

## RESOLUTION NO. 21-002

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (FISHPOND AT CORPUS CHRISTI APARTMENTS) SERIES 2020; 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 (including notes), 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 Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of providing funds in connection with the financing of 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 FishPond Living at Corpus Christi, LP, a Texas limited partnership (the "Borrower"), in connection with the acquisition, construction and equipping of a qualified residential rental development for seniors 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 July 25, 2019, declared its intent to issue its revenue bonds or notes 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; and;

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 acquisition, construction and equipping of the Development and related costs, and (ii) the Borrower will execute and deliver to the Department a multifamily note (the "Borrower 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 obligations of the Borrower under the Loan Agreement will be secured by a Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing (the "Subordinate Mortgage") from the Borrower for the benefit of the Department and the Trustee; and

WHEREAS, the Department's rights (except for certain unassigned rights) under the Indenture, the Borrower Note and the Subordinate Mortgage will be assigned to the Trustee pursuant to an Assignment of Security Instrument (the "Assignment") from the Department to the Trustee; and

WHEREAS, with respect to the Bonds, 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 Nueces County, Texas; and

WHEREAS, in order to assure compliance with Section 103 and 141 through 150 of the Code, the Board has determined that the Department, the Trustee and the Borrower will execute a Tax Exemption Certificate and Agreement (the "Tax Exemption Agreement"), in connection with the Bonds, pursuant to which the Department and the Borrower will make certifications, representations and covenants relating to the treatment of the interest on the Bonds as exempt from gross income for federal income tax purposes; and

WHEREAS, the Borrower will obtain a loan from Sterling Bank, as lender (the "Lender"), and the Lender will deposit the proceeds of such loan with the Trustee, to be held by the Trustee as security for the Bonds in accordance with the Indenture; and

WHEREAS, the Board has been presented with a draft of, has considered and desires to ratify, approve, confirm and authorize the use and distribution in the public offering of the Bonds of an official statement (the "Official Statement") and to authorize the Authorized Representatives (as defined herein) to deem the Official Statement "final" for purposes of Rule 15c2-12 of the Securities and Exchange Commission and to approve the making of such changes in the Official Statement as may be required to provide a final official statement for use in the public offering and sale of the Bonds; and

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Purchase Agreement") with Ramirez & Co. Inc. (the "Underwriter") and the Borrower, setting forth certain terms and conditions upon which the Underwriter will purchase the Bonds from the Department and the Department will sell the Bonds to the Underwriter; and

WHEREAS, it is anticipated that all or a portion of the Bonds will be refunded by the issuance of a refunding note (the "Refunding Note") on or prior to the final Mandatory Tender Date (as defined in the Indenture), which Refunding Note will be sold and initially delivered to Berkadia Commercial Mortgage LLC, as the initial funding lender (the "Initial Funding Lender") as provided in the Funding Loan Agreement (as defined herein) for subsequent transfer to the Federal Home Loan Mortgage Corporation; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture; and

WHEREAS, the Board has examined proposed forms of (a) the Indenture, the Loan Agreement, the Regulatory Agreement, the Assignment, the Tax Exemption Agreement, the Official Statement and the Purchase Agreement (collectively, the "Issuer Documents"), all of which are attached to and comprise a part of this Resolution and (b) the Subordinate Mortgage and the Borrower 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 Subordinate Mortgage and the Borrower 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, and Chapter 1371, Texas Government Code, 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 Underwriter.

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. That the Chair or Vice Chair of the Board or the Executive Director of the Department are hereby authorized and empowered, in accordance with Chapter 1371, Texas Government Code, to fix and determine the interest rate, principal amount and maturity of, the redemption and tender provisions related to, and the price at which the Department will sell to the Underwriter or another party to the Purchase Agreement, the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by an Authorized Representative (as defined below) of the Department of the Indenture and the Purchase Agreement; provided, however, that (i) the Bonds shall bear interest at the initial interest rate set forth in the Purchase Agreement in accordance with the provisions of the Indenture; provided that in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; and provided further that the initial interest rate on the Bonds shall not exceed 3.0%; (ii) the aggregate principal amount of the Bonds shall not exceed \$10,000,000; (iii) the final maturity of the Bonds shall occur not later than November 1, 2038; and (iv) the price at which the Bonds are sold to the initial purchaser thereof under the Purchase Agreement shall not exceed 100% of 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 are each 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 Nueces 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 Purchase Agreement. That the sale of the Bonds to the Underwriter and/or any other parties pursuant to the Purchase Agreement is hereby approved, that the form and substance of the Purchase Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Purchase Agreement and to deliver the Purchase Agreement to the Borrower, the Underwriter, and/or any other parties to the Purchase Agreement, as appropriate.

Section 1.8 [Reserved].

Section 1.9 [Reserved].

Section 1.10 Acceptance of the Borrower Note and the Subordinate Mortgage. That the form and substance of the Borrower Note and the Subordinate Mortgage are hereby accepted by the Department and that the Authorized Representatives each are hereby authorized to endorse and deliver the Borrower Note without recourse.

Section 1.11 Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment, and to deliver the Assignment to the Trustee.

Section 1.12 Approval, Execution, Use and Distribution of the Official Statement. That the form and substance of the Official Statement and its use and distribution by the Underwriter in accordance with the terms, conditions and limitations contained therein are hereby approved, ratified, confirmed and authorized; that the Authorized Representatives are hereby severally authorized to deem the Official Statement "final" for purposes of Rule 15c2-12 under the Securities and Exchange Act of 1934; that the Authorized Representatives named in this Resolution each are authorized hereby to make or approve such changes in the Official Statement as may be required to provide a final Official Statement for the Bonds; that the Authorized Representatives named in this Resolution each are authorized hereby to accept the Official Statement, as required; and that the use and distribution of the Official Statement by the Underwriter hereby is authorized and approved, subject to the terms, conditions and limitations contained therein, and further subject to such amendments or additions thereto as may be required by the Purchase Agreement and as may be approved by the Executive Director of the Department and the Department's counsel.

Section 1.13 [Reserved].

Section 1.14 [Reserved].

Section 1.15 [Reserved].

Section 1.16 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 1.17 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 (“Bond Counsel”), 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 1.18 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 B - Indenture
- Exhibit C - Loan Agreement
- Exhibit D - Regulatory Agreement
- Exhibit E - Borrower Note
- Exhibit F - Subordinate Mortgage
- Exhibit G - Assignment
- Exhibit H - Purchase Agreement
- Exhibit I - Official Statement
- Exhibit J - Tax Exemption Agreement

Section 1.19 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 Financial Administration of the Department, the Director of Bond Finance and Chief Investment Officer of the Department, the Director of Multifamily Bonds of the Department, the Director of Texas Homeownership 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 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 Approval of Requests for Rating from Rating Agency. That the action of the Executive Director of the Department or any successor and the Department's consultants in seeking a rating from Moody's Investors Services, Inc., and its successors and assigns, is approved, ratified and confirmed hereby.

Section 2.5 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 2.6 Underwriter. That the underwriter with respect to the issuance of the Bonds will be Ramirez & Co., Inc., or any other party identified in the Purchase Agreement.

Section 2.7 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 Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

Section 2.8 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, 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 Regulatory Agreement and the Tax Exemption 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 Regulatory Agreement and the Tax Exemption



Agreement, which require, among other things, that the “affordable unit” portion of 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 in connection with the financing of 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 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, in accordance with Section 2306.226 of the Act, 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 the Bonds 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 does 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 Note 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 Section 2306.032 of the Texas Government Code, and the March 16, 2020 action by the Governor of the State of Texas under Section 418.016, Texas Government Code, suspending certain provisions of the Texas Open Meetings Act regarding meetings of the Governing Board.

PASSED AND APPROVED this 3rd day of September, 2020.

**EXHIBIT A**

**Description of Development**

**Borrower:** FishPond Living at Corpus Christi, LP, a Texas limited partnership

**Development:** The Development is an approximately 112-unit multifamily community for seniors to be known as FishPond at Corpus Christi Apartments and to be located at 1006 6th Street, Corpus Christi, Nueces County, Texas 78404. It consists of two (2) residential apartment buildings with approximately 79,350 net rentable square feet. The Development will consist of 112 one-bedroom/one-bath units ranging from approximately 700 square feet to approximately 717 square feet.

---

**TRUST INDENTURE**

between

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
as Issuer

and

**BOKF, NA,**  
as Trustee

Relating to

\$[ \_\_\_\_\_ ]  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(FISHPOND AT CORPUS CHRISTI APARTMENTS)**  
**SERIES 2020**

Dated as of October 1, 2020

**INDEX**

**(This Index is not a part of the Indenture  
but rather is for convenience of reference only)**

	<u>Page</u>
Preambles .....	1
Granting Clauses .....	1

**ARTICLE I**

**DEFINITIONS**

Section 1.01. Definitions.....	3
Section 1.02. Interpretation.....	20
Section 1.03. Captions and Headings .....	20
Section 1.04. Content of Certificates and Opinions.....	20

**ARTICLE II**

**AUTHORIZATION AND TERMS OF BONDS**

Section 2.01. Authorization and General Terms of Bonds .....	21
Section 2.02. Maturity and Interest.....	22
Section 2.03. Execution and Authentication of Bonds .....	23
Section 2.04. Source of Payment of Bonds.....	24
Section 2.05. Payment and Ownership of Bonds.....	24
Section 2.06. Registration and Transfer of Bonds .....	25
Section 2.07. Mutilated, Lost, Wrongfully Taken or Destroyed Bonds .....	26
Section 2.08. Cancellation of Bonds.....	26
Section 2.09. Book-Entry Only System.....	27
Section 2.10. Delivery of the Bonds .....	28

**ARTICLE III**

**REDEMPTION AND REMARKETING**

Section 3.01. Redemption of Bonds .....	29
Section 3.02. Mandatory Tender.....	31
Section 3.03. Notice of Redemption.....	31
Section 3.04. Payment of Redeemed Bonds .....	33
Section 3.05. Duties of Remarketing Agent .....	34
Section 3.06. Conditions Precedent to Remarketing of Bonds and Notice .....	34
Section 3.07. Remarketing of Unredeemed Bonds.....	35
Section 3.08. Cancellation of Bonds.....	36

ARTICLE IV

REVENUES AND FUNDS

Section 4.01. Creation of Funds.....36  
Section 4.02. Allocation of Bond Proceeds and Other Deposits .....37  
Section 4.03. Bond Fund.....37  
Section 4.04. Project Fund.....38  
Section 4.05. Costs of Issuance Fund .....39  
Section 4.06. Collateral Fund.....39  
Section 4.07. Completion of the Project .....40  
Section 4.08. Expense Fund.....40  
Section 4.09. Rebate Fund .....40  
Section 4.10. Investment of Special Funds.....41  
Section 4.11. Money to be Held in Trust.....42  
Section 4.12. Valuation.....42  
Section 4.13. Nonpresentment of Bonds.....42  
Section 4.14. Repayment to the Borrower from the Special Funds.....43

ARTICLE V

THE TRUSTEE AND REMARKETING AGENT

Section 5.01. Trustee’s Acceptance and Responsibilities.....43  
Section 5.02. Certain Rights and Obligations of the Trustee.....44  
Section 5.03. Fees, Charges and Expenses of Trustee.....48  
Section 5.04. Intervention by Trustee .....49  
Section 5.05. Successor Trustee.....49  
Section 5.06. Appointment of Co-Trustee .....50  
Section 5.07. Resignation by the Trustee.....50  
Section 5.08. Removal of the Trustee.....51  
Section 5.09. Appointment of Successor Trustee .....51  
Section 5.10. Adoption of Authentication .....52  
Section 5.11. Dealing in Bonds.....52  
Section 5.12. Representations, Agreements and Covenants of Trustee.....52  
Section 5.13. Reserved.....52  
Section 5.14. Interpleader .....52  
Section 5.15. Survival of Certain Provisions .....53  
Section 5.16. Concerning the Remarketing Agent.....53  
Section 5.17. Qualifications of the Remarketing Agent .....54  
Section 5.18. Additional Duties .....54  
Section 5.19. Notices to Rating Agency .....54  
Section 5.20. Compliance with Texas Government Code .....55

ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

Section 6.01. Defaults; Events of Default.....55  
Section 6.02. Notice of Default.....56  
Section 6.03. Acceleration .....56  
Section 6.04. Other Remedies; Rights of Holders .....57  
Section 6.05. Right of Holders to Direct Proceedings .....58  
Section 6.06. Application of Money .....58  
Section 6.07. Remedies Vested in Trustee.....60  
Section 6.08. Rights and Remedies of Holders.....60  
Section 6.09. Termination of Proceedings .....61  
Section 6.10. Waivers of Events of Default.....61

ARTICLE VII

SUPPLEMENTAL INDENTURES

Section 7.01. Supplemental Indentures Generally.....61  
Section 7.02. Supplemental Indentures Not Requiring Consent of Holders.....62  
Section 7.03. Supplemental Indentures Requiring Consent of Holders.....62  
Section 7.04. Consent of the Borrower .....64  
Section 7.05. Responsibilities of Trustee.....64  
Section 7.06. Authorization to Trustee; Effect of Supplement.....64  
Section 7.07. Opinion of Counsel .....65  
Section 7.08. Modification by Unanimous Consent .....65

ARTICLE VIII

DEFEASANCE

Section 8.01. Release of Indenture .....65  
Section 8.02. Payment and Discharge of Bonds .....66  
Section 8.03. Survival of Certain Provisions .....67

ARTICLE IX

COVENANTS AND AGREEMENTS OF THE ISSUER

Section 9.01. Covenants and Agreements of the Issuer.....67  
Section 9.02. Limited Obligations of the Issuer .....68  
Section 9.03. Limitation on Issuer’s Obligations.....69  
Section 9.04. Issuer Tax Covenants.....70

ARTICLE X

AMENDMENTS TO LOAN AGREEMENT, NOTE, TAX REGULATORY AGREEMENT OR  
TAX EXEMPTION AGREEMENT

Section 10.01. Amendments Not Requiring Consent of Holders .....70  
Section 10.02. Amendments Requiring Consent of Holders .....71  
Section 10.03. Consent of the Borrower.....71  
Section 10.04. Favorable Opinion of Bond Counsel .....72

ARTICLE XI

MISCELLANEOUS

Section 11.01. Limitation of Rights.....72  
Section 11.02. Severability .....72  
Section 11.03. Notices .....72  
Section 11.04. Suspension of Mail and Courier Service .....73  
Section 11.05. Payments Due on Non-Business Days.....73  
Section 11.06. Instruments of Holders.....74  
Section 11.07. Priority of this Indenture .....74  
Section 11.08. Binding Effect.....74  
Section 11.09. Counterparts.....74  
Section 11.10. Patriot Act .....74  
Section 11.11. Governing Law .....75  
  
Signatures..... S-1  
  
Exhibit A – Form of Bond ..... A-1



## TRUST INDENTURE

**THIS TRUST INDENTURE** dated as of October 1, 2020 (this “**Indenture**”), is made between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “**Issuer**”), a public and official agency of the State of Texas, and **BOKF, NA**, a national banking association, as trustee (the “**Trustee**”), under the circumstances summarized in the following recitals (the capitalized terms used in the recitals and granting clauses and not defined therein are as defined in Article I hereof):

A. Pursuant to and in accordance with the laws of the State, including without limitation, the Act, the Issuer has determined to issue and sell the Bonds in the aggregate principal amount of \$[ ] and to use the proceeds to be derived from the sale thereof to make the Loan to the Borrower pursuant to the Loan Agreement to assist in the financing of the Project to be undertaken by the Borrower;

B. To evidence its obligation to repay the Loan, the Borrower will execute and deliver the Note;

C. The Bonds will be secured by this Indenture, and the Issuer is authorized to execute and deliver this Indenture and to do or cause to be done all acts provided or required herein to be performed on its part;

D. All acts and conditions 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, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms;

E. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise (“Freddie Mac”), has entered into a commitment with Berkadia Commercial Mortgage LLC, a Delaware limited liability company (the “Freddie Mac Seller/Servicer”) dated October [ ], 2020 (the “Freddie Mac Commitment”), whereby Freddie Mac has committed, subject to the satisfaction on or before the Initial Mandatory Tender Date (as can be extended pursuant to the terms hereof) of the Conditions to Conversion set forth in the Construction Phase Financing Agreement by and among the Lender, the Freddie Mac Seller/Servicer and Freddie Mac and the Freddie Mac Commitment, to facilitate the refinancing of the Bonds by purchasing the Funding Loan;

F. In order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer, the Borrower and the Trustee have entered into the Tax Exemption Agreement and the Tax Regulatory Agreement, each of which sets forth various certifications, representations, and covenants relating to the Federal Tax Status of the Bonds; and

F. The Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH**, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the Issuer in and to (i) the Revenues, including, without limitation, all Loan Payments, Collateral Payments and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan other than amounts received by the Issuer with respect to Reserved Rights, (ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money, (iii) the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds is invested, and (except for money required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name 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 by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture, (iv) the Note, (v) the Subordinate Mortgage, and (vi) the Loan Agreement; except in all cases for the Reserved Rights (the foregoing collectively referred to as the “**Trust Estate**”),

**TO HAVE AND TO HOLD** unto the Trustee and its successors in that trust and its and their assigns forever;

**BUT IN TRUST, NEVERTHELESS**, and subject to the provisions hereof,

(a) except as provided otherwise herein, for the equal and proportionate benefit, security and protection of all present and future Holders of the Bonds issued or to be issued under and secured by this Indenture,

(b) for the enforcement of the payment of the Bond Service Charges, when payable, according to the true intent and meaning thereof and of this Indenture, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of this Indenture,

in each case, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond and all Bonds shall have the same right, lien and privilege under this Indenture and shall be secured equally and ratably hereby, it being intended that the lien and security of this Indenture shall take effect from the date hereof, without regard to the date of the actual issue, sale or disposition of the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that

(i) if the principal of the Bonds and the interest due or to become due thereon shall be well and truly paid, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the outstanding Bonds shall have been paid and discharged in accordance with Article VIII hereof, and

(ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof,

this Indenture and the rights assigned hereby shall cease, determine and be void, except as provided in Section 8.03 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

It is declared that all Bonds issued hereunder and secured hereby are to be issued, authenticated and delivered, and that the Trust Estate assigned hereby is to be dealt with and disposed of under, upon and subject to, the terms, conditions, stipulations, covenants, agreements, obligations, trusts, uses and purposes provided in this Indenture. The Issuer has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Holders, as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.01. Definitions.

In addition to the words and terms defined elsewhere in this Indenture or by reference to the Loan Agreement, unless the context or use clearly indicates another meaning or intent:

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

“**Act of Bankruptcy**” means written notice to the Trustee that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that a petition in bankruptcy, insolvency, reorganization or liquidation proceedings (or similar proceedings) has been instituted by or against the Borrower; provided that, if in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after commencement thereof.

“**Additional Payments**” means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.4 of the Loan Agreement.

“**Administrative Expenses**” means the Ordinary Trustee Fees and Expenses and the Dissemination Agent Fee.

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

“**Authorized Borrower Representative**” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity. The initial Authorized Borrower Representative is the Chief Executive Officer of the sole member of the General Partner.

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

“**Authorized Official**” means the Chair or Vice Chair of the Governing Body, the Executive Director, the Director of Administration, the Director of Financial Administration, the Director of Bond Finance and Chief Investment Officer, the Director of Multifamily Bonds and the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Governing Body and any other officer or employee of the Issuer designated by certificate of any of the foregoing as authorized by the Issuer to perform a specified act, sign a specified document or otherwise take action with respect to the Bonds. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Official is an Authorized Official until such time as such provider files with it a written certificate identifying a different person or persons to act in such capacity.

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

“**Beneficial Owner**” means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“**Beneficial Ownership Interest**” means the right to receive payments and notices with respect to the Bonds held in a Book-Entry System.

“**Bond Counsel**” means Bracewell LLP or other 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.

