indebtedness secured hereby and marshaling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which the Grantor may have or be able to assert by reason of applicable laws pertaining to the rights and remedies of sureties, and (d) all homestead rights.

Section 5.05. Statements by the Grantor. The Grantor shall, within ten (10) days after a request from the Beneficiary or the Controlling Person, deliver to the Beneficiary and the Controlling Person a

written statement setting forth the then unpaid amounts of the Secured Obligations and stating whether any offset or defense exists against payment of such amounts.

Section 5.06. Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given in the manner prescribed in the Loan Agreement, to the addresses provided therein. All notices provided herein to the Beneficiary shall also be provided to the Controlling Person and to R4 FW Acquisition LLC as Investor Limited Partner.

Section 5.07. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.08. Invalidity of Certain Provisions. Every provision of this Mortgage is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Secured Obligations, and all payments made under the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Mortgage.

Section 5.09. Subrogation. To the extent that the Beneficiary or the Controlling Person pays any outstanding lien, charge or prior encumbrance against the Property, the Beneficiary or the Controlling Person, as applicable, shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

Section 5.10. Attorneys' Fees. If the Secured Obligations are not paid when due or if any Event of Default occurs, the Grantor agrees to pay all costs of enforcement and collection incurred by the Beneficiary or the Controlling Person, including attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" and "attorneys' fees and costs" shall each mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" and "attorneys' fees and costs" shall also each include all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred and shall also include all such fees and expenses incurred in enforcing any judgment. This agreement to pay costs is part of and not a limitation on any obligation on the part of the Grantor to pay costs and expenses under the Loan Agreement.

Section 5.11. Governing Law. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES.

NOTWITHSTANDING THE FOREGOING, THE PARTIES STIPULATE AND AGREE THAT THE BENEFICIARY MAY ENFORCE, IN ACCORDANCE WITH THE LAW OF THE STATE, ANY OR ALL OF ITS RIGHTS TO SUE THE GRANTOR, TO COLLECT ANY INDEBTEDNESS IN TEXAS OR ELSEWHERE, BEFORE OR AFTER FORECLOSURE, AND IF THE BENEFICIARY

OBTAINS A DEFICIENCY JUDGMENT OUTSIDE OF THE STATE, THE BENEFICIARY MAY ENFORCE THAT JUDGMENT IN THE STATE, AS WELL AS IN OTHER STATES.

Section 5.12. Construction. Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine and neuter genders shall each be deemed to include the others. Except as otherwise indicated herein, all section and exhibit references in this Mortgage shall be deemed to refer to the sections and exhibits of and to this Mortgage, and the terms “herein”, “hereof”, “hereto”, “hereunder” and similar terms refer to this Mortgage generally rather than to the particular provision in which such term is used. Whenever the words “including”, “include” or “includes” are used in this Mortgage, they shall be interpreted as though immediately followed by the words “without limitation.” As used herein, the word “person” includes corporation, partnership, limited liability company, and any other form of association, as well as any governmental or quasi-governmental body or agency.

Section 5.13. Non-foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”) provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property pursuant to the terms of this Mortgage, the Grantor hereby certifies, under penalty of perjury, that the Grantor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder, that the Grantor’s U.S. employer identification number and that the Grantor’s principal place of business is as set forth on the first page of this Mortgage. It is understood that the Beneficiary may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. The Grantor shall execute such further certificates, which shall be signed under penalty of perjury, as the Beneficiary shall reasonably require. The covenants set forth in this Section shall survive the foreclosure of the lien of this Mortgage or acceptance of a deed in lieu thereof.