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

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

“**Bond Payment Date**” means each Interest Payment Date and any other date Bond Service Charges on the Bonds are due, whether at maturity, Mandatory Tender, upon redemption or acceleration or otherwise.

“**Bond Purchase Agreement**” means the Bond Purchase Agreement, dated October [\_\_\_], 2020, among the Underwriter, the Issuer and the Borrower.

“**Bond Resolution**” means the certain resolution relating to the issuance and sale of the Bonds, adopted by the Governing Body on [September 3], 2020.

“**Bond Service Charges**” means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity, Mandatory Tender or upon redemption or acceleration.

“**Bonds**” means the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 authorized in the Bond Resolution and Section 2.01 hereof in an aggregate principal amount not to exceed \$[\_\_\_\_\_].

“**Book-Entry Form**” or “**Book-Entry System**” means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (b) the ownership of book-entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book-entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and Bond Service Charges thereon.

“**Borrower**” means FishPond Living at Corpus Christi, LP, a Texas limited partnership, and its authorized successors and assigns.

“**Borrower Documents**” means the Financing Documents to which the Borrower is a party.

“**Business Day**” means a day other than a Saturday or a Sunday or any other day on which (a) banking institutions in the City of New York or in the city in which the Designated Office of the Trustee is located is authorized or obligated by law or executive order to be closed, or (b) the New York Stock Exchange is closed.

“**Cash Flow Projection**” means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction of the Rating Agency, the sufficiency of (a) the amount

on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.07 hereof, (iii) a release of Eligible Funds from the Negative Arbitrage Account as provided in Section 4.03 hereof, (iv) the optional redemption of the Bonds as provided in Section 3.01(a) hereof, (v) the sale or other disposition by the Trustee of Eligible Investments prior to maturity at a price below par in connection with an optional redemption prior to a Mandatory Tender Date, as described in Section 4.10 hereof, or (vi) the purchase, sale or exchange of Eligible Investments as provided in Section 4.10 hereof.

**“Closing Date”** means October [\_\_\_\_], 2020.

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

**“Collateral Payments”** means Eligible Funds paid to the Trustee for the benefit of the Borrower in respect to the repayment of the Loan for deposit into the Collateral Fund pursuant to Section 4.2 of the Loan Agreement and Section 4.06 hereof as a prerequisite to the advance of money in the Project Fund.

**“Completion Certificate”** means the certificate attached as Exhibit C to the Loan Agreement.

**“Completion Date”** means the date of completion of the Project evidenced in accordance with the requirements of Section 3.9 of the Loan Agreement.

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

**“Construction Phase Financing Agreement”** means the Construction Phase Financing Agreement dated as of the Closing Date among the Lender, the Freddie Mac Seller/Servicer and the Federal National Home Loan Mortgage Corporation.

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of October 1, 2020, between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

**“Controlling Holders”** means in the case of consent or direction to be given hereunder, the Holders of the majority in aggregate principal amount of the outstanding Bonds.

**“Conversion”** means the conversion of the Loan from the Construction Phase (as defined in the Construction Phase Financing Agreement) to the Permanent Phase (as defined in the Construction Phase Financing Agreement) on the Conversion Date.

**“Conversion Date”** means the date the Freddie Mac Seller/Servicer acquires the Funding Loan upon the satisfaction of the Conditions to Conversion (as defined in the Construction Phase Financing Agreement), as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion (as defined in the Construction Phase Financing Agreement); provided, however, the Conversion Date shall occur no earlier than [\_\_\_\_\_] 1, 2022.

**“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; 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 created in Section 4.01 hereof.

**“Depository”** means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in Bonds and to effect transfers of book-entry interests in Bonds.

**“Designated Office”** means the office of the Trustee at the Notice Address set forth in this Indenture or, solely for purposes of presentation for transfer, payment or exchange of the Bonds, the designated operations office of the Trustee at 111 Fillmore Ave. E. St. Paul Minnesota 5501, Attn. Corporate Trust Services, or at such other address as may be specified in writing by the Trustee, as provided in Section 12.03 hereof.

**“Dissemination Agent”** means [Digital Assurance Certification LLC], or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

**“Dissemination Agent Fee”** means the fee payable to the Dissemination Agent as compensation for its services and the reimbursement to the Dissemination Agent of its expenses

in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to Section 4.4 of the Loan Agreement.

“**DTC**” means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

“**DTC Participant**” means any participant contracting with DTC under its Book-Entry System and includes securities brokers and dealers, banks and trust companies and clearing corporations.

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

(a) the proceeds of the Bonds (including any additional amount paid by the Underwriter to the Trustee as the purchase price of the Bonds);

(b) money received by the Trustee constituting proceeds of the Mortgage Loan;

(c) remarketing proceeds of the Bonds (including any additional amount paid by the Remarketing Agent to the Trustee as the remarketing price of the Bonds) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer or any Affiliate of either the Borrower or the Issuer);

(d) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(e) the proceeds of draws by the Trustee on any letter of credit provided to the Trustee for the benefit of the Borrower;

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

(g) the proceeds of the Funding Loan; and

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

“**Eligible Investments**” means, subject to the provisions of Section 4.10 hereof, any of the following investments that mature (or are redeemable at the option of the Trustee without penalty) at such time or times as to enable timely disbursements to be made from the fund in which such



investment is held or allocated in accordance with the terms of this Indenture, to the extent the same are at the time legal for investment of the Issuer's funds (written direction of the Issuer or an Authorized Borrower Representative to invest funds shall be conclusive evidence that the directed investment is at the time a legal investment of the Issuer's funds):

(a) Government Obligations;

(b) Shares or units in any money market mutual fund rated "Aaa-mf" by Moody's (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security), including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America; and

(c) Obligations of any state or political subdivision of any state or instrumentality thereof that (i) are rated at the time of purchase in the Highest Rating Category by the Rating Agency and (ii) have an interest accrual period, interest payment dates and principal payment dates that provide for timely payments that are unconditionally and directly payable from the obligations of the character described in (a) and (b) above in amounts sufficient to meet the payment obligations on the Bonds.

**"Event of Default"** means (a) with respect to this Indenture, any of the events described as an Event of Default in Section 6.01 hereof and (b) with respect to the Loan Agreement, any of the events described as an Event of Default in Section 7.1 of the Loan Agreement.

**"Expense Fund"** means the Expense Fund created in Section 4.01 hereof.

**"Extraordinary Issuer Fees and Expenses"** means the fees, expenses and disbursements payable to the Issuer under this Indenture or any other Financing Document for Extraordinary Services and Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by the Issuer, Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement.

**"Extraordinary Services"** and **"Extraordinary Expenses"** mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under this Indenture, the Loan Agreement or any other Financing Document, 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, a default or 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 the Trustee and the Trustee's counsel which are to be paid by the Borrower pursuant to Section 4.4 of 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 Opinion of Bond Counsel to the effect that such action will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

**“Federal Tax Status”** means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

**“Financing Documents”** means this Indenture, the Bonds, the Loan Agreement, the Note, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the Mortgage Loan Documents and any secondary financing documents, and any documents relating to low income housing tax credit equity.

**“Force Majeure”** means any of the causes, circumstances or events described as constituting Force Majeure in Section 7.1 of the Loan Agreement.

**“Freddie Mac Seller/Servicer”** means Berkadia Commercial Mortgage LLC, a Delaware limited liability company.

**“Funding Loan”** means the tax-exempt loan relating to the refunding of a portion of the Bonds, if originated, evidenced by a note made by the Issuer and purchased by the Freddie Mac Seller/Servicer in the maximum principal amount of \$[\_\_\_\_\_].

**“General Partner”** means FishPond Corpus Christi Manager, LLC, a Texas limited liability company, and its permitted successors and assigns.

**“Governing Body”** means the Governing Board of the Issuer.

**“Government”** means the government of the United States of America, the government of any other nation, any political subdivision of the United States of America or any other nation (including, without limitation, any state, territory, federal district, municipality or possession) and any department, agency or instrumentality thereof; and “Governmental” shall mean of, by, or pertaining to any Government.

**“Government Obligations”** means (i) noncallable, non-redeemable direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (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.

**“Highest Rating Category”** means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG 1” if rated by Moody’s or “A-1+” or “AA+” if rated by S&P.

**“Holder”** or **“Holder of a Bond”** means the Person in whose name a Bond is registered on the Register.

**“Indemnified Parties”** means, collectively, the Issuer Indemnified Persons and the Trustee Indemnified Persons.

**“Indenture”** means this Trust Indenture, dated as of October 1, 2020, between the Issuer and the Trustee, as amended or supplemented from time to time.

**“Independent”** when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

**“Initial Bond”** means the initial Bond registered by the Texas Comptroller of Public Accounts and subsequently canceled and replaced by a definitive Bond pursuant to this Indenture.

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

**“Initial Mandatory Tender Date”** means [\_\_\_\_\_] 1, 2023.

**“Interest Payment Date”** means (a) each May 1 and November 1 of each year beginning May 1, 2021, (b) each Mandatory Tender Date and (c) each Redemption Date. In the case of a payment of defaulted interest, “Interest Payment Date” also means the date of such payment established pursuant to Section 2.05 hereof.

**“Interest Period”** means, initially, the period from the Closing Date to and including May 1, 2021, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the day preceding the next Interest Payment Date.

**“Interest Rate”** means the Initial Interest Rate to, but not including, the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

**“Interest Rate for Advances”** means the rate per annum that is two percent plus that interest rate announced by the Trustee or one of its affiliates in its lending capacity as a bank as its “Prime Rate” or its “Base Rate,” but in no event to exceed the highest interest rate permitted by applicable law.

**“Investor Limited Partner”** means PNC Real Estate Tax Credit Capital Institutional Fund 47, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

**“Issuer”** means the Texas Department of Housing and Community Affairs, a public and official agency of the State, together with its successors and assigns, in its capacity as issuer of the Bonds.

**“Issuer Administrative Fee”** means the fee payable annually in advance to the Issuer on each October 1, in the amount of 0.10% per annum of the aggregate principal amount of the Bonds outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administrative Fee to the Issuer for the period from the Closing Date to September 30, 2022. 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 Administrative Fee due on or after October 1, 2022.

**“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 (as defined in the Tax Regulatory Agreement) in the Project, for the duration of the State Restrictive Period (as defined in the Tax Regulatory Agreement). The first annual 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, 2023. The Issuer’s Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

**“Issuer Documents”** means the Financing Documents to which the Issuer is a party.

**“Issuer Fees and Expenses”** means the Issuer Administrative Fee, the Issuer Compliance Fee and the Extraordinary Issuer Fees and Expenses.

**“Issuer Indemnified Persons”** means the Issuer, the Governing Body, and each and all of their respective past, present and future directors, board members, governing members, trustees, officers, employees, attorneys, agents and advisers (including counsel and financial advisors).

**“Lender”** means Sterling Bank, a [\_\_\_\_\_], and its successors and assigns.

**“Loan”** means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

**“Loan Agreement”** means the Loan Agreement dated as of October 1, 2020, between the Issuer and the Borrower, as amended or supplemented from time to time and assigned by the Issuer to the Trustee, except for the Reserved Rights.

**“Loan Payments”** means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.1 of the Loan Agreement.

**“Mandatory Tender”** means a tender of the Bonds required by Section 3.02 hereof.

**“Mandatory Tender Date”** means (i) the Initial Mandatory Tender Date and (ii) if the outstanding Bonds are remarketed pursuant to Article III for a Remarketing Period that does not extend to the final maturity of the Bonds, the Remarketing Date following such Remarketing Period.

**“Maturity Date”** means [\_\_\_\_\_] 1, 203[\_\_\_\_\_].

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

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

**“Mortgage Loan”** means the mortgage loan to be made by the Lender to the Borrower in the principal amount of \$[\_\_\_\_\_].

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

**“National Housing Act”** means the National Housing Act of 1937, as amended, and the applicable regulations thereunder.

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

**“Note”** means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached as Exhibit A to the Loan Agreement and in the principal amount of \$[\_\_\_\_\_], evidencing the obligation of the Borrower to make Loan Payments.

**“Notice Address”** means:

To the Issuer:

Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
Facsimile: (512) 475-1895  
Email: Teresa.morales@tdhca.state.tx.us

To the Trustee:

BOKF, NA  
Corporate Trust Department  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225  
Attention: Kathy McQuiston  
Telephone: (214) 932-3061  
Email: kmcquiston@bokf.com

To the Borrower:

FishPond Living at Corpus Christi, LP  
500 West 2nd Street, Suite 1900 #29  
Austin, Texas 78701  
Attention: David Fournier  
Telephone: (512) 970-3889  
Email: dfournier@fishpondliving.com

With a copy to:

The Law Offices of Claire G. Palmer, PLLC  
7707 Brookview Court  
Irving, Texas 75063  
Telephone: (972) 948-3166  
Email: clairepalmer@sbcglobal.net

(which copy shall not constitute notice to Borrower)

To the Investor Limited Partner:

PNC Real Estate Tax Credit Capital Institutional Fund  
47, Limited Partnership  
121 S.W. Morrison Street, Suite 1300  
Portland, Oregon 97204-3143  
Attn: Fund Manager

With a copy to:

Nixon Peabody LLP  
799 9th Street NW Suite 500,  
Washington, DC 20001-5327  
Attention: Matthew W. Mullen

To the Special Limited Partner:

Columbia Housing SLP Corporation

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

To the Rating Agency: Moody's Investors Service, Inc.  
7 World Trade Center  
250 Greenwich Street, 16th Floor  
New York, NY 10007  
Attention: Public Finance Group-Housing Team  
Electronic notices to: Housing@moodys.com

To the Remarketing Agent: Ramirez & Co., Inc.  
[\_\_\_\_\_] ]  
[\_\_\_\_\_] ]  
Attention: [\_\_\_\_\_] ]  
Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

or such additional or different address, notice of which is given under Section 12.03 hereof.

**“Opinion of Bond Counsel”** means an opinion of Bond Counsel.

**“Opinion of Counsel”** means an opinion from an attorney or firm of attorneys, acceptable to the Trustee, with experience in the matters to be covered in the opinion, which may be legal counsel of the Issuer or the Borrower..

**“Optional Redemption Date”** means [\_\_\_\_\_] 1, 2022, or any Business Day thereafter.

**“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 this Indenture, while the Bonds are outstanding in an annual amount equal to \$[\_\_\_\_\_] ; provided, however, the amount of Ordinary Trustee Fees and Expenses payable under this Indenture is limited to money withdrawn from the Costs of Issuance Fund and the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to Section 4.4 of the Loan Agreement. 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 4.4 of the Loan Agreement.

**“Organizational Documents”** means the Amended and Restated Agreement of Limited Partnership of the Borrower, as it may be amended from time to time.

**“Outstanding Bonds,” “Bonds outstanding”** or **“outstanding”** as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under this Indenture, except:

(a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;

(b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 2.07 of this Indenture.

**“Permitted Liens”** means liens relating to the Project permitted by the Mortgage Loan Documents, and specifically includes the Subordinate Mortgage and the mortgage relating to the TCAP RF Loan.

**“Person”** or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

**“Plans and Specifications”** means the plans and specifications describing the Project as of the Closing Date and as they may be changed as provided in the Loan Agreement.

**“Predecessor Bond”** of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 2.07 hereof in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 2.07, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

**“Project”** means the approximately 112-unit multifamily housing facility known as FishPond at Corpus Christi Apartments located at 1006 Sixth Street, Corpus Christi, Texas 78404.

**“Project Costs”** means the costs of the Project specified in Section 3.6 of the Loan Agreement.

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

**“Purchase Price”** has the meaning specified for such term in Section 3.02(a) hereof.

**“Rating Agency”** means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

**“Rating Category”** means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

**“Rebate Amount”** has the meaning specified for such term in the Tax Exemption Agreement.



**“Rebate Analyst”** means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and retained by the Borrower to make the computations and give the directions required pursuant to the Tax Exemption Agreement. Initially, the Rebate Analyst will be Tiber Hudson, LLC.

**“Rebate Analyst Fee”** means a fee paid or payable to the Rebate Analyst for each rebate calculation pursuant to the Tax Exemption Agreement.

**“Rebate Fund”** means the Rebate Fund created in Section 4.09 hereof.

**“Redemption Date”** means any date on which the Bonds are to be redeemed pursuant to this Indenture.

**“Register”** means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 2.06 hereof.

**“Regular Record Date”** means, with respect to any Bond, the fifteenth day of the calendar month next preceding each Interest Payment Date.

**“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.

**“Remarketing Agent”** means initially, Ramirez & Co., Inc., and any successor Remarketing Agent that may be designated in accordance with Section 5.16 hereof.

**“Remarketing Agreement”** means the Remarketing Agreement dated as of October 1, 2020, between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

**“Remarketing Date”** means the date on which the Bonds initially are remarketed, and if the outstanding Bonds on such date or on any subsequent Remarketing Date are remarketed pursuant to this Indenture for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

**“Remarketing Expenses”** means the reasonable costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees, the costs of a Cash Flow Projection and other costs and expenses incurred in connection with or properly attributable to the remarketing of Bonds as certified to the Trustee by the Remarketing Agent in writing.

**“Remarketing Notice Parties”** means the Borrower, the Issuer, the Trustee, the Remarketing Agent, the Investor Limited Partner and the Rating Agency.

**“Remarketing Period”** means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.07 hereof or the final Maturity Date of the Bonds, as applicable.

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

**“Remarketing Rate”** means the interest rate or rates established pursuant to Article III and borne by the Bonds then outstanding from and including the Mandatory Tender Date to, but not including, the immediately succeeding Mandatory Tender Date or the Maturity Date, as applicable.

**“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 4.4 of the Loan Agreement, including the Issuer Fee and Expenses; (c) all rights of the Issuer to receive any Rebate Amount 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 other Financing Documents; (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 Tax Exemption Agreement and in the Tax Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate Mortgage or the Note, as applicable, 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 Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate Mortgage or the Note, (4) the maintenance of insurance by the Borrower, (5) no liability of the Issuer to third parties, and (6) 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 Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate 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 Tax Exemption Agreement, the Tax Regulatory 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) all enforcement remedies with respect to the foregoing.

**“Revenues”** means (a) the Loan Payments, (b) the Collateral Payments, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing money. The term “Revenues” does not include any money or investments in the Rebate Fund or Additional Payments or other payments or amounts with respect to the Reserved Rights.

**“S&P”** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the State of New York, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

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

“**Special Limited Partner**” means Columbia Housing SLP Corporation, an Oregon corporation and its permitted successors and assigns.

“**Special Record Date**” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

“**State**” means the State of Texas.

“**Subordinate Mortgage**” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing, dated of even date with this Indenture, from the Borrower to BOKF, NA for the benefit of the Trustee and the Issuer as security for the Borrower’s obligations under the Loan Agreement other than repayment of principal and interest on the Note, as amended or supplemented from time to time.

“**Supplemental Indenture**” means any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VII hereof.

“**Surplus Cash**” has the meaning specified in the Mortgage Loan Documents.

“**Tax Exemption Agreement**” means the Tax Exemption Certificate and Agreement dated as of October 1, 2020, among the Issuer, the Borrower and the Trustee, as amended or supplemented from time to time.

“**Tax Regulatory Agreement**” means the Regulatory and Land Use Restriction Agreement dated as of October 1, 2020, among the Issuer, the Borrower and the Trustee, as amended or supplemented from time to time.

“**TCAP RF Loan**” means the loan of certain funds from the Tax Credit Assistance Program (TCAP) Repayment Funds in the maximum principal amount of \$[\_\_\_\_\_] by the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, to the Borrower, as evidenced and secured by a subordinate mortgage encumbering the Project

“**Tendered Bond**” means any Bond which has been tendered for purchase pursuant to a Mandatory Tender.

“**Trust Estate**” means the property rights, money, securities and other amounts pledged and assigned to the Trustee hereunder pursuant to the Granting Clauses hereof.

“**Trustee**” means BOKF, NA, a national banking association, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

“**Trustee Indemnified Persons**” means the Trustee and each and all of its past, present and future directors, officers, employees, attorneys, agents and advisers (including counsel).