Section 5.14. Access to Property and Dissemination of Information. The Grantor hereby authorizes the Deed of Trust Trustee, Beneficiary, the Controlling Person, any prospective bidder at any foreclosure sale, or in connection with the exercise of the power of sale hereunder, and their respective officers, directors, employees, agents and independent contractors, upon reasonable prior notice and so long as such persons do not unreasonably interfere with the Grantor’s operations on the Premises or the rights of tenants, to enter upon all or any portion of the Premises at any time and from time to time (following the occurrence and continuance of an Event of Default beyond all applicable notice, grace and cure periods) for the purpose of conducting such tests, inspections, inquiries, examinations, studies, analyses, samples, surveys and other information-gathering activities (collectively, “Tests and Studies”) with respect to the Premises as any of them may from time to time deem reasonably necessary or appropriate, including Tests and Studies with respect to the structural integrity of the Improvements and the presence of hazardous substances in or around the Premises. The Grantor hereby covenants and agrees to reasonably cooperate with such persons and entities in their efforts to conduct Tests and Studies, and further covenants and agrees to make reasonably available to such persons and entities such portions of the Premises as any of them may designate. The results of all Test and Studies shall be and at all times remain the property of such persons and entities, and under no circumstances shall any such person have any obligation whatsoever to disclose or otherwise make available to the Grantor or any other person such results or any other information obtained by them in connection with such Tests and Studies, unless such Tests and Studies are used to demonstrate or provide evidence of an Event of Default. Notwithstanding the foregoing provisions of this Section, the Beneficiary reserves the right, and the Grantor expressly authorizes the Beneficiary, to make available to any person (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all information which the Beneficiary may have with respect to the Premises, whether provided by the Grantor or any

other person or obtained as a result of Tests and Studies (including environmental reports, surveys and engineering reports). The Grantor consents to the Beneficiary's notifying any person (either as a part of a Notice of Sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. The Grantor acknowledges that the Beneficiary cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of the Tests and Studies or any information contained therein to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount which a person may bid at such sale. The Grantor agrees that the Beneficiary shall have no liability whatsoever as a result of delivering in accordance with this Section 5.14 any or all of the Tests and Studies or any information contained therein to any person, and the Grantor hereby releases, remises and forever discharges the Beneficiary from any and all claims, damages or causes of action arising out of, connected with or incidental to the Tests and Studies or the delivery thereof in accordance with this Section 5.14 to any person.

Section 5.15. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds the Grantor and the heirs, legatees, devisees, administrators, personal representatives, executors and the successors and assigns thereof, and the Beneficiary. The term "Beneficiary" means the Person named herein as the Beneficiary, and its successors-in-interest or assigns under the Bond Documents from time to time, whether or not named as the Beneficiary herein and any such successor or assignee shall be for all purposes the sole Beneficiary after the date of such substitution. Without limiting the generality of the foregoing, the Controlling Person and the Bondholders are and shall be express third party beneficiaries of the rights of the Beneficiary hereunder. The term "Grantor" means the Grantor named herein and the successors-in-interest, if any, of the named the Grantor in and to the Property or any part thereof. If there is more than one Grantor hereunder, their obligations are joint and several. This Section shall not be deemed a waiver of any of the provisions of Section 1.12 hereof, Section 6.12 of the Loan Agreement or Section 4 of the Land Use Restriction Agreement.

Section 5.16. No Merger of Lease. Upon the foreclosure of the lien created by this Mortgage on the Property or the exercise of the power of sale granted hereunder pursuant to the provisions hereof, any Lease then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless the Beneficiary or any purchaser at such foreclosure or exercise of the power of sale shall so elect. If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless the Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until the Beneficiary so elects, the Beneficiary shall continue to have and enjoy all of the rights and privileges of the Beneficiary hereunder as to the separate estates.

Section 5.17. Counterparts; Electronic Signatures. This Deed of Trust may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Deed of Trust.

Section 5.18. Nonrecourse. The provisions of Section 10.13 of the Loan Agreement are hereby incorporated herein by reference.

Section 5.19. Consent. Notwithstanding anything to the contrary in this Deed of Trust, whenever Beneficiary or the Controlling Person is required under this Deed of Trust to provide consent of approval, such consent or approval (or the denial of such consent or approval, as the case may be) shall, prior to an Event of Default, not be unreasonably withheld or conditioned and shall be given within a

reasonable time after its receipt of the request therefor, taking into consideration the circumstances of the requested.

Section 5.20. WAIVER OF TRIAL BY JURY.