“**Underwriter**” means Ramirez & Co., Inc., a [ \_\_\_\_\_ ] corporation.

“**Unredeemed Bonds**” means, on any Mandatory Tender Date, Bonds that are not scheduled to be redeemed pursuant to Section 3.01(a) hereof.

“**Untendered Bond**” has the meaning specified for such term in Section 3.07(a) hereof.

Section 1.02. Interpretation.

Any reference herein to the Issuer, to the Governing Body or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of any statute of the State or of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this paragraph, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under the Bond Resolution, the Bonds, the Financing Documents or any other instrument or document entered into in connection with any of the foregoing, including without limitation, any alteration of the obligation to pay Bond Service Charges in the amount and manner, at the times, and from the sources provided in the Bond Resolution and this Indenture, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” “hereinafter” and similar terms refer to this Indenture; and the term “hereafter” means after, and the term “heretofore” means before, the date of this Indenture. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.03. Captions and Headings.

The captions and headings in this Indenture are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 1.04. Content of Certificates and Opinions.

Every certificate or opinion provided for in this Indenture with respect to compliance with any provision hereof made or given by an Authorized Official of the Issuer or an Authorized Borrower Representative may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion or representation given by counsel or an accountant, unless such Authorized Official or Authorized Borrower Representative, as applicable, knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement is based is erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based, insofar as it relates to factual matters with respect to which information is in the possession of the Issuer or the Borrower, as

applicable, upon a certificate or opinion of or representation by an Authorized Official of the Issuer or Authorized Borrower Representative, unless such counsel or accountant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such certificate, opinion or representation is based is erroneous. The same Authorized Official of the Issuer or an Authorized Borrower Representative, or the same counsel or accountant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Indenture, but different officers, counsel or accountants may certify to different matters.

When any certificate or opinion is required by the express terms of this Indenture to be given by the Issuer on its own behalf, any such certificate or opinion made or given by an Authorized Official of the Issuer (and in no event individually) may be based, (i) insofar as it relates to factual matters, upon a certificate of or representation by the Borrower, (ii) insofar as it relates to legal or accounting matters, upon a certificate or representation by counsel or an accountant, as the case may be, in each case under clauses (i) and (ii) without further investigation or inquiry by such Authorized Official unless such Authorized Official knows that the certificate or opinion with respect to the matters upon which such certificate or opinion may be based are erroneous in any material respect.

## ARTICLE II

### AUTHORIZATION AND TERMS OF BONDS

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

(a) Authorization of Bonds. There is hereby authorized, established and created an issue of bonds of the Issuer to be known and designated as the “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020.” No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized principal amount of Bonds which may be issued under the provisions of this Indenture is \$[\_\_\_\_\_].

(b) General Terms. The Bonds shall be in substantially the form as set forth in *Exhibit A* to this Indenture; shall be numbered consecutively from “R-1” upwards bearing numbers not then contemporaneously outstanding (in order of issuance) according to the records of the Trustee; shall be in Authorized Denominations; and shall be dated the Closing Date; provided that the Initial Bond shall have such changes as described in the last paragraph of Section 2.03 hereof.

(c) Registered Form. All Bonds shall be in fully registered form, and, except as provided in Section 2.06 hereof, the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

(d) Further Details. The Bonds shall be negotiable instruments in accordance with the Act, and shall express the purpose for which they are issued and any other statements or legends which may be required by law. Each Bond shall be of a single

maturity, unless the Trustee shall be directed to authenticate and deliver a Bond of more than one maturity.

Section 2.02. Maturity and Interest.

(a) General. The Bonds shall bear interest on the principal amount outstanding from the most recent date to which interest has been paid or duly provided for (or, if no interest has been paid or provided for, from the Closing Date), payable on each Interest Payment Date. The Bonds shall bear interest at the Interest Rate for each Interest Period as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30 day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.01 hereof.

(b) Initial Interest Rate. From the date of their initial delivery to but not including the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.02 hereof. If sufficient funds are not available to pay the Purchase Price on the Unredeemed Bonds following such Mandatory Tender on the Initial Mandatory Tender Date and any such Bonds are not redeemed pursuant to Section 3.01(b) hereof, such Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the principal of and accrued interest on such Bonds, with interest being paid monthly on the first Business Day of each month.

(c) Establishment of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.02. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then outstanding for the Remarketing Period specified by the Remarketing Agent (which shall not extend beyond the Forward Commitment Maturity Date (as defined in the Construction Phase Financing Agreement) in effect at the time the new Remarketing Period is determined) at the written direction of an Authorized Borrower Representative as provided in Section 3.07 hereof, would enable the Bonds to be remarketed at a price equal to 100% of the principal amount of Bonds to be remarketed. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate per annum, the Bonds outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds outstanding shall be redeemed pursuant to Section 3.01(b) hereof and not remarketed.

(d) Notice of Remarketing Rate. The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no

event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination by telephone or electronic mail, promptly confirmed in writing, to the Trustee, the Issuer and the Borrower. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Trustee, the Issuer, the Borrower and the Holders for the purposes of this Indenture.

Section 2.03. Execution and Authentication of Bonds.

Each Bond shall be signed by the manual or facsimile signature of the Chair or Vice Chair of the Governing Body and attested by the manual or facsimile signature of the Secretary or Assistant Secretary to the Governing Body, in their official capacities, and its seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced. In case any officer whose signature or a facsimile of whose signature shall appear on any Bond shall cease to be that officer before the issuance of the Bond, such signature or the facsimile thereof nevertheless shall be valid and sufficient for all purposes, the same as if he or she had remained in office until that time. Any Bond may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of the Bond that person was not the proper officer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Bonds. The Bonds may be typewritten, printed, engraved, lithographed or otherwise produced.

No Bond, other than the Initial Bond, shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth in Exhibit A to this Indenture, has been signed by the Trustee. The authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. The certificate of the Trustee may be executed by any person authorized by the Trustee, but it shall not be necessary that the same authorized person sign the certificates of authentication on all of the Bonds.

The Initial Bond shall be numbered "I-1" and shall be identical to the form of the Bond set forth in *Exhibit A*, except (a) in lieu of the certificate of authentication of the Trustee, the Initial Bond shall contain the Registration Certificate of the Texas Comptroller of Public Accounts substantially in the form set forth below, (b) no CUSIP number shall be required, (c) the DTC FAST Rider in the form of Bond shall not be included in the Initial Bond, (d) the sixth to last and seventh to last paragraphs in the form of Bond shall be deleted from the Initial Bond, (e) the notice at the top of the form of Bond shall be deleted from the Initial Bond, and (f) the third to last paragraph of the form of Bond shall be replaced with the following in the Initial Bond: "This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless the Comptroller's Registration Certificate herein has been executed by an authorized representative of the Texas Comptroller of Public Accounts."

In lieu of the authentication certificate of the Trustee, the Initial Bond shall contain the following certificate:

“REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER           §  
OF PUBLIC ACCOUNTS                   §       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 of office this \_\_\_\_\_.

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

(SEAL)”

The provisions of Exhibit A may be rearranged or re-ordered for purposes of the Initial Bond.

Section 2.04. Source of Payment of Bonds.

The Issuer covenants that it will promptly pay the principal of and the interest on the Bonds only out of (a) the Revenues pledged for the payment thereof under this Indenture, (b) the amounts held in Special Funds, and (c) from any other moneys held pursuant to the Trust Estate. Nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of the Issuer. All the Bonds to be issued hereunder shall be equally and ratably secured, to the extent provided herein, by this Indenture.

Section 2.05. Payment and Ownership of Bonds.

Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee. Subject to the provisions of Sections 2.08 and 2.09 hereof, (a) the principal of any Bond shall be payable when due to a Holder upon presentation and surrender of such Bond at the Designated Office of the Trustee or at the office designated by the Trustee, and (b) interest on any Bond shall be paid on each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

If and to the extent, however, that payment or provision for payment of interest on any Bond on any Interest Payment Date is not made, that interest shall cease to be payable to the Person who was the Holder of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (a) the Trustee shall, pursuant to Section 6.06(d)



hereof, establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid (or when the Bonds are in Book-Entry Form, sent pursuant to the applicable procedures of the Depository), to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

Subject to the foregoing, each Bond delivered under this Indenture upon transfer thereof, or in exchange for or in replacement of any other Bond, shall carry the rights to interest accrued and unpaid, and to accrue on that Bond, or which were carried by that Bond.

Except as provided in this Section and the first paragraph of Section 2.07 hereof, (a) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (b) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (c) neither the Issuer nor the Trustee shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

#### Section 2.06. Registration and Transfer of Bonds.

So long as any of the Bonds remain outstanding, the registration and transfer of Bonds, as provided in this Indenture, will be maintained and kept at the Designated Office of the Trustee.

Subject to the provisions set forth above and in Section 2.09 hereof, any Bond may be transferred upon the Register, upon presentation and surrender thereof at the Designated Office of the Trustee, together with an assignment duly executed by the Holder or its duly authorized attorney in any form which shall be satisfactory to the Trustee. Upon transfer of any Bond and on request of the Trustee, the Issuer shall execute in the name of the transferee, and the Trustee shall authenticate and deliver, a new Bond or Bonds, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds presented and surrendered for transfer.

In all cases in which Bonds shall be transferred hereunder, the Issuer shall execute, and the Trustee shall authenticate and deliver, Bonds in accordance with the provisions of this Indenture. The transfer shall be made without charge; provided, that the Issuer and the Trustee may make a charge for every exchange or transfer of Bonds sufficient to reimburse them for any tax or excise required to be paid with respect to the transfer. The charge shall be paid before a new Bond is delivered.

All Bonds issued upon any transfer of Bonds shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon transfer.

Section 2.07. Mutilated, Lost, Wrongfully Taken or Destroyed Bonds.

If any Bond is mutilated, lost, wrongfully taken or destroyed, in the absence of written notice to the Issuer or the Trustee that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of like date, maturity and denomination as the Bond mutilated, lost, wrongfully taken or destroyed; provided, that (a) in the case of any mutilated Bond, the mutilated Bond first shall be surrendered to the Trustee, and (b) in the case of any lost, wrongfully taken or destroyed Bond, there first shall be furnished to the Trustee evidence of the loss, wrongful taking or destruction satisfactory to the Trustee, together with indemnity satisfactory to an Authorized Borrower Representative, the Trustee and an Authorized Official.

If any lost, mutilated, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond, the Issuer may direct the Trustee to pay that Bond without surrender thereof upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The Issuer and the Trustee may charge the Holder of a mutilated, lost, wrongfully taken or destroyed Bond their reasonable fees and expenses in connection with their actions pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being mutilated, lost, wrongfully taken or destroyed (a) shall constitute, to the extent of the outstanding principal amount of the Bond mutilated, lost, taken or destroyed, an additional contractual obligation of the Issuer, regardless of whether the mutilated, lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone and (b) shall be entitled to all of the benefits of this Indenture equally and proportionately with any and all other Bonds issued and outstanding hereunder.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and, to the extent permitted by law, shall preclude any and all other rights and remedies with respect to the replacement or payment of negotiable instruments or other investment securities without their surrender, notwithstanding any law or statute to the contrary now existing or enacted hereafter.

Section 2.08. Cancellation of Bonds.

Any Bond surrendered pursuant to this Article for the purpose of payment or retirement or for exchange, replacement or transfer shall be cancelled upon presentation and surrender thereof to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the Issuer, or the Borrower on behalf of the Issuer, may deliver at any time to the Trustee with written instructions for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer or the Borrower may have acquired in any manner whatsoever. All Bonds so delivered shall be cancelled promptly by the Trustee. Cancelled Bonds shall be disposed of by the Trustee at that time, or at any earlier time directed by the Issuer, in accordance with its policies and procedures. Certification of the surrender and cancellation shall be made to the Issuer by the Trustee upon the request of the Issuer.

Section 2.09. Book-Entry Only System.

Notwithstanding any provision of this Indenture to the contrary, the Issuer may direct that all Bonds issued hereunder shall be initially issued in a Book-Entry System, registered in the name of a Depository or its nominee as registered owner of the Bonds, and held in the custody of that Depository. Unless otherwise requested by a Depository, a single certificate will be issued and delivered to the Depository, or held by the Trustee as custodian for the Depository, for each maturity of Bonds. Beneficial Owners of Bonds in a Book-Entry System will not receive physical delivery of Bond certificates except as provided hereinafter. For so long as a Depository shall continue to serve as securities depository for the Bonds as provided herein, all transfers of Beneficial Ownership Interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring Beneficial Ownership Interests of Bonds is to receive, hold or deliver any Bond certificate; provided; that, if a Depository fails or refuses to act as securities depository for the Bonds, the Issuer shall take the actions necessary to provide for the issuance of Bond certificates to the Holders of such Bonds.

With respect to Bonds registered in the name of a Depository, the Issuer, the Borrower and the Trustee shall have no responsibility or obligation to any participant therein or to any Person on whose behalf any participant holds an interest in the Bonds. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation with respect to (a) the accuracy of the records of the Depository or any participant therein or any other Person, other than a registered owner of the Bonds, as shown in the Register, or any notice with respect to the Bonds or (b) the payment to any participant in the Depository or any other Person, other than a registered owner of the Bonds, as shown in the Register, of any amount with respect to principal of or interest on or Purchase Price of the Bonds.

Replacement Bonds may be issued directly to Beneficial Owners of Bonds other than a Depository, or its nominee, but only in the event that (a) the Depository determines not to continue to act as securities depository for the Bonds (which determination shall become effective no less than 90 days after written notice to such effect to the Issuer and the Trustee); or (b) the Issuer has advised a Depository of its determination (which determination is conclusive as to the Depository and Beneficial Owners of the Bonds) that the Depository is incapable of discharging its duties as securities depository for the Bonds; or (c) the Issuer has determined (which determination is conclusive as to the Depository and the Beneficial Owners of the Bonds) that the interests of the Beneficial Owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Issuer and the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Issuer and the Borrower fail to locate another qualified securities depository to replace the Depository, the Issuer and the Borrower, at the Borrower's expense, shall cause to be authenticated and delivered replacement Bonds, in certificate form, to the Beneficial Owners of the Bonds. In the event that the Issuer makes the determination noted in (b) or (c) above (provided that the Issuer undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any such determination), and has made provisions to notify the Beneficial Owners of Bonds of such determination by mailing an appropriate notice to the Depository, the Issuer shall cause to be issued replacement Bonds in certificate form to Beneficial Owners of the Bonds as shown on the records of the Depository provided to the Issuer.

Upon the written consent of 100% of the Beneficial Owners of the Bonds, the Trustee shall withdraw the Bonds from any Depository and authenticate and deliver Bonds fully registered to the assignees of that Depository or its nominee. If the request for such withdrawal is not the result of any Issuer action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the persons requesting such withdrawal, authentication and delivery; otherwise such withdrawal, authentication and delivery shall be at the cost and expense of the Borrower.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book-entry at a Depository, (a) the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate Person or entity to meet the requirements of the Depository as to registering or transferring the book-entry to produce the same effect and (b) delivery of the Bonds will be in accordance with arrangements among the Issuer, the Trustee and the Depository notwithstanding any provision of this Indenture to the contrary.

Any provision of this Indenture to the contrary notwithstanding, so long as the Bonds are registered solely in the name of the Depository or its nominee, all payments with respect to principal of, premium, if any, and interest on, the Bonds and all notices with respect to the Bonds shall be made and given in accordance with the policies and procedures of the Depository.

#### Section 2.10. Delivery of the Bonds.

Upon the execution and delivery of this Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee with written directions to authenticate them. Thereupon, the Trustee shall authenticate the Bonds and deliver them to, or hold them as custodian for, the Depository, as further directed by the Underwriter.

Prior to the delivery of any Bonds against payment therefor, the Trustee shall have received the following:

- (a) a certified copy of the Bond Resolution;
- (b) executed counterparts of this Indenture and the other Financing Documents specifically listed in the definition of Financing Documents;
- (c) an Opinion of Bond Counsel substantially to the effect that this Indenture and the Bonds constitute legal, valid and binding obligations of the Issuer, subject to customary exceptions relating to bankruptcy and insolvency, and that, under existing law, the interest payable on the 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 or a “related person” to such a “substantial user” within the meaning of Section 147(a) of the Code);
- (d) an Opinion of Counsel for the Borrower to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are

legal, valid and binding agreements of the Borrower in accordance with their respective terms subject to customary qualifications and exceptions;

- (e) an opinion of the Attorney General of Texas approving the Bonds;
- (f) the Initial Bond registered by the Texas Comptroller of Public Accounts;
- (g) funds the Trustee is required to receive for deposit pursuant to Section 4.02 hereof;
- (h) an executed copy of the mortgage note evidencing the Mortgage Loan;
- (i) a copy of the rating letter confirming the rating assigned to the Bonds provided by the Rating Agency; and
- (j) any other documents or opinions which the Trustee, the Issuer or Bond Counsel may reasonably require, which requirement shall be deemed to be satisfied upon the delivery of the Opinion of Bond Counsel.

### ARTICLE III

#### REDEMPTION AND REMARKETING

##### Section 3.01. Redemption of Bonds.

(a) The Bonds are subject to optional redemption prior to their maturity from Eligible Funds, at the written direction of an Authorized Borrower Representative (with delivery of a Cash Flow Projection and written notice to the Trustee and the Issuer at least 35 days prior to the proposed redemption date (15 days if the proposed Redemption Date is the Conversion Date) and, in the case of a redemption in part, specifying the principal amount of the Bonds to be redeemed), either in whole or in part, on each Optional Redemption Date at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the Optional Redemption Date.

(b) The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in this Indenture have not been met by the dates and times set forth in Section 3.06(a) hereof, (iii) the amount on deposit in the Remarketing Proceeds Account at 11:00 a.m. Eastern time on the Mandatory Tender Date is insufficient to pay the Purchase Price of the outstanding Unredeemed Bonds on such Mandatory Tender Date, or (iv) the Trustee has not received an executed copy of the Opinion of Bond Counsel described in Section 3.06(a)(iv) by 11:00 a.m. Eastern time on the Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Bond Fund, other than funds in the Negative Arbitrage Account therein, (iii) amounts on deposit in the

Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the written direction of an Authorized Borrower Representative.

(c) At the election of the Borrower in connection with a redemption in whole of the Bonds, by written notice from an Authorized Representative of the Borrower to the Trustee, the Issuer and the Remarketing Agent given not less than five (5) Business Days in advance of the Redemption Date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the redemption price had the Bonds been redeemed on such date, and shall be payable on the date scheduled for the redemption thereof. Bonds so purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the written direction of an Authorized Borrower Representative.

(d) Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and such Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on such Bonds are not received by the Trustee on or prior to the redemption date, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

(e) At the election of an Authorized Borrower Representative, upon a redemption in whole of the Bonds, by written notice to the Trustee given not less than five (5) Business Days in advance of such redemption date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date. The purchase price of Bonds so purchased in lieu of redemption shall be the principal amount thereof together with all accrued and unpaid interest to the date of redemption and shall be payable on the date of redemption thereof. Bonds so purchased in lieu of redemption shall remain outstanding and shall be registered to or upon the written direction of an Authorized Borrower Representative.

(f) The Trustee shall pay the redemption price of Bonds, or the purchase price from Bonds deemed to be tendered pursuant to subsection (d), from the following sources in the following priority: (i) amounts on deposit in the Collateral Fund and the Bond Fund (other than funds in the Negative Arbitrage Account therein) and the Interest Payment Account of the Bond Fund, to the extent not needed to reimburse the Lender for any advances of Mortgage Loan proceeds, and (ii) any other Eligible Funds available or made available for such purpose at the written direction of an Authorized Borrower Representative.

Section 3.02. Mandatory Tender.

(a) The Unredeemed Bonds are subject to mandatory tender in whole and not in part on the Mandatory Tender Date and shall be purchased at a price (the “**Purchase Price**”) equal to 100 percent of the principal amount of such Bonds, without premium. No later than 10:00 a.m., Eastern Time, on the Mandatory Tender Date, the Holders of the Unredeemed Bonds shall deliver such Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the Purchase Price of the Unredeemed Bonds not later than 2:30 p.m. Eastern time on the Mandatory Tender Date, in the following priority: (i) amounts on deposit in the Remarketing Proceeds Account, and (ii) any other Eligible Funds available or made available for such purpose at the written direction of an Authorized Borrower Representative.

(b) Not less than 30 days before the Mandatory Tender Date, the Trustee shall give written notice of tender and remarketing to the Holders of Unredeemed Bonds by first class mail, postage prepaid (or, when the Bonds are in Book-Entry Form, pursuant to the applicable procedures the Depository), at their respective addresses appearing in the Register. The notice shall state the Mandatory Tender Date and that:

(i) all outstanding Unredeemed Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date and must be tendered for purchase on the Mandatory Tender Date;

(ii) all outstanding Unredeemed Bonds will be purchased on the Mandatory Tender Date at a price equal to the Purchase Price;

(iii) Holders will not have the right to elect to retain their Unredeemed Bonds and any such Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date; and

(iv) the address of the office of the Trustee at which Holders should deliver their Unredeemed Bonds for purchase on the Mandatory Tender Date.

If notice is given as stated in this subsection, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Unredeemed Bonds.

Section 3.03. Notice of Redemption.

Unless waived by any Holder of Bonds to be redeemed, and if the Bonds are not then held in a Book-Entry System, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days (10 days in the case of an optional redemption on the Conversion Date) nor more than 30 days prior to the date fixed for redemption. A second notice of redemption shall be given, as soon as practicable, by

first-class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within 30 days following the date fixed for redemption of that Bond. With respect to a mandatory redemption pursuant to Section 3.01(b), the notice of Mandatory Tender provided to Holders pursuant to Section 3.02 shall serve as the notice of redemption required by this Section 3.03 and shall satisfy the requirements of this Section 3.03 and no further notice of redemption will be required to the Holders.

All official notices of redemption shall be dated and shall state:

- (a) the proposed Redemption Date,
- (b) the redemption price,
- (c) if less than all outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks and the respective principal amounts of the Bonds to be redeemed,
- (d) that on the Redemption Date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date,
- (e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and
- (f) that the notice of redemption is conditioned upon (i) there being deposited with the Trustee on or prior to the proposed Redemption Date money sufficient to pay the redemption price of the Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium, and (ii) in the case of a proposed redemption on the Conversion Date, that Conversion occurs on or prior to such date.

If the Bonds are not then held in a Book-Entry System, in addition to the foregoing notice, further notice shall be given by the Trustee as set out below, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

(a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; and (iv) the maturity date of each Bond being redeemed.

(b) Each further notice of redemption shall be sent at least 15 days before the Redemption Date by electronic mail, registered or certified mail or overnight delivery service to all registered securities depositories known to the Trustee to then be in the business of holding substantial amounts of obligations of types comprising the Bonds and to one or more national information services that disseminate notices of redemption of



obligations such as the Bonds. one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

(c) Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number (if any) identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

Failure to receive notice as provided in this Section or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any other Bond.

Notice of any redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the Trustee only to the Depository, or its nominee, as the Holder of such Bonds in the manner required by the Depository. Selection of Beneficial Ownership Interests in the Bonds called for redemption and notice of the redemption to the Beneficial Owners are the responsibility of the Depository and any failure of such Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds. Notices of redemption may state that no representation is made as to the accuracy or correctness of the CUSIP number or numbers provided therein or on the Bonds.

#### Section 3.04. Payment of Redeemed Bonds.

Notice having been sent in the manner provided in Section 3.03 hereof, the Bonds and portions thereof called for redemption shall become due and payable on the Redemption Date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the Redemption Date.

Upon the payment of the price of Bonds being redeemed or prepaid, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed or prepaid with the proceeds of such check or other transfer.

If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the Redemption Date, is held by the Trustee on the Redemption Date, so as to be available therefor on that date and if notice of redemption has been sent as aforesaid, then from and after the Redemption Date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding hereunder. If such money shall not be so available on the Redemption Date, or that notice shall not have been sent as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

All money deposited in the Bond Fund and held by the Trustee for the redemption, purchase or prepayment of particular Bonds shall be held in trust for the account of the Holders thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

Section 3.05. Duties of Remarketing Agent.

The Remarketing Agent shall do the following in connection with the remarketing of the Bonds:

(a) Unless otherwise directed in writing by an Authorized Borrower Representative not less than 10 days before the Mandatory Tender Date, the Remarketing Agent shall offer for sale and use its best efforts to sell Unredeemed Bonds on the Mandatory Tender Date at a price equal to the Purchase Price.

(b) Establishment of Interest Rate In Connection With Remarketing of Unredeemed Bonds.

(i) Establishment of Interest Rate. From and after the Mandatory Tender Date, the Unredeemed Bonds shall bear interest at the Remarketing Rate determined pursuant to this subsection. Any Remarketing Rate determined by the Remarketing Agent and taking effect pursuant to this Indenture shall be conclusive and binding for the purposes of this Indenture upon the Trustee, the Issuer, the Borrower and the Holders.

(ii) Determination of Remarketing Rate. The Remarketing Agent shall determine the Remarketing Rate on or before the Mandatory Tender Date to be effective to a new Mandatory Tender Date selected by an Authorized Borrower Representative with the consent of the Remarketing Agent or the Maturity Date, as applicable. The Remarketing Rate shall be the minimum rate of interest (not to exceed the Maximum Interest Rate) necessary, in the professional judgment of the Remarketing Agent, taking into consideration prevailing market conditions, to enable the Remarketing Agent to remarket all of the Unredeemed Bonds outstanding on a new Mandatory Tender Date at the Purchase Price for the period beginning on the Mandatory Tender Date and ending on or before the next Mandatory Tender Date or the Maturity Date, as applicable, plus an additional amount, if any, equal to the additional interest due on the Bonds for such period (after accounting for any remaining funds in the Bond Fund, other than funds in the Negative Arbitrage Account therein) which amount shall be deposited by the Trustee into the Bond Fund from Eligible Funds provided by or on behalf of the Borrower.

(iii) Notice. Immediately upon determining the Remarketing Rate, the Remarketing Agent shall give notice to the other Remarketing Notice Parties. In no event shall the Remarketing Agent give its notice later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate.

Section 3.06. Conditions Precedent to Remarketing of Bonds and Notice.

(a) Conditions Precedent to Remarketing of Unredeemed Bonds. The remarketing of the Unredeemed Bonds on the Mandatory Tender Date is subject to the

satisfaction of each of the following conditions precedent before the Mandatory Tender Date:

(i) Not less than four Business Days before the Mandatory Tender Date, the Trustee has received notice from the Remarketing Agent that all of the outstanding Unredeemed Bonds have been remarketed and that the proceeds from the remarketing are expected to be available to the Trustee on the Mandatory Tender Date and deposited into the Remarketing Proceeds Account in an amount equal to the Purchase Price;

(ii) Not less than four Business Days before the Mandatory Tender Date, the Trustee has received a Confirmation of Rating;

(iii) Not less than two Business Days before the Mandatory Tender Date, the Trustee has received an amount necessary to cover negative arbitrage, if any, on the Unredeemed Bonds through the earlier of the next Mandatory Tender Date or the Maturity Date, as set forth in a Cash Flow Projection; and

(iv) Not less than four Business Days before the Mandatory Tender Date, the Trustee has received a draft of an Opinion of Bond Counsel to the effect that the remarketing of the Bonds will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

(b) Notice of Satisfaction of Conditions Precedent. Not less than two Business Days before the Mandatory Tender Date, the Trustee shall give notice to the other Remarketing Notice Parties indicating whether all conditions precedent to the remarketing of the Unredeemed Bonds in Section 3.06(a) hereof have been satisfied.

(c) Remarketing Costs. The costs of remarketing of the Bonds shall be paid by the Borrower.

#### Section 3.07. Remarketing of Unredeemed Bonds.

(a) Delivery of Bonds for Purchase. Each Holder must deliver its Unredeemed Bonds to the Trustee for purchase not later than 10:00 a.m., Eastern Time, on the Mandatory Tender Date. Bonds so received by the Trustee shall be held by the Trustee in trust for the tendering Holders pending receipt of funds for the payment of such Bonds.

(b) Untendered Bond. Any Unredeemed Bond that is not tendered on the Mandatory Tender Date (an “**Untendered Bond**”) will be deemed to have been tendered to the Trustee as of such Mandatory Tender Date, and, from and after such Mandatory Tender Date shall cease to bear interest and no longer will be considered to be outstanding. In the event of a failure by Holders to deliver Unredeemed Bonds on the Mandatory Tender Date, such Holders will not be entitled to any payment (including any interest to accrue from and after the Mandatory Tender Date) other than the Purchase Price for such Untendered Bond, and any Untendered Bond will no longer be entitled to the benefits of

this Indenture, except for the purpose of payment of the Purchase Price for such Untendered Bond.

(c) Delivery of Purchase Price of Remarketed Bonds. If the Remarketing Agent has received notice from the Trustee pursuant to Section 3.06(b) hereof that the conditions precedent to the remarketing of the Unredeemed Bonds have been satisfied, the Remarketing Agent shall instruct each purchaser of Unredeemed Bonds to deliver to the Trustee, no later than 11:00 a.m., Eastern time, on the Mandatory Tender Date, in immediately available funds, the Purchase Price for the Unredeemed Bonds it has agreed to purchase in the remarketing. If the Trustee receives the Purchase Price of the Unredeemed Bonds by the required time, the Trustee promptly shall transfer the registered ownership of the Unredeemed Bonds to the respective new purchasers and deliver such Unredeemed Bonds to such purchasers. Moneys deposited with the Trustee for the purchase of Unredeemed Bonds shall be held in trust in the Remarketing Proceeds Account of the Bond Fund and shall be paid to each tendering Holders upon presentation of its Unredeemed Bonds at the designated office of the Trustee. If the Trustee does not receive the Purchase Price of the Unredeemed Bonds by the required time, the Unredeemed Bonds shall be redeemed pursuant to Section 3.01(b)(iii) hereof, and the Trustee shall return any moneys it had received for the purchase of Unredeemed Bonds.

(d) Notice of Remarketing to Holders of Untendered Bonds. The Trustee shall promptly give notice by registered or certified first class mail, postage prepaid or overnight delivery (or, when the Bonds are in Book-Entry Form, pursuant to the applicable procedures of the Depository), to each Holder of Untendered Bonds stating that interest on such Bonds ceased to accrue on the Mandatory Tender Date and that moneys representing the Purchase Price of such Bonds are available against delivery of such Bonds at the designated office of the Trustee.

Section 3.08. Cancellation of Bonds.

The Trustee shall immediately cancel those Unredeemed Bonds the Purchase Price of which is paid from amounts other than proceeds derived from the remarketing of the Bonds.

## ARTICLE IV

### REVENUES AND FUNDS

Section 4.01. Creation of Funds.

There are hereby established with the Trustee the following funds and accounts to be held in trust and maintained by the Trustee under this Indenture:

(a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such accounts as provided in this Indenture);

(b) the Project Fund, and therein the Bond Proceeds Account;

- (c) the Costs of Issuance Fund;
- (d) the Collateral Fund;
- (e) the Rebate Fund; and
- (f) the Expense Fund.

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in this Indenture. All money deposited in the funds and accounts created hereunder shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed.

The Trustee shall, at the written direction of an Authorized Borrower Representative and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Borrower or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture or the Tax Exemption Agreement with respect to a deposit or use of money in the Special Funds or the Rebate Fund, or result in commingling of funds not permitted hereunder.

Section 4.02. Allocation of Bond Proceeds and Other Deposits. On the Closing Date, the proceeds of the sale of the Bonds (\$[ ]) shall be deposited in the Bond Proceeds Account of the Project Fund.

Section 4.03. Bond Fund.

On the Closing Date, there shall be deposited in the Negative Arbitrage Account of the Bond Fund the amount, if any, set forth in Section 4.02 hereof.

The Trustee shall deposit in the Remarketing Proceeds Account of the Bond Fund any amounts received from the remarketing of the Unredeemed Bonds. Money in the Remarketing Proceeds Account shall be held exclusively for the payment of the Purchase Price of the Unredeemed Bonds.

So long as there are any outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid by the Borrower on or before each Interest Payment Date directly to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the Bond Service Charges due on the Bonds on such Interest Payment Date.

The Bond Fund (and any accounts therein for which provision is made in this Indenture) and the money and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

Bond Service Charges shall be payable, as they become due, in the following order (1) from money on deposit in the Bond Fund (excluding the Negative Arbitrage Account therein), (2) from money on deposit in the Negative Arbitrage Account of the Bond Fund, (3) from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, and (4) from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is hereby authorized to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to or at the written direction of an Authorized Borrower Representative.

#### Section 4.04. Project Fund.

Upon the deposit of Collateral Payments in the Collateral Fund as provided in Section 4.06 hereof, and subject to the provisions of this Section 4.04 hereof, the Trustee may disburse the Bond proceeds on deposit in the Project Fund to or at the written direction of the Lender, the Bridge Lender or the Borrower, as applicable, for payment of Project Costs in accordance with Section 3.6 of the Loan Agreement. To the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is hereby authorized to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund, and (ii) transfer, from Collateral Payments or other Eligible Funds then deposited in the Collateral Fund, a corresponding amount from the Collateral Fund to the Project Fund, which transfer is hereby deemed to be of the proceeds of the sale of the Eligible Investments then allocated from the Project Fund to the Collateral Fund. The Trustee shall be irrevocably and unconditionally obligated to (i) disburse from the Project Fund an amount equal to the amount deposited into the Collateral Fund to or at the written direction of the Lender, the Bridge Lender or the Borrower, as applicable, or (ii) return to the Lender, the Bridge Lender or the Borrower, as applicable, the amount deposited into the Collateral Fund, within one Business Day of receipt of such deposit. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to pay Bond Service Charges on each Interest Payment Date without further written direction.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer, the Investor Limited Partner or the Borrower, after the Project has been completed and a Completion Certificate is filed as provided in Section 4.07 hereof, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer, the General Partner and the Investor Limited Partner. The Trustee shall satisfy this obligation by providing trust statements for all periods in which there are funds in the Project Fund.

Notwithstanding any provision of the Loan Agreement or any other provision of this Indenture to the contrary and except to make necessary interest payments, the Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Collateral Payments or other Eligible Funds in an amount equal to or greater than

the requested disbursement amount have been deposited in the Collateral Fund. Prior to making any disbursement (except to the extent necessary to pay Bond Service Charges), the Trustee shall determine that the aggregate principal amount that will be held in (a) the Collateral Fund and (b) the Project Fund, after the anticipated disbursement, is at least equal to the then-outstanding principal amount of the Bonds.

On any Redemption Date, the Trustee shall, at the written direction of an Authorized Borrower Representative, transfer any amounts then on deposit in the Project Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Upon the occurrence and continuance of an Event of Default hereunder because of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to Section 6.03 hereof, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

#### Section 4.05. Costs of Issuance Fund.

Amounts on deposit in the Costs of Issuance Fund shall be used by the Trustee to pay Costs of Issuance as directed in writing by an Authorized Borrower Representative. Any amounts remaining on deposit in the Costs of Issuance Fund 30 days after the Closing Date shall be promptly returned to the Borrower or disbursed at the written direction of an Authorized Borrower Representative.

#### Section 4.06. Collateral Fund.

The Trustee shall deposit into the Collateral Fund all Collateral Payments received pursuant to Section 4.2 of the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Section 4.2 of the Loan Agreement requires the Borrower to cause Collateral Payments to be paid to the Trustee for deposit into the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, amounts on deposit in the Project Fund to be disbursed by the Trustee to pay Project Costs.

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

The Trustee shall transfer money in the Collateral Fund as follows: (i) on each Bond Payment Date, to the Bond Fund, the amount necessary to pay Bond Service Charges due on such Bond Payment Date (but only to the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund), (ii) on the Mandatory Tender Date, if the Unredeemed Bonds are to be redeemed pursuant to Section 3.01(b)(iii) hereof, to the Bond Fund, the amount necessary to pay the redemption price of such Bonds on such date, and (iii) on the Maturity Date of the Bonds, to the Bond Fund the amount necessary to pay all amounts due on the Bonds on such date.

On any Redemption Date, the Trustee shall transfer all amounts then on deposit in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Amounts on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds may be transferred to the Project Fund and used to pay costs of the Project as provided in Section 3.6 of the Loan Agreement.

The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds, or the principal component of the redemption price of any of the Bonds, all as provided in this Indenture.

Anything in this Indenture to the contrary notwithstanding, at any time up to 90 days prior to any Mandatory Tender Date, the purchaser (the "Purchaser") of any obligations issued to refund Bonds may deliver Eligible Funds to the Trustee for deposit into the Collateral Fund, and promptly following such receipt, the Trustee shall transfer a corresponding amount of other Eligible Funds on deposit in the Collateral Fund to the Lender or the Bridge Lender, as applicable, or as otherwise directed by the Purchaser.

#### Section 4.07. Completion of the Project.

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee and the Issuer of the Completion Certificate required by Section 3.9 of the Loan Agreement.

#### Section 4.08. Expense Fund.

There shall be deposited in the Expense Fund the amount, if any, set forth in Section 4.02 hereof and any other amounts delivered to the Trustee for such purpose, to pay the amounts required by this Section 4.08. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

- (a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) pursuant to paragraph 14 of the Tax Exemption Agreement;
- (b) to pay the Ordinary Trustee's Fees and Expenses when due;
- (c) to pay the Dissemination Agent Fee when due; and
- (d) to pay the Issuer Fees and Expenses not previously paid.

To the extent money in the Expense Fund is not sufficient to pay the foregoing fees and expenses, such deficiency shall be paid by the Borrower pursuant to Section 4.4 of the Loan Agreement immediately upon written demand.

#### Section 4.09. Rebate Fund.

The Rebate Fund is created 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 or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with



Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under this Indenture. Notwithstanding the foregoing, the Trustee is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

#### Section 4.10. Investment of Special Funds.

Except as otherwise set forth in this Section, money in the Special Funds shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of an Authorized Borrower Representative, and money in the Rebate Fund shall be invested and reinvested by the Trustee as provided in the Tax Exemption Agreement. In the absence of written directions of an Authorized Borrower Representative as provided above, the Trustee shall be required to invest such funds in the investments described in clause (b) of the definition of Eligible Investments herein. At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Exemption Agreement) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Exemption Agreement. Moneys in the Costs of Issuance Fund and the Expense Fund shall be held uninvested.

Investments of money in the Bond Fund and the Collateral Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay Bond Service Charges on the Bonds as they become due on each Bond Payment Date. Each investment of money in the Project Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any of those investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association that is an Affiliate of the Trustee. The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. The Trustee is not providing and will not provide investment supervision, recommendations, or advice.

An investment made from money credited to the Special Funds shall constitute part of that respective Special Fund. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be allocated to the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein. Any investment losses from moneys credited to a Special Fund shall be charged against that Special Fund. The Trustee shall not be liable for losses on investments made upon the direction of the Authorized Borrower Representative or otherwise in compliance with the provisions of this Indenture. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything herein to the contrary, Bond proceeds and any amounts deposited in the Negative Arbitrage Account shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

Subject to the following sentence, investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from the applicable Special Fund. Prior to the Initial Mandatory Tender Date, at the direction of the Borrower, the Trustee is permitted to invest in Eligible Investments that mature on or before a Mandatory Tender Date but is not permitted to sell or otherwise dispose of such Eligible Investment prior to maturity at a price below par without first receiving from or on behalf of the Borrower: (i) a Cash Flow Projection, and (ii) Eligible Funds in the amount, if any, set forth in such Cash Flow Projection.