- (a) **THE GRANTOR AND THE BENEFICIARY EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS DEED OF TRUST OR THE RELATIONSHIP BETWEEN THE PARTIES AS GRANTOR AND BENEFICIARY THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) **THE GRANTOR AND THE BENEFICIARY EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

Section 5.21. Notice of Additional Provisions Regarding Insurance. Any terms to the contrary contained in this Deed of Trust notwithstanding, the following requirements are hereby imposed pursuant to Section 307.052 of the Texas Finance Code:

- (a) **THE GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN AN AMOUNT EQUAL TO THE INDEBTEDNESS, (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER, AND (iii) NAME THE BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS.**
- (b) **IF THE GRANTOR FAILS TO COMPLY WITH SUBSECTION (a) ABOVE, THE BENEFICIARY MAY, BUT WILL NOT BE OBLIGATED TO, OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE, SUBJECT TO PRIOR WRITTEN NOTICE TO THE GRANTOR.**

**ARTICLE 6**  
**DEED OF TRUST TRUSTEE**

Section 6.01. Concerning Deed of Trust Trustee.

(a) The Deed of Trust Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in the Deed of Trust Trustee's opinion, such action would be likely to involve the Deed of Trust Trustee in expense or liability, unless requested so to do by a written instrument signed by the Beneficiary and, if the Deed of Trust Trustee so requests, unless the Deed of Trust Trustee is tendered security and indemnity satisfactory to the Deed of Trust Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Deed of Trust Trustee shall act in accordance with such request or direction of the Beneficiary. The Deed of Trust Trustee shall not be responsible for the execution, acknowledgment, or validity of the Bond Documents, or for the proper authorization thereof, or for the sufficiency of the



lien and security interest purported to be created hereby, and the Deed of Trust Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of the Beneficiary.

(b) At the direction of the Beneficiary, the Deed of Trust Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for the Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of this Deed of Trust, and shall be fully protected in relying as to legal matters on the advice of counsel; (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys; (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of the Deed of Trust Trustee, and the Deed of Trust Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care and approved by the Beneficiary, or for any error of judgment or act done by the Deed of Trust Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Deed of Trust Trustee's negligence or bad faith or failure to act in accordance with the terms hereof; and (iv) any and all other lawful action as the Beneficiary or the Controlling Person may instruct the Deed of Trust Trustee to take to protect or enforce the Beneficiary's rights hereunder. The Deed of Trust Trustee shall not be personally liable in case of entry by the Deed of Trust Trustee, or anyone entering by virtue of the powers herein granted to the Deed of Trust Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. The Deed of Trust Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by the Deed of Trust Trustee hereunder, believed by the Deed of Trust Trustee in good faith to be genuine. The Deed of Trust Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties hereunder and to reasonable compensation for such of the Deed of Trust Trustee's services hereunder as shall be rendered. The Grantor will, from time to time, pay the compensation due to the Deed of Trust Trustee hereunder and reimburse the Deed of Trust Trustee for, and save the Deed of Trust Trustee harmless against, any and all liability and expenses which may be incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties.

(c) All moneys received by the Deed of Trust Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and the Deed of Trust Trustee shall be under no liability for interest on any moneys received by the Deed of Trust Trustee hereunder.

(d) The Deed of Trust Trustee may resign by the giving of notice of such resignation in writing or verbally to the Beneficiary and the Grantor. If the Deed of Trust Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, the Beneficiary shall prefer to appoint a substitute Deed of Trust Trustee or multiple substitute Deed of Trust Trustees, or successive substitute Deed of Trust Trustees or successive multiple substitute Deed of Trust Trustees, to act instead of the aforementioned Deed of Trust Trustee, the Beneficiary and the Grantor shall have full power to appoint a substitute Deed of Trust Trustee (or, if preferred, multiple substitute Deed of Trust Trustees) in succession who shall succeed (and if multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall succeed) to all the estates, right, powers, and duties of the aforementioned Deed of Trust Trustee. Such appointment may be executed by any authorized agent of the Beneficiary, and if the Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by

the board of directors or any superior officer of the corporation. The Grantor hereby ratifies and confirms any and all acts which the aforementioned Deed of Trust Trustee, or the Deed of Trust Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Deed of Trust Trustees, whenever any action or undertaking of such substitute Deed of Trust Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

(e) Should any deed, conveyance, or instrument of any nature be required from the Grantor by any Deed of Trust Trustee or substitute Deed of Trust Trustee to more fully and certainly vest in and confirm to the Deed of Trust Trustee or substitute Deed of Trust Trustee such estates, rights, powers, and duties, then, upon request by the Deed of Trust Trustee or substitute Deed of Trust Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by the Grantor.

(f) Any substitute Deed of Trust Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Deed of Trust Trustee herein; but nevertheless, upon the written request of the Beneficiary or of the substitute Deed of Trust Trustee, the Deed of Trust Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Deed of Trust Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Deed of Trust Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Deed of Trust Trustee to the substitute Deed of Trust Trustee so appointed in the Deed of Trust Trustee's place.

(g) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to the Deed of Trust Trustee or the Beneficiary pursuant to this Deed of Trust, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Deed of Trust Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by the Deed of Trust Trustee or the Beneficiary.

#### Section 6.02. Indemnity.

(a) The Grantor shall indemnify, defend, protect and hold harmless the Beneficiary, the Controlling Person and the Deed of Trust Trustee, their respective parents, subsidiaries, directors, officers, employees, representatives, agents, successors, and assigns from and against any and all liability, damage, loss, cost, or expense (including, without limitation, attorneys' fees and expenses), action, proceeding, claim or dispute incurred or suffered by the foregoing parties so indemnified except with respect to conditions or circumstances which, pursuant to a final judgment or ruling by a Governmental Authority with jurisdiction (i) are determined to have been caused solely by the bad faith, fraud or willful misconduct in the case of the Beneficiary or the gross negligence or willful misconduct of the Issuer and/or the negligence or misconduct of the Controlling Person, or (ii) are determined not to have existed prior to, and to have arisen solely out of actions, conditions or events occurring, (1) following any sale of the Project Facilities by foreclosure of the Deed of Trust or deed in lieu thereof after such time as the Grantor and/or its affiliates, agents, employees or representatives no longer have possession or control of the Project Facilities, or (2) following the appointment and acceptance of possession by a receiver for the Project Facilities after such time as the Grantor and/or its affiliates, agents, employees or representatives

no longer have possession or control of the Project Facilities, whether voluntarily or involuntarily incurred or suffered, in respect of the following:

(i) any litigation concerning this Deed of Trust or the Property, or any interest of the Grantor, the Deed of Trust Trustee or the Beneficiary therein, or the right of occupancy thereof by the Grantor, the Deed of Trust Trustee or the Beneficiary, whether or not any such litigation is prosecuted to a final, non-appealable judgment;

(ii) any dispute among or between any of the constituent parties or other partners or venturers of the Grantor if the Grantor is a general or limited partnership, or among or between any employees, officers, directors, shareholders, members or managers of the Grantor if the Grantor is a corporation or limited liability company, or among or between any members, trustees or other responsible parties if the Grantor is an association, trust or other entity;

(iii) any action taken or not taken by the Beneficiary, the Controlling Person or the Deed of Trust Trustee which is allowed or permitted under this Deed of Trust relating to the Grantor, the Property, any constituent parties or otherwise in connection with this Deed of Trust, including without limitation, the protection or enforcement of any lien, security interest or other right, remedy or recourse created or afforded by this Deed of Trust;

(iv) any action brought by the Beneficiary or the Deed of Trust Trustee against the Grantor under this Deed of Trust, whether or not such action is prosecuted to a final, non-appealable judgment; and

(v) any and all loss, damage, costs, expense, action, causes of action, or liability (including reasonable attorneys' fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a hazardous substance on, in, under or about the property, whether known or unknown at the time of the execution hereof, including without limitation (1) all foreseeable consequential damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence; and (2) the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup, or detoxification of the property, and the preparation and implementation of any closure, remedial, or other required plans.

**THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER BOND DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. THE GRANTOR SHALL REIMBURSE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 6.02 SHALL SURVIVE REPAYMENT**

**OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY THE GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY BENEFICIARY, THE CONTROLLING PERSON OR THE DEED OF TRUST TRUSTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN.**

IN WITNESS WHEREOF, the Grantor has executed this Deed of Trust as of the day and year first above written.

LDG FORESTWOOD, LP, a Texas limited partnership

By: LDG Forestwood GP, LLC, a Texas limited liability company, its general partner

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

Name: Chris Dischinger

Title: Manager

STATE OF TEXAS )  
 )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of October, 2018, before me, \_\_\_\_\_, personally appeared Chris Dischinger, known to me or proven on the basis of satisfactory evidence to be the manager of LDG Forestwood GP, LLC, the general partner of LDG Forestwood, LP, the within named Grantor, and that he being authorized to do so, executed the foregoing Mortgage for the purposes therein contained by his signature on the instrument LDG Forestwood, LP executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary

My Commission expires:

(SEAL)

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**