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Issuer hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

#### Section 4.11. Money to be Held in Trust.

Except where money has been deposited with or paid to the Trustee pursuant to an instrument restricting its application to particular Bonds, all money required or permitted to be deposited with or paid to the Trustee under any provision of this Indenture or the Note, and any investments thereof, shall be held by the Trustee in trust. Except for money held by the Trustee in the Rebate Fund pursuant to Section 4.09 hereof, all money described in the preceding sentence held by the Trustee shall be subject to the lien of this Indenture hereof while so held. Money held in the Rebate Fund is not subject to the lien of this Indenture.

The money in any fund or account established under this Indenture shall be subject to the unclaimed property laws of the State.

#### Section 4.12. Valuation.

For the purpose of determining the amount on deposit to the credit of any Special Fund or the Rebate Fund, the value of obligations in which money in any fund or account shall have been invested shall be computed at the then market value thereof based on such public pricing sources as shall generally be available to the Trustee. The Trustee shall have no liability for the accuracy of any such valuation.

The Eligible Investments shall be valued by the Trustee at any time requested by an Authorized Borrower Representative on reasonable written notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value the Eligible Investments more than once in any calendar month.

#### Section 4.13. Nonpresentation of Bonds.

In the event that any Bond shall not be presented for payment when the principal thereof becomes due, or a check or draft for interest is uncashed, if money sufficient to pay the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Holder, all liability of the Issuer to that Holder for such payment of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely.

Thereupon, it shall be the duty of the Trustee to hold such money, without liability for interest thereon, in a separate account in the Bond Fund for the exclusive benefit of the Holder, who shall be restricted thereafter exclusively to such money for any claim of whatever nature on its part under this Indenture or on, or with respect to, the principal then due of that Bond or of such check or draft.

If any of such money remains unclaimed by the Holder of a Bond not presented for payment or check or draft not cashed for a period ending the earlier of (a) two (2) years after it becomes payable or distributable or (b) one day less than the applicable escheat laws of the State, the Trustee shall comply with the unclaimed property laws of the State, and all liability of the Issuer, the Borrower and the Trustee to the Holder for the payment of such Bond shall forthwith cease, determine and be completely discharged.

Section 4.14. Repayment to the Borrower from the Special Funds.

Except as provided in Section 4.09 and Section 4.13 hereof and provided no Event of Default has occurred and is continuing under Section 7.1 of the Loan Agreement, any amounts remaining in the Special Funds (a) after all of the outstanding Bonds shall be paid or deemed paid and discharged under the provisions of this Indenture, and (b) after payment or provision for the payment of all fees, charges and expenses of the Trustee and the Issuer and of all other amounts required to be paid under this Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement and the Note, shall be paid to the Borrower, to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the outstanding Bonds.

## ARTICLE V

### THE TRUSTEE AND REMARKETING AGENT

Section 5.01. Trustee's Acceptance and Responsibilities.

The Trustee accepts the trusts imposed upon it by this Indenture and has also accepted the Rebate Fund, and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in this Article, to all of which the parties hereto and the Holders agree.

(a) Prior to the occurrence of a default or an Event of Default (as defined in Section 6.01 hereof) of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred,

(i) as Trustee hereunder, the Trustee undertakes to perform only those duties and obligations which are set forth specifically in this Indenture, and no duties or obligations shall be implied to the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions

expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case a default or an Event of Default has occurred and is continuing hereunder (of which the Trustee has been notified, or is deemed to have notice pursuant to Section 5.02(f) hereof), the Trustee shall exercise those rights and powers vested in it by this Indenture and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, except that

(i) this Subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) of this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, agents or employees, unless it shall be established that the Trustee was grossly negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Controlling Holders relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or satisfactory indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.01.

#### Section 5.02. Certain Rights and Obligations of the Trustee.

Except as otherwise provided in Section 5.01 hereof:

(a) The Trustee (i) may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable therefor only in accordance with the standard specified above), (ii) shall be

entitled to the advice of counsel concerning all matters of trusts hereof and duties hereunder, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Borrower) 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 taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for:

- (i) any recital in the Financing Documents,
- (ii) the validity, priority, recording, re-recording, filing or re-filing of this Indenture, any Supplemental Indenture, the Tax Regulatory Agreement or any of the other Financing Documents,
- (iii) any instrument or document of further assurance or collateral assignment,
- (iv) any financing statements, amendments thereto or continuation statements,
- (v) insurance of the Project or collection of insurance moneys,
- (vi) the validity of the execution by the Issuer of this Indenture, any Supplemental Indenture or instruments or documents of further assurance,
- (vii) the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby,
- (viii) the value of or title to the Project, or
- (ix) the maintenance of the security hereof.

The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Borrower under the Loan Agreement except as set forth hereinafter; but the Trustee may require of the Issuer or the Borrower full information and advice as to the observance or performance of those covenants, agreements and obligations. The Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Loan Agreement.

(c) The Trustee shall not be accountable for the application by the Borrower or any other Person of the proceeds of any Bonds authenticated or delivered hereunder.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or

other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any Person who is the Holder of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Issuer or the Borrower may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Issuer or the Borrower, as appropriate, by an Authorized Official or Authorized Borrower Representative as sufficient evidence of the facts recited therein. Prior to the occurrence of a default or Event of Default hereunder of which the Trustee has been notified, as provided in paragraph (f) of this Section, or of which by that paragraph the Trustee is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default hereunder, except Events of Default described in paragraphs (a) and (b) of Section 6.01 hereof, unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Issuer or by the Holders of at least 10% of the aggregate principal amount of Bonds then outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) The Trustee shall not be required to give any bond or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(h) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms hereof, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of the Financing Documents, if the Trustee deems it to be desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(i) Before taking action hereunder pursuant to Section 5.04 or Article VI hereof (with the exception of any action required to be taken under Section 6.02 hereof or giving notice of the acceleration of the Bonds under Section 6.03 hereof), the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability resulting from its own negligence, or willful misconduct. The Trustee may

take action without that indemnity, and in that case, the Borrower shall reimburse the Trustee for all of the Trustee's expenses pursuant to Section 5.03 hereof.

(j) Unless otherwise provided herein, all moneys received by the Trustee under this Indenture shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided herein; provided, that those moneys need not be segregated from other moneys, except to the extent required by this Indenture or by law. The Trustee shall not have any liability for interest on any moneys received hereunder, except to the extent expressly provided herein.

(k) Any resolution by the Governing Body, and any opinions, certificates and other instruments and documents for which provision is made in this Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

(l) The Trustee shall be entitled to file proofs of claim in bankruptcy. Ordinary Trustee Fees and Expenses and Extraordinary Fees and Expenses of the Trustee are intended to constitute administrative expenses in bankruptcy.

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

(n) The permissive right of the Trustee to do things enumerated in the Financing Documents shall not be construed as a duty and the Trustee shall not be answerable for other than its gross negligence or willful misconduct. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of these Bonds except for (i) the information describing the Trustee or its operations in the Official Statement relating to the Bonds, and (ii) any information describing the Trustee or its operations in any other disclosure document; provided that such information shall have been provided by the Trustee specifically for inclusion in such disclosure document.

(o) In acting or omitting to act pursuant to the Financing Documents, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Indenture and the Loan Agreement, including, but not limited to, this Article V.

(p) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder (which shall be a date not later than the Closing Date).

(q) The Trustee agrees to accept and act upon instructions or directions pursuant to the Financing Documents sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Issuer or the Borrower elect to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Issuer or the Borrower; and (iii) that the security procedures (if any) to be followed in connection with its transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

(r) Promptly following written request by the Rating Agency, the Trustee shall furnish to the Rating Agency a statement or schedule setting forth the amount on deposit in the Special Funds and such other information as may be reasonably requested by the Rating Agency to maintain the rating on the Bonds.

#### Section 5.03. Fees, Charges and Expenses of Trustee.

The Trustee shall be entitled to payment or reimbursement by the Borrower, as provided in the Loan Agreement, for customary fees for Ordinary Services rendered hereunder and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by it in connection with the provision of Ordinary Services. For purposes hereof, fees for Ordinary Services and reimbursement of Ordinary Expenses provided for in the definition of Ordinary Trustee Fees and Expense shall be considered customary. In the event that it should become necessary for the Trustee to perform Extraordinary Services, it shall be entitled to payment by the Borrower for customary extra compensation therefor and to reimbursement by the Borrower for reasonable and necessary Extraordinary Expenses incurred in connection therewith. Unless and until such time as the Trustee resigns or is replaced, and a successor Trustee is appointed pursuant to Section 5.09 hereunder, the Trustee shall continue to perform its duties hereunder notwithstanding the Borrower's failure to timely pay such fees.

Without creating a default or an Event of Default hereunder, however, the Borrower or the Investor Limited Partner may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the amount of any fee, charge or expense.



The Trustee shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by its neglect or misconduct. The customary fees for its Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement only from (i) the Additional Payments made by the Borrower pursuant to the Loan Agreement, or (ii) from moneys available therefor in the Expense Fund. Any amounts payable to the Trustee pursuant to this Section 5.03 shall be payable upon demand and shall bear interest from the date of demand therefor at the Interest Rate for Advances.

Upon an Event of Default under this Indenture, and only upon an Event of Default under this Indenture, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and premium, if any, and interest on any Bond, upon the Trust Estate for the foregoing fees, charges and expenses incurred by it.

Section 5.04. Intervention by Trustee.

The Trustee may intervene on behalf of the Holders, and shall intervene if requested to do so in writing by the Holders of at least 25% of the aggregate principal amount of Bonds then outstanding, in any judicial proceeding to which the Issuer or the Borrower is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of the Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with Sections 5.01 and 5.02 hereof before it takes action hereunder.

Section 5.05. Successor Trustee.

Anything herein to the contrary notwithstanding,

(a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its corporate trust assets and corporate trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee hereunder and shall be vested with all of the title to the whole property or Trust Estate hereunder; and

(b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the United States of America or the State, (iii) shall be duly authorized to exercise trust powers within the United States of America or the

State, and (iv) shall have a reported capital, surplus and retained earnings of not less than \$100,000,000.

Section 5.06. Appointment of Co-Trustee.

It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under this Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default hereunder, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a co-Trustee. The following provisions of this Section are adopted to these ends.

In the event that the Trustee appoints an individual or additional institution as a co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that co-Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that co-Trustee shall run to and be enforceable by it.

Should any instrument or document in writing from the Issuer reasonably be required by the co-Trustee so appointed by the Trustee for vesting and conveying more fully and certainly in and to that co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any co-Trustee or a successor to it shall die, become incapable of acting, resign or be removed, all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the co-Trustee shall be exercised by, vest in and be conveyed to the Trustee, to the extent permitted by law, until the appointment of a successor to the co-Trustee.

Section 5.07. Resignation by the Trustee.

The Trustee may resign at any time from the trusts created hereby by giving written notice of the resignation to the Issuer and the Borrower, and by mailing written notice of the resignation to the Holders as their names and addresses appear on the Register at the close of business 15 days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 hereof or an order of a court of competent jurisdiction allowing the Trustee to resign.

Section 5.08. Removal of the Trustee.

The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Borrower and the Investor Limited Partner, and signed by or on behalf of the Controlling Holders.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Borrower or the Controlling Holders.

The removal of the Trustee under this Section 5.08 shall take effect upon the appointment of a successor Trustee as provided for in Section 5.09 of this Indenture.

Section 5.09. Appointment of Successor Trustee.

If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Borrower; provided, that if a successor Trustee is not so appointed within 10 days after (i) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided in Sections 5.07 and 5.08 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Borrower shall not have appointed a successor Trustee, the Controlling Holders may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 30 days of such resignation, removal or other vacancy, the Holder of any Bond outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to this Section shall meet the requirements of Section 5.05 hereof and shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer, the Borrower and the Investor Limited Partner an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer, the Borrower or the Investor Limited Partner, and payment of all fees and expenses owed to it, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the

predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to this Indenture and shall cease to be registrar, authenticating agent and paying agent for any of the Bonds, to the extent it served in any of those capacities.

Section 5.10. Adoption of Authentication.

In case any of the Bonds shall have been authenticated, but shall not have been delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee and may deliver those Bonds so authenticated as provided herein. In case any Bonds shall not have been authenticated, any successor Trustee may authenticate those Bonds either in the name of any predecessor or in its own name. In all cases, the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the predecessor Trustee.

Section 5.11. Dealing in Bonds.

The Trustee, its Affiliates, and any directors, officers, employees or agents thereof, in good faith, may become the owners of Bonds secured hereby with the same rights which it or they would have hereunder if the Trustee did not serve in that capacity.

Section 5.12. Representations, Agreements and Covenants of Trustee.

The Trustee hereby represents that it is a national banking association organized and existing under and by virtue of the laws of the United States of America, in good standing and duly authorized to exercise corporate trust powers in the State, and that it has an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee covenants that it will take such action, if any, as is necessary to remain in good standing and duly authorized to exercise corporate trust powers in the State, and that it will maintain an unimpaired reported capital, surplus and retained earnings of not less than \$100,000,000. The Trustee accepts and agrees to observe and perform the duties and obligations of the Trustee to which reference is made in any other instrument or document to which it is a party providing security for any of the Bonds.

Section 5.13. Reserved.

Section 5.14. Interpleader.

In the event of a dispute between any of the parties hereto with respect to the disposition of any funds held by the Trustee hereunder, or the Trustee receives conflicting demands made

upon the Trustee with respect to the Trustee's duties hereunder or any other document related to the Bonds, the Trustee shall be entitled to file a suit in interpleader in a court of competent jurisdiction located in the State seeking to require the parties to interplead and litigate in such court their several claims and rights among themselves. Upon the filing of such a suit and the deposit of the applicable funds to such court, the Trustee will ipso facto be fully released and discharged from all obligations to further perform any and all duties imposed hereunder or any other document related to the Bonds regarding such matter and/or such funds that are the subject of such interpleader suit. In the event that the Trustee remains as Trustee under this Indenture and receives a court order, directive or other request regarding the interpleader suit, the Trustee shall be entitled to rely upon such instruction without incurring any obligation or liability and the parties hereto release, hold harmless and indemnify the Trustee for any obligation or liability for so relying on such court instruction.

Section 5.15. Survival of Certain Provisions.

The provisions of Sections 5.01 through 5.14 of this Indenture shall survive the release, discharge and satisfaction of this Indenture.

Section 5.16. Concerning the Remarketing Agent.

The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. Following any resignation or removal of the Remarketing Agent, the Borrower shall appoint a successor remarketing agent subject to the requirements of Section 5.17 hereof and provide prior notice of such appointment to the Trustee and the Issuer. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

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

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

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law

to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

Section 5.17. Qualifications of the Remarketing Agent.

The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

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

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

Section 5.18. Additional Duties.

Notwithstanding any provisions hereof to the contrary, the Trustee shall have the following additional duties:

(a) The Trustee shall provide the Rating Agency upon its written request such information within its possession as the Rating Agency shall reasonably require from time to time in order to maintain the rating on the Bonds;

(b) Subject to Sections 5.02(j) and 5.07 hereof, the Trustee shall continue to perform its function hereunder without regard to the insufficiency of payment of its fees, provided that nothing herein shall negate the Trustee's right to compensation and indemnification hereunder and as provided in the Loan Agreement; and

Section 5.19. Notices to Rating Agency.

The Trustee shall notify the Rating Agency of (a) the occurrence of an Event of Default of which the Trustee has actual notice, (b) any change in the identity of the Trustee, (c) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement, the Note or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice, (d) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds, (e) any defeasance or acceleration of the Bonds hereunder, (f) any change or notification of proposed change of the Mandatory Tender Date pursuant to a remarketing of the Bonds of which

it has actual notice, (g) any change in the Lender of which the Trustee has actual knowledge, or (h) any change in the investment of funds subject to the lien of this Indenture.

Section 5.20. Compliance with Texas Government Code.

The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Indenture, the Tax Regulatory Agreement and the Tax Exemption Agreement, and such representation is hereby incorporated by reference into each of the documents referenced herein. The foregoing verification is made solely to comply with Section 2271.002, 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 Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

The Trustee 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 Trustee 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 Trustee understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND HOLDERS

Section 6.01. Defaults; Events of Default.

The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default hereunder:

(a) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b) Payment of the principal of any Bond shall not be made when and as that principal shall become due and payable, whether at stated maturity, Mandatory Tender, upon redemption, acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed as contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, overnight delivery service or electronic means to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Controlling Holders; and

(d) The occurrence and continuance of an Event of Default as defined in Section 7.1 of the Loan Agreement.

The term “default” or “failure” as used in this Article means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in this Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute an Event of Default, as provided above or in the Loan Agreement.

Anything in this Indenture to the contrary notwithstanding, the Investor Limited Partner shall have the cure rights set forth in Section 6.03 hereof.

#### Section 6.02. Notice of Default.

If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by electronic means, by registered or certified mail, or by overnight delivery service, to the Issuer, the Borrower, the Remarketing Agent and the Investor Limited Partner, within five days after the Trustee has notice of the Event of Default pursuant to Section 5.02(f) hereof. If an Event of Default occurs of which the Trustee has notice pursuant to this Indenture, the Trustee shall give written notice thereof, within 30 days after the Trustee’s receipt of notice of its occurrence, to the Holders of all Bonds then outstanding as shown by the Register at the close of business 15 days prior to the delivery of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of notice to the Holders is in the interests of the Holders.

#### Section 6.03. Acceleration.

Upon the occurrence of an Event of Default described in Section 6.01(a) or (b), the Trustee may, and upon the written request of the Controlling Holders shall, subject to Section 5.02(j), by written notice delivered to the Borrower and the Issuer, 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. If the Trustee is unable to determine that sufficient funds will be available, the Trustee shall declare the principal of the Bonds immediately due and payable, but only upon the written direction of the Controlling Holders of the Bonds then outstanding. Upon the occurrence



of any Event of Default other than those described in Sections 6.01(a) and 6.01(b) hereof, the Trustee may, and upon written consent of all Holders of Bonds then outstanding, shall declare by a notice in writing delivered to the Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest thereon, to be due and payable immediately. Upon such declaration, the principal and interest on the Bonds shall become and be due and payable immediately. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided, that interest on any unpaid principal of Bonds outstanding shall continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.

The provisions of the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement hereunder (after an opportunity for hearing by the Issuer and the Borrower),

(a) all sums payable hereunder (except the principal of and interest on Bonds which have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default shall have occurred, shall have been duly paid or provision shall have been duly made therefor by deposit with the Trustee, and

(b) all existing Events of Default shall have been cured,

then and in every case, the Trustee shall waive the Event of Default and its consequences and shall rescind and annul that declaration. No waiver or rescission and annulment shall extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Limited Partner shall be entitled (but not obligated) to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The Issuer and the Trustee agree that cure of any default or Event of 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.

#### Section 6.04. Other Remedies; Rights of Holders.

With or without taking action under Section 6.03 hereof, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or in equity to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under this Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Controlling Holders, the Trustee (subject to the provisions of Sections 5.01 and 5.02 hereof and particularly subparagraph 5.01(c)(iv) and Subsection 5.02(j) of those Sections), shall exercise any rights and powers conferred by this Section and by Section 6.03 hereof.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by this Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given hereunder or otherwise to the Trustee or to the Holders now or hereafter existing, provided that the only remedy enforceable against the Issuer shall be for specific performance of its covenants hereunder.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

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 remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Reserved Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement (other than with respect to the Reserved Rights). In exercising any remedy, right or power thereunder or hereunder, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in Sections 5.01 and 5.02 hereof.

Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding without the approval of the Holders so affected.

#### Section 6.05. Right of Holders to Direct Proceedings.

Anything to the contrary in this Indenture notwithstanding, the Controlling Holders shall have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, 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 (a) any direction shall not be other than in accordance with the provisions of law and of this Indenture, (b) the Trustee shall be indemnified as provided in Sections 5.01 and 5.02 hereof, and (c) the Trustee may take any other action that it deems to be proper and that is not inconsistent with the direction.

#### Section 6.06. Application of Money.

If at any time after the occurrence of an Event of Default the money held by the Trustee under this Indenture (other than amounts in the Rebate Fund) shall not be sufficient to pay the principal of and interest on the Bonds as the same become due and payable, such money, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in this Article or otherwise, shall, be applied by the Trustee as set forth in this Section 6.06.

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all fees of the Trustee for Ordinary and Extraordinary Expenses pursuant to any right given or action taken under the provisions of this Article or the provisions of the Financing Documents (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VI), all money received by the Trustee, shall be applied as follows, subject to Section 2.05 hereof and any provision made pursuant to Section 4.10 or 4.11 hereof:

(a) Unless the principal of all of the Bonds shall have become, or shall have been declared to be, due and payable, all of such money shall be deposited in the Bond Fund and shall be applied:

First - To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second - To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds which shall have become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds shall have become due or shall have been declared to be due and payable pursuant to this Article, all of such money shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds shall have been declared to be due and payable pursuant to this Article, and if that declaration thereafter shall have been rescinded and annulled under the provisions of Section 6.03 or 6.10 hereof, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Bonds shall become due and payable later, the money shall be deposited in the Bond Fund and shall be applied in accordance with the provisions of paragraph (a) of this Section.

(d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 2.05 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

Section 6.07. Remedies Vested in Trustee.

All rights of action (including without limitation, the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Holders as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Holders of the outstanding Bonds, subject to the provisions of this Indenture.

Section 6.08. Rights and Remedies of Holders.

A Holder shall not have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof, or for the exercise of any other remedy hereunder, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of Section 5.02 hereof, or of which it is deemed to have notice under that paragraph,

(b) the Controlling Holders shall have made written request to the Trustee to proceed to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in Sections 5.01 and 5.02 hereof, and

(c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted herein or to institute the suit, action or proceeding in its own name within 60 days of receipt of the written request and offer of indemnity.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of this Indenture by its or their action, or to enforce, except in the manner provided herein, any remedy, right or power hereunder. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided herein for the benefit of the Holders of all Bonds then outstanding. Nothing in this Indenture shall affect or impair, however, the right of any Holder to enforce the payment of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

Section 6.09. Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any remedy, right or power under this Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Issuer and the Holders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

Section 6.10. Waivers of Events of Default.

Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default hereunder and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds. The Trustee shall do so upon the written request of the Controlling Holders.

There shall not be so waived, however, any Event of Default described in paragraph (a) or (b) of Section 6.01 hereof or any declaration of acceleration in connection therewith rescinded or annulled, unless at the time of that waiver or rescission and annulment payments of the amounts provided in Section 6.03 hereof for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively. No waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

## ARTICLE VII

### SUPPLEMENTAL INDENTURES

Section 7.01. Supplemental Indentures Generally.

The Issuer and the Trustee may enter into Supplemental Indentures as provided in this Article.

Section 7.02. Supplemental Indentures Not Requiring Consent of Holders.

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into Supplemental Indentures for any one or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Holders or the Trustee;
- (c) To assign additional revenues under this Indenture;
- (d) To accept additional security and instruments and documents of further assurance with respect to the Project;
- (e) To add to the covenants, agreements and obligations of the Issuer under this Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;
- (f) To evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under this Indenture, the Loan Agreement and the Bonds;
- (g) To facilitate (i) the transfer of Bonds held in Book-Entry Form from one Depository to another and the succession of Depositories, or (ii) the withdrawal of Bonds delivered to a Depository for use in a Book-Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Depository;
- (h) To permit the Trustee to comply with any obligations imposed upon it by law;
- (i) To specify further the duties and responsibilities of the Trustee; and
- (j) To achieve compliance of this Indenture or the Bonds with any applicable federal securities or income tax law.

The provisions of Subsections 7.02(h) and (j) shall not be deemed to constitute a waiver by the Trustee, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to this Indenture or the Bonds.

Section 7.03. Supplemental Indentures Requiring Consent of Holders.

Exclusive of Supplemental Indentures to which reference is made in Section 7.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise,

with the consent of the Controlling Holders, evidenced as provided in this Indenture, and with the consent of the Borrower if required by Section 7.04 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 7.02 hereof shall permit, however, or be construed as permitting:

(a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of this Section, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by Section 7.04 hereof, receipt of the Borrower's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid (or when the Bonds are in Book-Entry form, sent pursuant to the applicable procedures of the Depository), to all Holders of Bonds then outstanding at their addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee shall not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice required by this Section. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in this Section. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the sending of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Controlling Holders (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder shall have consented thereto.

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder

who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds outstanding shall have consented to the Supplemental Indenture, as provided in this Section, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

Section 7.04. Consent of the Borrower.

Anything contained herein to the contrary notwithstanding, any Supplemental Indenture executed and delivered in accordance with this Article VII that affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery of that Supplemental Indenture; provided, however, that no consent shall be required if the Borrower is the source of an Event of Default under the Loan Agreement.

Section 7.05. Responsibilities of Trustee.

Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 7.06. Authorization to Trustee; Effect of Supplement.

The Trustee is authorized to join with the Issuer in the execution and delivery of any Supplemental Indenture in accordance with this Article and to make the further agreements and stipulations which may be contained therein. Thereafter,

- (a) That Supplemental Indenture shall form a part of this Indenture;
- (b) All terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- (c) This Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and
- (d) The respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Remarketing Agent, the Trustee and all Holders of Bonds then outstanding shall be determined, exercised and enforced hereunder in a manner which is



subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Issuer. A copy of any Supplemental Indenture for which provision is made in this Article, except a Supplemental Indenture described in Section 7.02 (g) hereof, shall be mailed to the Holders by the Trustee. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

Section 7.07. Opinion of Counsel.

The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel approved by it as conclusive evidence that (a) any proposed Supplemental Indenture complies with the provisions of this Indenture, and (b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Borrower.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee and the Issuer a Favorable Opinion of Bond Counsel.

Section 7.08. Modification by Unanimous Consent.

Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then outstanding, (c) the Borrower and the Investor Limited Partner and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

## ARTICLE VIII

### DEFEASANCE

Section 8.01. Release of Indenture.

If (a) all of the outstanding Bonds are paid and discharged, or if there otherwise shall be paid to the Holders of the outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement and the Note, then this Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of Section 8.03 hereof if applicable,

(a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer, and

(b) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of this Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be paid to the Borrower under Section 4.14 hereof, or (ii) to be held by the Trustee under Section 4.13 hereof or otherwise for the payment of Bond Service Charges.

Section 8.02. Payment and Discharge of Bonds.

All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 8.01 hereof, if:

(a) the Trustee as paying agent shall have received, in trust for and irrevocably committed thereto, sufficient Eligible Funds, or

(b) the Trustee shall have received, in trust for and irrevocably committed thereto, noncallable Government Obligations (or a combination of Eligible Funds and Government Obligations) which are certified by an Independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any Eligible Funds to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity or their redemption date, as the case may be; and

(c) The Trustee shall have been given irrevocable written instructions from either the Issuer or an Authorized Borrower Representative to give the written notice to the Holders as required pursuant to the last paragraph of this Section 8.02..

Any money held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under this Section is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of this Section, that income, interest or increment shall be transferred at the time of that determination in the manner provided in Section 4.14 hereof for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written

notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall (i) state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and (ii) set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.02.

Section 8.03. Survival of Certain Provisions.

Notwithstanding the foregoing, any provisions of this Indenture which relate to the maturity of Bonds, interest payments and dates thereof, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, non-presentment of Bonds, the holding of money in trust, and repayments to the Borrower from the Bond Fund, the rebate of money to the United States in accordance with Section 4.09 hereof and the Tax Exemption Agreement, and the rights and duties of the Trustee in connection with all of the foregoing, or which by their terms survive payment and discharge of the Bonds, shall remain in effect and be binding upon the Trustee and the Holders notwithstanding the release and discharge of this Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Indenture. The obligations of the Borrower to pay the Trustee its fees and expenses hereunder shall survive the release, discharge and satisfaction of this Indenture, but shall terminate effective automatically upon payment in full by the Borrower of all fees and expenses owed by the Borrower to the Trustee as of the date of termination of this Indenture.

ARTICLE IX

COVENANTS AND AGREEMENTS OF THE ISSUER

Section 9.01. Covenants and Agreements of the Issuer.

In addition to any other covenants and agreements of the Issuer contained in this Indenture or the Bond Resolution, the Issuer further covenants and agrees with the Holders and the Trustee as follows:

(a) Payment of Bond Service Charges. The Issuer will cause all Bond Service Charges to be paid solely from the sources provided herein, on the dates, at the places and in the manner provided in this Indenture; provided that the Bond Service Charges are limited obligations of the Issuer payable solely by the Issuer from the Trust Estate, and nothing in this Indenture or the Bonds shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate.

(b) Performance of Covenants; Authority; Due Execution. The Issuer covenants that it will faithfully perform or cause to be performed at all times any and all covenants, undertakings, stipulations and provisions to be performed by the Issuer contained in this Indenture and the other Issuer Documents, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Issuer is duly authorized under the laws of the State, including particularly the Act, to issue the Bonds, to execute this Indenture and to pledge the amounts hereby pledged

in the manner and to the extent herein set forth. The Issuer further covenants that all action on its part for the issuance of the Bonds and the execution and delivery of the Issuer Documents have been duly and effectively taken, and that the Bonds in the hands of the Holders thereof are and will be valid and enforceable obligations of the Issuer according to the terms thereof and hereof.

(c) Revenues and Assignment of Revenues. To the extent within its power, the Issuer will not assign the Revenues or create or authorize to be created any debt, lien or charge thereon, other than the assignment thereof under this Indenture.

(d) Inspection of Project Books. All books, instruments and documents in the Issuer's possession relating to the Project and the Revenues shall be open to inspection and copying during reasonable times and upon reasonable notice by any accountants or other agents of the Trustee that the Trustee may designate from time to time.

(e) Register. At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied (at the expense of the person making such copies) by the Borrower, the Investor Limited Partner, the Issuer, the Controlling Holders, or by a designated representative thereof.

(f) Rights and Enforcement of the Loan Agreement. The Trustee may enforce, in its name or in the name of the Issuer, all rights of the Issuer for and on behalf of the Holders, except for Reserved Rights, and may enforce all covenants, agreements and obligations of the Borrower under and pursuant to the Loan Agreement, regardless of whether the Issuer is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Issuer, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the Loan Agreement, and will take all actions within its authority to keep the Loan Agreement in effect in accordance with the terms thereof.

#### Section 9.02. Limited Obligations of the Issuer.

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 FINANCING 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 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 BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

Section 9.03. Limitation on Issuer's Obligations.

Any other term or provision in this Indenture or the other Financing Documents to the contrary notwithstanding, any and all obligations (including without limitation, fees, claims, demands, payments, damages, liability, penalties, assessments and the like) of or imposed upon the Issuer are subject to Section 2.04 hereof and the following:

(a) Waiver of Personal Liability. No Issuer Indemnified Person shall be individually or personally liable for the payment of any principal, premium, if any, or interest on the Bonds or any costs incidental thereto or any sum hereunder or under the Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Indenture or the Loan Agreement except in the case of such Issuer Indemnified Person's own willful misconduct.

(b) Non-Liability of Issuer. The Issuer shall not be obligated to pay the principal (or redemption price) of or interest on the Bonds, except from the Trust Estate. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or the Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement, and except as may result solely from the Issuer's own willful misconduct.

(c) No Obligation to Enforce Assigned Rights. Notwithstanding anything to the contrary in this Indenture, the Issuer shall have no obligation to and instead the Trustee may, without further direction from the Issuer, take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer under this Indenture and the Loan Agreement (other than the Reserved Rights), including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under the Loan Agreement.

(d) Role of Issuer. The Issuer shall not be required to take any action not expressly provided for herein. The Issuer shall have no obligation to review, control or oversee the activities of the Trustee in collecting any amounts payable pursuant to the Loan Agreement or this Indenture, or in making any payments on the Bonds. Further, the Issuer

shall not be obligated to take any action or execute any document which might in its reasonable judgment involve it in any expense or liability unless it shall have been furnished with assurance of payment or reimbursement for any expense and with reasonable indemnity for liability of the Issuer Indemnified Persons.

(e) No Recourse on Bonds. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

The Trustee hereby acknowledges that the Issuer's sole source of money to repay the Bonds will be provided by the Trust Estate, and hereby agrees that if such amounts shall ever prove insufficient to pay all principal, premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise) or any costs incidental thereto, then the Trustee shall give notice to the Borrower to pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium, if any, or interest, or costs incidental thereto including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be.

Section 9.04. Issuer Tax Covenants.

The Issuer represents, covenants and agrees that it will:

(a) comply with all applicable requirements of the Code that are necessary to preserve the Federal Tax Status of the Bonds, as further set forth in the Tax Exemption Agreement; and

(b) 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.

ARTICLE X

AMENDMENTS TO LOAN AGREEMENT, NOTE, TAX REGULATORY AGREEMENT OR  
TAX EXEMPTION AGREEMENT

Section 10.01. Amendments Not Requiring Consent of Holders.

Without the consent of or notice to the Holders, the Issuer, the Borrower, the Investor Limited Partner and the Trustee may enter into or consent to, as applicable, any amendment, change or modification of the Loan Agreement, the Note, the Tax Regulatory Agreement or the

Tax Exemption Agreement, as the case may be, as may be required or permitted (a) by the provisions of the Financing Documents, (b) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Loan Agreement, the Note, the Tax Regulatory Agreement or the Tax Exemption Agreement, as the case may be, (c) in connection with an amendment or to effect any purpose for which there could be an amendment of this Indenture pursuant to Section 7.02 hereof, or (d) in connection with any other change therein which is not materially prejudicial to the Trustee or the Holders of the Bonds, in the judgment of the Trustee (provided that the Trustee is entitled to the advice of counsel or other experts, at its discretion, in making such decision).

#### Section 10.02. Amendments Requiring Consent of Holders.

Except for the amendments, changes or modifications contemplated in Section 10.01 hereof, neither the Issuer nor the Trustee shall consent to:

(a) any amendment, change or modification of the Loan Agreement or the Note which would change the amount or time as of which Loan Payments and Collateral Payments are required to be paid, without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of all of the then outstanding Bonds affected by such amendment, change or modification, or

(b) any other amendment, change or modification of the Loan Agreement, the Note, the Tax Regulatory Agreement or the Tax Exemption Agreement without the giving of notice as provided in this Section of the proposed amendment, change or modification and receipt of the written consent thereto of the Holders of the Controlling Holders.

The consent of the Holders shall be obtained as provided in Section 7.03 hereof with respect to Supplemental Indentures.

If the Issuer or an Authorized Borrower Representative shall request at any time the consent of the Trustee to any proposed amendment, change or modification of the Loan Agreement, the Note, the Tax Regulatory Agreement or the Tax Exemption Agreement contemplated in subparagraphs (a) or (b) of this Section, upon being indemnified satisfactorily with respect to expenses, the Trustee shall cause notice of the proposed amendment, change or modification to be provided in the manner which is required by Section 7.03 hereof with respect to notice of Supplemental Indentures. The notice shall set forth briefly the nature of the proposed amendment, change or modification and shall state that copies of the instrument or document embodying it are on file at the Designated Office of the Trustee for inspection by all Holders.

#### Section 10.03. Consent of the Borrower.

Anything contained herein to the contrary notwithstanding, any of the documents described in Sections 10.01 and 10.02 hereof executed and delivered in accordance with this Article X shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery thereof.

Section 10.04. Favorable Opinion of Bond Counsel.

Before the Issuer and the Trustee shall consent to any amendment, change or modification of any of the documents described in Sections 10.01 and 10.02, there shall be delivered a Favorable Opinion of Bond Counsel to the Trustee and the Issuer.

ARTICLE XI

MISCELLANEOUS

Section 11.01. Limitation of Rights.

With the exception of rights conferred expressly in this Indenture, 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 Remarketing Agent, the Borrower, the Investor Limited Partner and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower and the Holders of the Bonds, as provided herein.

Section 11.02. Severability.

In case any section or provision of this Indenture, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

Section 11.03. Notices.

Except as provided in Section 6.02 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is (i) duly mailed by first-class mail, postage pre-paid, (ii) forwarded by overnight courier service, delivery charges pre-paid, or (iii) transmitted by electronic means (including, without limitation, e-mail and facsimile transmission) . Notices to the Issuer, the Borrower, the Investor Limited Partner, the Trustee, the Remarketing Agent and the Rating Agency shall be delivered to their respective Notice Address. Copies of all notices required to be sent to the Borrower shall be sent simultaneously to the Investor Limited Partner.



Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Issuer, the Trustee, the Borrower or the Investor Limited Partner to one or both of the others also shall be given to the others. In addition to the foregoing, the Trustee hereby agrees to send written notice to the Rating Agency upon the occurrence of any of the following events: (1) any change in the Trustee; (2) any amendment to the documents; (3) any change or notification of the proposed change of the Mandatory Tender Date or the Remarketing Date; (4) any partial payment of any Bond Loan or the giving of notice of the call for redemption (in whole or in part) of the Bonds, (5) any defeasance or acceleration of the Bonds, (6) any change in the investment of funds subject to the lien of this Indenture, or (7) any sale of Eligible Investments below par, as shown in a Cash Flow Projection delivered to the Rating Agency prior to the sale date.

The Issuer, the Trustee, the Borrower, the Investor Limited Partner, the Lender, the Remarketing Agent and the Rating Agency may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or Persons to whose attention the same shall be directed.

In connection with any notice mailed or otherwise sent pursuant to the provisions of this Indenture, a certificate of the Trustee, the Issuer, the Borrower, the Investor Limited Partner or the Holders of the Bonds, whichever or whoever mailed that notice, that the notice was so mailed shall be conclusive evidence of the proper mailing of the notice.

#### Section 11.04. Suspension of Mail and Courier Service.

If because of the suspension of delivery of first-class mail or of delivery by overnight courier services, or for any other reason, the Trustee shall be unable to mail by the required class of mail or forward by overnight courier service any notice required to be given by the provisions of this Indenture, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate the required mailing or forwarding thereof, and the giving of that notice in that manner for all purposes of this Indenture shall be deemed to be in compliance with the requirement of this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

#### Section 11.05. Payments Due on Non-Business Days.

If any Bond Payment Date is a day other than a Business Day, then payment of interest and principal need not be made by the Trustee on that date, but that payment may be made on the next succeeding Business Day on which the Trustee is open for business with the same force and effect as if that payment were made on the Bond Payment Date, and no interest shall accrue for the period after that date.

Section 11.06. Instruments of Holders.

Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under this Indenture to be executed by any Holder may be in any number of concurrent writings of similar tenor and may be executed by that Holder in person or by an agent or attorney appointed in writing. Proof of (a) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (b) the execution of any writing appointing any agent or attorney, and (c) the ownership of Bonds, shall be sufficient for any of the purposes of this Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely:

(i) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and

(ii) The fact of ownership of Bonds shall be proved by the Register maintained by the Trustee.

Nothing contained herein shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Holder of any Bond shall bind every future Holder of the same Bond, with respect to anything done or suffered to be done by the Issuer, the Borrower or the Trustee pursuant to that writing.

Section 11.07. Priority of this Indenture.

This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

Section 11.08. Binding Effect.

This Indenture 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 herein.

Section 11.09. Counterparts.

This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 11.10. Patriot Act.

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies

each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. No. 107-56. 115 Stat. 272 (2001), as amended, the Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Trustee will request any such documentation under this Section 11.10 from the Borrower in accordance with the Loan Agreement and will not request such documentation from the Issuer.

Section 11.11. Governing Law.

This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

[signature pages follow]

**IN WITNESS WHEREOF**, the Issuer and the Trustee have caused this Trust Indenture 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**

By: \_\_\_\_\_  
Monica Galuski, Director of Bond Finance  
and Chief Investment Officer

**BOKF, NA, as Trustee**

By: \_\_\_\_\_  
Kathy McQuiston, Vice President

**EXHIBIT A**  
**FORM OF BOND**

**NOTICE: Unless this certificate is presented by an authorized representative of The Depository Trust Company to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.**

REGISTERED  
No. R- \_\_\_\_\_

REGISTERED  
\$ \_\_\_\_\_

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(FISHPOND AT CORPUS CHRISTI APARTMENTS)**  
**SERIES 2020**

INITIAL INTEREST RATE	MATURITY DATE	DATED DATE	CUSIP
_____%	[_____] 1, 203[____]	October [____], 2020	

REGISTERED OWNER:

PRINCIPAL AMOUNT: \_\_\_\_\_ AND 00/100 DOLLARS

The Texas Department of Housing and Community Affairs (the “**Issuer**”), a public body and official agency of the State of Texas (the “**State**”), for value received, promises to pay to the Registered Owner specified above or registered assigns, but solely from the sources and in the manner referred to herein, the Principal Amount specified above on the Maturity Date specified above (subject to the rights of redemption and tender set forth herein), and to pay from those sources interest on the unpaid principal balance of said Principal Amount on (a) May 1 and November 1 of each year beginning May 1, 2021, (b) each Mandatory Tender Date, (c) each Redemption Date, (d) the Maturity Date, and (e) the date of acceleration of the Bonds (the “**Interest Payment Dates**”), until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from the date of initial delivery.

This Bond shall bear interest at a rate per annum equal to the Interest Rate, calculated on the basis of a 360-day year consisting of twelve 30-day months.

The principal of this Bond is payable upon presentation and surrender hereof at the designated corporate trust office of the trustee, presently BOKF, NA (the “**Trustee**”). Interest is

payable on each Interest Payment Date by check or draft mailed to the person in whose name this Bond (or one or more predecessor bonds) is registered (the “**Holder**”) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the “**Regular Record Date**”) on the registration books for this issue maintained by the Trustee, as registrar, at the address appearing therein. Any interest which is not timely paid or duly provided for shall cease to be payable to the Holder hereof (or of one or more predecessor bonds) as of the Regular Record Date, and shall be payable to the Holder hereof (or of one or more predecessor bonds) at the close of business on a Special Record Date to be fixed by the Trustee for the payment of that overdue interest. Notice of the Special Record Date shall be sent to Holders not less than 10 days prior thereto. The principal of and interest on this Bond are payable in lawful money of the United States of America, without deduction for the services of the paying agent. While the Bonds are held in a book-entry system and in certain other circumstances, all as provided in the Indenture, principal of and interest on this Bond is required to be paid by wire transfer or other arrangement, other than any payment of the entire unpaid principal amount hereof.

This Bond is one of a duly authorized issue of the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “Bonds”), issuable under the Trust Indenture dated as of October 1, 2020 (the “**Indenture**”), between the Issuer and the Trustee, in an initial aggregate principal amount of \$[\_\_\_\_\_] and used for the purpose of financing a loan (the “**Loan**”) to be made to FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “**Borrower**”). The Loan will be used by the Borrower to pay a portion of the costs of acquiring, rehabilitating, equipping and improving the Project, as defined in the Indenture, and as further described in the Loan Agreement dated as of even date with the Indenture (the “**Loan Agreement**”), between the Issuer and the Borrower. The Bonds are special limited obligations of the Issuer, issued or to be issued under and are to be secured and entitled equally and ratably to the protection given by the Indenture. The Bonds are issued pursuant to, under authority of and in compliance with Texas Government Code, Chapter 2306, as amended, (the “**Act**”), and a resolution duly enacted by the Governing Body (the “**Governing Body**”) of the Issuer. Any term used herein but not otherwise defined shall have the meaning ascribed to such term in the Indenture.

The Bonds are subject to redemption and mandatory tender prior to their maturity as follows:

(a) Optional and Mandatory Redemption. The Bonds are subject to optional and mandatory redemption as provided in the Indenture.

(b) Mandatory Tender. The Unredeemed Bonds are subject to mandatory tender on each Mandatory Tender Date. Holders will not have the right to elect to retain their Unredeemed Bonds, and any such Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date. Upon presentation and surrender of Unredeemed Bonds by a Holder on the date fixed for tender, such Holder shall be paid the Purchase Price of such Bonds. Accrued interest on such Bonds shall be paid separately on such Mandatory Tender Date, which is an Interest Payment Date, in the usual manner.

Reference is made to the Indenture for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the

rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

The Borrower is required by the Loan Agreement to cause the Lender (as defined in the Indenture) to make on its behalf Collateral Payments (as defined in the Indenture) to the Trustee in the amounts and at the times necessary to pay the principal of and interest (the “**Bond Service Charges**”) on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Service Charges on the Bonds, the Issuer’s right, title and interest in and to the Loan Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Loan Agreement and in the Tax Exemption Certificate and Agreement dated as of October 1, 2020 (the “**Tax Exemption Agreement**”), among the Issuer, the Trustee and the Borrower, the Borrower has executed and delivered the Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 2020 (the “**Tax Regulatory Agreement**”), among the Issuer, the Borrower and the Trustee.

Copies of the Indenture, the Loan Agreement, the Tax Exemption Agreement and the Tax Regulatory Agreement are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on the Bonds are payable solely from the Trust Estate, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and the Note in repayment of the Loan, amounts on deposit in the Bond Fund, amounts received as Collateral Payments (as defined in the Indenture) required to be received by the Trustee as a condition to, and in the amount of, the disbursement of amounts on deposit in the Project Fund, and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the Trust Estate. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

**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.**

NO MEMBER, DIRECTOR, OFFICER, AGENT, EMPLOYEE OR ATTORNEY OF THE ISSUER, INCLUDING ANY PERSON EXECUTING THE INDENTURE OR THE BONDS, SHALL BE LIABLE PERSONALLY ON THE BONDS OR FOR ANY REASON RELATING TO THE ISSUANCE OF THE BONDS. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS, OR FOR ANY CLAIM BASED ON THE BONDS, OR OTHERWISE IN RESPECT OF THE BONDS, OR BASED ON OR IN RESPECT OF THE INDENTURE OR ANY SUPPLEMENTAL INDENTURE, AGAINST ANY MEMBER, DIRECTOR, OFFICER, EMPLOYEE OR AGENT, AS SUCH, OF THE ISSUER OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS BOND AND AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE BONDS, EXPRESSLY WAIVED AND RELEASED.

The Bonds are issuable only as fully registered bonds and, except as hereinafter provided, in printed or typewritten form, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“**DTC**”), which shall be considered to be the Holder for all purposes of the Indenture, including, without limitation, payment by the Issuer of Bond Service Charges, and receipt of notices to, giving of consents by and exercise of rights of, Holders. There shall be a single Bond representing each maturity, and all Bonds shall be immobilized in the custody of DTC or its custodian with the owners of beneficial interests in those Bonds (the “**Book-Entry interests**”) having no right to receive from the Issuer Bonds in the form of physical securities or certificates. Ownership of Book-Entry interests in the Bonds shall be shown by book-entry on the system maintained and operated by DTC, its participants (the “**Participants**”) and certain persons acting through the Participants, and transfers of ownership of Book-Entry interests shall be made only by that Book-Entry System, the Issuer and the Trustee having no responsibility therefor. DTC is to maintain records of the positions of Participants in the Bonds, and the Participants and persons acting through Participants are to maintain records of the purchasers and owners of Book-Entry interests in the Bonds. The Bonds as such shall not be transferable or exchangeable, except for transfer to another Depository (as defined in the Indenture) or to another nominee of a Depository, without further action by the Issuer and otherwise at the expense of the Borrower.

If any Depository determines not to continue to act as a Depository for the Bonds for use in a Book-Entry System, the Issuer may attempt to have established a securities depository/Book-Entry System relationship with another qualified Depository under the Indenture. If the Issuer does not or is unable to do so, the Issuer and the Trustee, after the Trustee has made provision for notification of the owners of Book-Entry interests by the then Depository, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000, or any integral multiple of \$5,000 in excess thereof) to the assignees of the Depository or its nominee, all at the cost and expense (including costs of printing or otherwise preparing and delivering replacement Bond certificates) of those Persons requesting

such authentication and delivery, if the event is not the result of Issuer action or inaction (including action at the request of the Borrower).

The Indenture permits certain amendments or supplements to the Indenture, the Loan Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement and the Note not prejudicial to the Holders to be made without the consent of or notice to the Holders, and certain other amendments or supplements thereto to be made with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding.

The Holder of each Bond has only those remedies provided in the Indenture.

This Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed.

It is certified and recited that there have been performed and have happened in regular and due form, as required by law, all acts and conditions necessary to be done or performed by the Issuer or to have happened (a) precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special limited obligations of the Issuer, and (b) precedent to and in the execution and delivery of the Indenture and the Loan Agreement.

IN WITNESS OF THE ABOVE, the Issuer has caused this Bond to be to be executed and delivered by the manual or facsimile signature of its [Vice] Chair and attested by the manual or facsimile signature of its [Assistant] Secretary as of the Dated Date set forth above.

**TEXAS DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
[Vice] Chair

[SEAL]

ATTEST:

By: \_\_\_\_\_  
[Assistant] Secretary

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

**BOKF, NA**

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication: \_\_\_\_\_, 20\_\_

**ASSIGNMENT**

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer that Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_

Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agent Medallion Program or in such other guarantee program acceptable to the Registrar.

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatever.

Please insert social security number or other tax identification number of transferee

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

**DTC FAST RIDER**

Each Bond shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

---

**LOAN AGREEMENT**

between

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
as Issuer

and

**FISHPOND LIVING AT CORPUS CHRISTI, LP,**  
as Borrower

Relating to

\$[\_\_\_\_\_]  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(FISHPOND AT CORPUS CHRISTI APARTMENTS)**  
**SERIES 2020**

Dated as of October 1, 2020

INDEX

(This Index is not a part of this Agreement  
but rather is for convenience of reference only.)

Page

Preamble .....1

ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms .....1  
Section 1.2. Interpretation .....2  
Section 1.3. Captions and Headings.....2

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations of the Issuer .....2  
Section 2.2. Representations and Covenants of the Borrower .....3

ARTICLE III

PLAN OF FINANCING

Section 3.1. Issuance of Bonds; Application of Proceeds.....5  
Section 3.2. The Loan .....6  
Section 3.3. Mortgage Loan to Borrower .....6  
Section 3.4. Acquisition, Construction, Installation, Equipment and Improvement.....6  
Section 3.5. Plans and Specifications.....7  
Section 3.6. Disbursements from the Project Fund.....7  
Section 3.7. Reserved.....8  
Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient .....8  
Section 3.9. Completion Date .....8  
Section 3.10. Reserved.....9  
Section 3.11. Investment of Fund Money .....9

ARTICLE IV

LOAN PAYMENTS; COLLATERAL PAYMENTS  
AND ADDITIONAL PAYMENTS

Section 4.1. Loan Repayment; Delivery of Note .....9  
Section 4.2. Collateral Payments .....10  
Section 4.3. Bond Fund and Collateral Fund .....10

Section 4.4.	Additional Payments .....	10
Section 4.5.	Place of Payments .....	11
Section 4.6.	Obligations Unconditional .....	12
Section 4.7.	Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary .....	12

## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1.	Right of Inspection.....	12
Section 5.2.	Borrower to Maintain its Existence; Sale of Project.....	12
Section 5.3.	Indemnification .....	13
Section 5.4.	Tax Matters .....	15
Section 5.5.	Affirmative Covenants .....	16
Section 5.6.	Negative Covenants .....	17
Section 5.7.	Continuing Disclosure.....	17
Section 5.8.	Reliance.....	18
Section 5.9.	Allocation and Use of Proceeds to Eligible Costs .....	18
Section 5.10.	Compliance with Texas Government Code .....	18

## ARTICLE VI

### PREPAYMENT AND REMARKETING

Section 6.1.	Prepayment.....	19
Section 6.2.	Remarketing of Bonds .....	19
Section 6.3.	Borrower's Obligations Upon Tender of Bonds .....	19
Section 6.4.	Option to Terminate .....	19

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1.	Events of Default.....	20
Section 7.2.	Remedies on Default.....	21
Section 7.3.	No Remedy Exclusive.....	22
Section 7.4.	Agreement to Pay Attorneys' Fees and Expenses.....	22
Section 7.5.	No Waiver .....	22
Section 7.6.	Notice of Default.....	23
Section 7.7.	Investor Limited Partner's Cure Rights .....	23

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1.	Term of Agreement.....	23
Section 8.2.	Amounts Remaining in Funds.....	23

Section 8.3.	Notices .....	23
Section 8.4.	Certain Provisions Required by the Issuer .....	24
Section 8.5.	Limited Liability of Borrower.....	25
Section 8.6.	Binding Effect .....	25
Section 8.7.	Amendments and Supplements .....	25
Section 8.8.	Execution Counterparts.....	26
Section 8.9.	Severability .....	26
Section 8.10.	Governing Law.....	26
Section 8.11.	Survival of Provisions .....	26

Exhibit A - FORM OF NOTE .....	A-1
Exhibit B - FORM OF DISBURSEMENT REQUEST.....	B-1
Exhibit C - FORM OF COMPLETION CERTIFICATE.....	C-1



## LOAN AGREEMENT

**THIS LOAN AGREEMENT** made and entered into as of October 1, 2020 (this “Agreement”), between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “Issuer”), a public and official agency of the State of Texas, and **FISHPOND LIVING AT CORPUS CHRISTI, LP**, a Texas limited partnership (the “Borrower”), under the following circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

A. Pursuant to the Act, the Borrower has requested, and the Issuer has determined to issue, sell and deliver its Bonds, and to finance a loan with the proceeds derived from the sale thereof to the Borrower to assist in the financing of the Project to be undertaken by the Borrower.

B. To provide and secure amounts to repay the Loan of the Bond proceeds and to obtain disbursements thereof, the Borrower will cause Collateral Payments to be made available to the Trustee from funds provided by the Lender.

C. The Issuer and the Borrower each have full right and lawful authority to enter into this Agreement and to perform and observe the provisions hereof on their respective parts to be performed and observed.

D. In order to assure compliance with Sections 103 and 142 through 150 of the Code, the Issuer, the Borrower, and BOKF, NA (as Trustee and Fiscal Agent) have entered into the Tax Exemption Certificate and Agreement dated as of October 1, 2020 (the “Tax Exemption Agreement”) and the Regulatory and Land Use Restriction Agreement dated as of October 1, 2020 (the “Tax Regulatory Agreement”), each of which sets forth various certifications, representations, and covenants relating to the tax-exempt status of the Bonds.

**NOW, THEREFORE**, in consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Borrower agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely out of the Trust Estate created under the Indenture):

### ARTICLE I

#### DEFINITIONS

##### Section 1.1. Use of Defined Terms.

In addition to the words and terms defined elsewhere in this Agreement, the words and terms in this Agreement shall have the meanings set forth in the Trust Indenture dated as of October 1, 2020 (the “Indenture”), between the Issuer and the Trustee, the Tax Exemption Agreement or the Tax Regulatory Agreement.

Section 1.2. Interpretation.

Any reference herein to the Issuer, to the Governing Body or to any member, director, officer or employee of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of any statute of the State or the United States of America includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee or the Borrower under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Bonds. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.3. Captions and Headings.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations of the Issuer.

(a) The Issuer represents that: (i) it is a public and official agency of the State; (ii) it has or will have as of the Closing Date duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Bonds and the execution and delivery of the Issuer Documents; (iii) it is not in violation of or in conflict with any provisions of the laws of the State that would impair its ability to carry out its obligations contained in the Issuer Documents; (iv) it has the legal right and is empowered to enter into the transactions contemplated by the Issuer Documents; (v) it has duly authorized the execution, delivery and performance of the Issuer Documents; and (vi) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under the Issuer Documents by any successor public body. The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, construction and equipping of the Project or that the Project will be adequate or sufficient for the Borrower’s intended purposes.

(b) 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.

Section 2.2. Representations and Covenants of the Borrower.

The Borrower represents and covenants that:

(a) The Borrower (i) is a limited partnership duly formed and validly existing under the laws of the State, and (ii) is authorized to own, on a long-term basis, and operate the Project.

(b) It has full power and authority to execute, deliver and perform the Borrower Documents and to enter into and carry out the transactions contemplated by those documents. The execution, delivery and performance of the Borrower Documents do not, and will not, to the Borrower's knowledge, violate any provision of law applicable to the Borrower and do not, and will not, conflict with or result in a default in any material respect under any agreement or instrument to which the Borrower is a party or by which it is bound. The Borrower Documents have, by proper action, been duly authorized, executed and delivered by the Borrower and all steps necessary have been taken to constitute the Borrower Documents valid and binding obligations of the Borrower, enforceable in accordance with their terms except as may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights and general principles of equity.

(c) The Borrower does not currently operate or conduct any business except as related to the financing, ownership, operation and construction of the Project. The Borrower has no material assets or property other than its anticipated interest in the Project.

(d) The General Partner (i) is a limited liability company duly formed and validly existing under the laws of the State, and (ii) has the requisite legal authority to act as the general partner of the Borrower.

(e) The provision of financial assistance to be made available to it under this Agreement and the commitments therefor made by the Issuer have induced the Borrower to undertake the transactions contemplated by this Agreement.

(f) The Borrower will use and operate the Project in a manner consistent with the Act and in accordance with the Tax Regulatory Agreement and the Tax Exemption Agreement for as long as required by the Act and the Code and knows of no reason why the Project will not be so operated. If, in the future, there is a cessation of that operation, it will use its best efforts to resume that operation or accomplish an alternate use by the Borrower or others approved by the Issuer which will be consistent with the Act, the Code, the Tax Regulatory Agreement and the Tax Exemption Agreement.

(g) The Project will be completed in material accordance with the Plans and Specifications and the portion of the Project funded with the proceeds of the Bonds will constitute a qualified residential rental project within the meaning of Section 142(d) of the Code, all as further set forth in the Tax Exemption Agreement and the Tax Regulatory Agreement, and will be operated and maintained in such manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other applicable Governmental regulations and as to be consistent with the Act.

(h) The Project will be located entirely within the jurisdiction of the Issuer.

(i) The Borrower has obtained or will obtain all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the execution and delivery of the Borrower Documents or the performance by the Borrower of its obligations thereunder, or that were or are required for the acquisition, construction and/or operation of the Project.

(j) No litigation at law or in equity or proceeding before any governmental agency involving the Borrower is pending or, to the best of its knowledge, threatened in which any liability of the Borrower is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Borrower or that would affect its existence or authority to do business, the acquisition, construction, equipping or operation of the Project, the validity of any Borrower Documents or the performance of its obligations thereunder.

(k) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in material default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing that, under the provisions of any such agreement, with the lapse of time or the giving of notice, or both, would constitute an event of default by the Borrower thereunder.

(l) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower Documents do not and will not conflict with or constitute or result in a default by the Borrower in any material respect under or violate, (i) the Organizational Documents, (ii) the General Partner's organizational documents, (iii) any agreement or other instrument to which the Borrower is a party or by which it or its assets are bound, or (iv) to the best of its knowledge, any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(m) The Borrower has received and reviewed a copy of the Indenture and approves the terms and conditions thereof and agrees to the terms thereof.

(n) The Borrower has filed or caused to be filed all federal, state and local tax returns that are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(o) The Borrower has or will have a fee simple interest in and to the real property and will have absolute ownership of the personal property comprising the Project, and upon the Borrower's acquisition of the Project there will be no liens or encumbrances against such property other than the liens contemplated by the Mortgage Loan Documents and other Permitted Liens.

(p) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such

transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(q) The Borrower's representations and warranties survive the issuance of the Bonds.

(r) The Borrower's representations and warranties remain operative and in full force and effect regardless of any investigations by or on behalf of the Issuer or the results thereof.

(s) As to enforceability (subject to standard exceptions): (i) this Agreement (to the extent validly assigned to the Trustee pursuant to the Indenture) and the Note will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower by the Trustee in accordance with their terms for the benefit of the Holders of the Bonds, and (ii) the Reserved Rights constitute the legal, valid, and binding agreements of the Borrower enforceable against the Borrower by the Issuer in its own right (or, in the case of indemnification of any Issuer Indemnified Person, by such Issuer Indemnified Person in his, her or its own right) in accordance with their terms.

(t) No written information, exhibit or report furnished to the Issuer by the Borrower in its application for financing or by the Borrower or its representatives in connection with the negotiation of this Agreement or the other Borrower Documents, regardless of whether the Issuer is a party thereto (including any financial statements, whether audited or unaudited, and any other financial information provided in connection therewith) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The Borrower acknowledges that the representations and covenants herein made by the Borrower have been expressly and specifically relied upon by the Issuer in determining to make the Loan to the Borrower and the Loan would not have been made but for such representations and covenants. All material information provided by the Borrower to the Issuer concerning the Project and the Borrower was and is on the date of execution of this Agreement true and correct in all material respects.

### ARTICLE III

#### PLAN OF FINANCING

##### Section 3.1. Issuance of Bonds; Application of Proceeds.

(a) To provide funds to make the Loan for purposes of assisting the Borrower in paying Project Costs, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance and delivery of the Bonds upon receipt by the Trustee of the items listed in Section 2.10 of the Indenture. The Issuer agrees the proceeds of sale of the Bonds will be deposited in accordance with the Indenture.

(b) The Bonds will be issued in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing pursuant to and as

set forth in the Indenture. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture. The Borrower agrees to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform.

(c) Pending disbursement pursuant to Section 3.6 hereof, the proceeds of the Bonds deposited in the Project Fund, together with any investment earnings thereon, shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

### Section 3.2. The Loan.

The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to make the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Trustee.

### Section 3.3. Mortgage Loan to Borrower.

(a) To provide and secure funds for the repayment of the Loan, and to provide for the delivery of the Collateral Payments, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the Mortgage Loan. In particular, the Borrower will promptly take all necessary actions on its part to close the Mortgage Loan and satisfy all other terms, conditions and requirements of the Lender.

(b) The Borrower represents that the Mortgage Loan will be secured pursuant to the Mortgage Loan Documents.

(c) In connection with the Mortgage Loan, the Borrower shall execute and deliver such documents as required by the Lender, with such provisions as may be consistent with the terms and provisions of this Agreement.

(d) The Borrower agrees to cooperate with the Lender in any manner reasonably requested.

### Section 3.4. Acquisition, Construction, Installation, Equipment and Improvement.

The Borrower (a) has acquired or is in the process of acquiring a fee simple interest in the Project site and shall construct, improve and equip the Project with all reasonable dispatch and in accordance with the Plans and Specifications, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, construction, installation, equipment and improvement from funds made available therefor in accordance with this Agreement or otherwise, except to the extent being contested in good faith, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in

connection with the acquisition, construction, improvement and equipping of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, construction contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers employed in the construction, improvement and equipping of the Project as required by law.

Section 3.5. Plans and Specifications.

The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the purpose of the Project to other than purposes permitted by the Act, the Tax Exemption Agreement and the Tax Regulatory Agreement.

Section 3.6. Disbursements from the Project Fund.

Subject to the provisions below and so long as no Event of Default hereunder has occurred and is continuing for which the principal amount of the Bonds has been declared to be immediately due and payable pursuant to Section 7.2 hereof and Section 6.03 of the Indenture, disbursements from the Project Fund shall be made only to pay any of the following Project Costs:

(a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, improvement and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.

(b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the construction period with respect to the Project.

(c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the construction period.

(d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.

(e) Subject to the limitations set forth in the Tax Exemption Agreement, Costs of Issuance of the Bonds, including, financial, legal, accounting, cash flow verification, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee properly incurred under the Indenture that may become due and payable during the construction period.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, construction, improvement and equipping of the Project.

(g) Any disbursements from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the receipt by the Trustee of: (a) a disbursement request in the form attached hereto as Exhibit B, on which the Trustee may conclusively rely; and (b) Collateral Payments in an amount equal to the amount of any such disbursement request for deposit in the Collateral Fund as provided in Section 4.2 hereof. The Borrower hereby acknowledges and agrees that it shall submit disbursement requests to the Trustee no more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered and accompanied by a copy of the approval of the Lender or the Bridge Lender, as applicable, of the payments or reimbursements requested.

(h) Any disbursement for any item not described in, or the cost for which item is other than as described in, the information statement filed by the Issuer in connection with the issuance of the Bonds as required by Section 149(e) of the Code, and in the notice of public hearing pertaining to the Bonds shall be accompanied by an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.

(i) Notwithstanding any provision of this Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that Eligible Funds in the Collateral Fund plus Eligible Funds in the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to then-outstanding principal amount of the Bonds; provided, however, the Trustee shall be permitted to transfer funds from the Project Fund to the Collateral Fund upon the direction of the Borrower in the form set forth on Exhibit B hereto, provided that the result of such transfer is that the amount of Eligible Funds remaining on deposit in the Project Fund plus Eligible Funds on deposit in the Collateral Fund is at least equal to then outstanding principal amount of the Bonds.

Section 3.7. Reserved.

Section 3.8. Borrower Required to Pay Costs in Event Project Fund Insufficient.

If money in the Project Fund is not sufficient to pay all Project Costs, the Borrower, nonetheless, will complete the Project in accordance with the Plans and Specifications and shall pay all such additional Project Costs from its own funds. The Borrower shall pay all Costs of Issuance of the Bonds in excess of the amounts deposited in the Costs of Issuance Fund. The Borrower shall not be entitled to any reimbursement for any such additional Project Costs or payment of Costs of Issuance from the Issuer, the Trustee or any Holder; nor shall it be entitled to any abatement, diminution or postponement of any Loan Payments or other amounts to be paid under this Agreement.

Section 3.9. Completion Date.

The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of Exhibit C attached hereto. The Completion Certificate shall be delivered as promptly as practicable after the occurrence of the events and conditions referred to in paragraphs (a) and (b) of the Completion Certificate.



Section 3.10. Reserved.

Section 3.11. Investment of Fund Money.

(a) At the written request of the Authorized Borrower Representative, any money held as part of the Special Funds and the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in the Indenture and the Tax Exemption Agreement. Notwithstanding any other provision of this Agreement or any other instrument, the Borrower will take no action, nor shall the Borrower direct the Trustee to take or approve the Trustee taking any action or direct the Trustee to make or approve the Trustee's making any investment or use of proceeds of the Bonds, or any other moneys which may arise out of or in connection with this Agreement, the Indenture or the Project, that would cause the Bonds to be treated as an "arbitrage bond" within the meaning of Section 148 of the Code. In addition, the Issuer and the Borrower covenant and agree 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 which may arise out of, or in connection with, this Agreement, the Indenture or the Project throughout the term of the Bonds. No provision of this Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with Section 148 of the Code or the Regulations promulgated thereunder.

(b) The Borrower acknowledges that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Borrower hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

#### ARTICLE IV

##### LOAN PAYMENTS; COLLATERAL PAYMENTS AND ADDITIONAL PAYMENTS

Section 4.1. Loan Repayment; Delivery of Note.

In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before the last Business Day prior to each Bond Payment Date, a Loan Payment in an amount equal to the amount necessary to pay Bond Service Charges due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges on that date.

To secure the Borrower's performance of its obligations under this Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note, the Tax Exemption Agreement and the Tax Regulatory Agreement.

So long as no Event of Default has occurred and is continuing hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be canceled by the Trustee and surrendered to the Borrower.

#### Section 4.2. Collateral Payments.

In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall cause the delivery of Collateral Payments equal to the amount of the proposed disbursement by the Trustee on or before each such disbursement. All such Collateral Payments shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture. Any such Collateral Payment amounts shall be provided to the Trustee in writing and the Trustee shall not be responsible for computing any amounts under this Section 4.2.

#### Section 4.3. Bond Fund and Collateral Fund.

The Borrower and the Issuer each acknowledge that neither the Borrower nor the Issuer has any interest in the Bond Fund or the Collateral Fund and any money deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Holders.

#### Section 4.4. Additional Payments.

The Borrower shall pay as Additional Payments hereunder the following:

(a) Whether out of the proceeds of the Mortgage Loan to the Borrower, or other funds, all Costs of Issuance of the Bonds and all expenses incurred in closing the Mortgage Loan.

(b) Reserved.

(c) To the Trustee, (i) the Ordinary Trustee Fees and Expenses to the extent that the funds available in the Expense Fund under the Indenture for the payment thereof are not sufficient and available therefor and (ii) the Extraordinary Trustee Fees and Expenses.

(d) To the Issuer, the Issuer Fees and Expenses.

(e) All amounts required under Section 3.06 of the Indenture in order to remarket the Bonds, and the Borrower agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such remarketing.

(f) All costs of printing any replacement Bonds required to be issued under the Indenture to the extent such costs are not paid by the Holders.

(g) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by the Indenture and the Tax Exemption Agreement to the extent funds available under the Indenture are not sufficient and applied therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Tax Exemption Agreement and the fees and expenses of the Rebate Analyst to the extent available money in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Exemption Agreement.

(h) To the Dissemination Agent, the Dissemination Agent Fee, as well as any other costs, suits, judgments, losses, damages and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement, to the extent funds available in the Expense Fund under the Indenture are not sufficient and applied therefor.

(i) To the Remarketing Agent, the Remarketing Agent fee and any Remarketing Expenses.

In the event the Borrower is in default under any provision of any of the Borrower Documents and such default is not cured after expiration of all applicable notice and cure provisions, the Borrower shall be liable to, and upon demand shall pay to, the Issuer, the Trustee and the Lender all reasonable fees and disbursements of such persons and their agents (including attorneys' fees and expenses) which are reasonably connected therewith or incidental thereto except to the extent such fees and disbursements are paid from money available therefor under the Indenture.

Upon the payment, prepayment, or incurrence of any such cost, expense, or liability described in this Section by any such party, the Additional Payments in respect thereof shall be payable upon written demand to the Borrower, which demand shall be accompanied by invoices or other appropriate documentation concerning the nature, amount and incurrence of such cost, expense or liability. If the Additional Payments payable under this Section are not paid upon such demand, such Additional Payments shall bear interest from the date of such payment or the incurrence thereof at the Interest Rate for Advances until the amount due shall have been fully paid.

Except as otherwise provided herein, the obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents, unless and until the Borrower has transferred the Project to an unaffiliated entity with the prior written consent of the Issuer, which transferee assumes the obligations of the Borrower pursuant to this Section.

#### Section 4.5. Place of Payments.

The Borrower shall make or cause to be made all Loan Payments directly to the Trustee at its Designated Office. The Borrower shall direct the Lender and the Bridge Lender to make all

Collateral Payments directly to the Trustee at its Designated Office. Additional Payments shall be made by the Borrower directly to the Person to whom or to which they are due.

Section 4.6. Obligations Unconditional.

The obligations of the Borrower to make Loan Payments, Additional Payments and any payments required of the Borrower under Section 4.08 of the Indenture shall be absolute and unconditional, and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person; provided that the Borrower may contest or dispute the amount of any such obligation arising under Section 4.08 of the Indenture so long as such dispute or contest does not result in an Event of Default under the Indenture.

Section 4.7. Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary.

To secure the payment of Bond Service Charges, the Issuer shall assign to the Trustee, by the Indenture, its rights under and interest in this Agreement (except for the Reserved Rights). The Borrower hereby agrees and consents to those assignments. To the extent within its control, the Issuer shall not attempt to further assign, transfer or convey its interest in the Revenues or this Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Collateral Payments hereunder.

The Trustee shall be a third party beneficiary of this Agreement.

## ARTICLE V

### ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Right of Inspection.

At all reasonable times and upon reasonable notice, the Borrower shall allow any duly authorized representative of the Issuer or the Trustee to visit and inspect the Project, to examine and make copies of and from its books of record and account, and to discuss its affairs, finances, and accounts with its officers, and shall furnish to the Issuer and the Trustee any information reasonably required regarding its business affairs and financial condition within a reasonable time after receipt of written request therefor.

Section 5.2. Borrower to Maintain its Existence; Sale of Project.

The Borrower shall maintain its existence, not dissolve or sell, transfer or otherwise dispose of all or substantially all of its assets and not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, that it may do so if the surviving, resulting or transferee entity assumes in writing all of the obligations of the Borrower under the Borrower Documents. The Borrower shall not take any action or allow any action to be taken to terminate the existence of the Borrower except as provided herein.

No sale, assignment or transfer of title to the Project, except as may be otherwise required by the Lender, shall be made unless (a) the Lender consents to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder arising prior to such sale, assignment or transfer, and (c) no Event of Default as certified in writing to the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Trustee shall consent to any such assignment or transfer if (i) the Lender notifies it in writing that the Lender has determined that the aforesaid conditions have been satisfied, (ii) the Trustee receives an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the Federal Tax Status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by a purchaser, assignee or transferee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation (x) to pay or reimburse the fees and expenses of the Issuer and the Trustee incurred prior to such sale, assignment or transfer and (y) to indemnify the Trustee and the Issuer with respect to any obligation, event or action incurred or arising prior to such sale, assignment or transfer to the extent said indemnification is provided in the Borrower Documents. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Mortgage Loan Documents or the Tax Regulatory Agreement.

Notwithstanding anything to the contrary contained herein or in any other Borrower Document, and subject to the consent of Lender as required by the Mortgage Loan Documents, the following shall be permitted and shall not require the prior written approval of the Issuer or the Trustee: (a) the transfer by the Investor Limited Partner of its interests in the Borrower in accordance with the terms of the Organizational Documents, (b) the removal of the General Partner or the Class B Limited Partner in accordance with the Organizational Documents and the temporary replacement thereof with the Investor Limited Partner or any of its affiliates, (c) the transfer of ownership interests in the Investor Limited Partner, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Limited Partner in the Borrower to the General Partner or any of its affiliates, and (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above or that does not negatively impact the Borrower's ability to perform its obligations hereunder. The parties agree that this section shall control to the extent of any conflict in any Borrower Documents.

### Section 5.3. Indemnification.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE INDEMNIFIED PARTIES 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

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 LOAN AGREEMENT OR (ii) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS 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 ANY INDEMNIFIED PARTY, THE BORROWER SHALL DEFEND THE INDEMNIFIED PARTIES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT AN INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE INDEMNIFIED PARTIES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE INDEMNIFIED PARTIES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE TAX REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE INDEMNIFIED PARTIES BY THIS AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE INDEMNIFIED PARTIES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS 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 AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE TAX REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE INDEMNIFIED PARTIES 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 INDEMNIFIED PARTIES 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 AN INDEMNIFIED PARTY THE BORROWER SHALL DEFEND THE INDEMNIFIED PARTIES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE INDEMNIFIED PARTIES, AND THE BORROWER SHALL PAY THE INDEMNIFIED PARTIES' EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE INDEMNIFIED PARTIES; PROVIDED HOWEVER, THAT THE INDEMNIFIED PARTIES SHALL HAVE THE RIGHT TO EMPLOY

SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

**NOTWITHSTANDING ANY PROVISION OF LOAN AGREEMENT TO THE CONTRARY, THE INDEMNIFIED PARTIES SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE (BUT ONLY IN THE CASE OF ISSUER INDEMNIFIED PERSONS), NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM AN INDEMNIFIED PARTY'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.**

The rights of any Indemnified Party to indemnity hereunder and rights to payment of fees and reimbursement of expenses shall survive the final payment or defeasance of the Bonds and in the case of any Trustee Indemnified Person any resignation or removal of the Trustee. The provisions of this Section shall remain valid and in effect notwithstanding repayment of the Loan or payment, redemption or defeasance of the Bonds or termination of this Agreement or the Indenture.

Section 5.4. Tax Matters.

(a) Representations and Covenants. The Borrower represents, warrants and covenants as follows:

(i) The Borrower will 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 Federal Tax Status of the Bonds. 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.

(ii) 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 Agreement.

(iii) Neither the Borrower nor any "related party," within the meaning of Section 1.150-1(b) of the Regulations, to the Borrower shall be permitted to purchase any Bonds in an amount related to the Loan.

(b) Continuing Compliance. The requirements stated in this Section 5.4 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.

Section 5.5. Affirmative Covenants.

(a) Maintenance of Project. The Borrower shall maintain and preserve the Project in good working order and condition, ordinary wear and tear excepted, and shall from time to time make all necessary repairs, renewals, replacements, additions and improvements to the Project.

(b) Keeping of Records and Books of Account. The Borrower shall keep adequate records and books of account in which complete entries will be made in accordance with the requirements of the Mortgage Loan Documents or indicating deviations therefrom, reflecting all financial transactions.

(c) Payment of Taxes, Etc. The Borrower shall promptly pay and discharge: all taxes, assessments, fees, and other Governmental charges or levies or imposed upon it or upon any of its properties, income or profits, before the same shall become delinquent; all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other similar Persons for labor, materials, supplies and rentals, which if unpaid might by law become a lien upon its properties; any indebtedness heretofore or hereafter incurred by it when due, and discharge, perform and observe covenants, provisions and conditions to be discharged, performed and observed by it in connection therewith, or in connection with any agreement or other instrument relating thereto or in connection with any lien existing at any time upon any of its properties; provided, however, that the Borrower shall not be required to pay any of the foregoing if (a) the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, (b) the Borrower shall have set aside on its books adequate reserves with respect thereto and (c) the title of the Borrower to, and its right to use, its properties is not materially and adversely affected thereby.

(d) Insurance. The Borrower shall at all times maintain or cause to be maintained insurance of such types and in such amounts as may be required by the Mortgage Loan Documents.

(e) Notice of Material Litigation. The Borrower shall promptly notify the Trustee and the Issuer in writing of any litigation, arbitration proceeding or administrative investigation, inquiry or other proceeding to which it may hereafter become a party or be subject to which may involve any material risk of any material judgment or liability (unless fully covered by insurance) or which may otherwise result in any material adverse change in the business or assets or in the condition, financial or otherwise, of the Borrower or which may materially impair the ability of the Borrower to perform the Borrower Documents, or any other agreement or instrument herein or therein contemplated.

(f) Notice of Default. In the event that any Event of Default occurs, the Borrower shall give prompt notice in writing of such happening to the Trustee and the Issuer.

(g) Performance of Contracts, Etc. Except to the extent contested in good faith, the Borrower shall perform according to and shall comply with all of its contractual obligations and all requirements of law if nonperformance thereof would materially and adversely affect the business or credit of the Borrower on an individual basis or would materially impair the ability of the Borrower to perform this Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement or the Note or any other agreement or instrument herein or therein contemplated.



(h) Notice of Other Matters. The Borrower shall promptly notify the Trustee and the Issuer in writing of any of the following events:

(i) Any material change with respect to the business, assets, liabilities, financial condition or results of operations of the Borrower other than changes in the ordinary course of business the effects of which have not been materially adverse.

(ii) A default by the Borrower in any material respect under any material agreement to which the Borrower is a party or by which the Borrower or its properties or assets may be bound, giving in each case the details thereof and specifying the action proposed to be taken with respect thereto.

(i) Cooperation in Perfecting Security Interests, Etc. The Borrower shall promptly perform, following request by the Trustee, such acts as may be necessary or advisable to perfect and maintain any lien provided for in this Agreement or in any agreement or document contemplated herein or therein, or otherwise to carry out the intent of this Agreement. The Trustee shall not be responsible for the initial filing of financing statements.

(j) Environmental Matters. The Borrower will take and continue to take prompt action to remedy all environmental pollution and contamination, hazardous waste disposal and other environmental cleanup problems, if any, whether or not such cleanup problems have resulted from the order or request of a municipal, state, federal, administrative or judicial authority, or otherwise. The foregoing covenant shall not constitute or create a waiver of any rights the Borrower may have to pursue any legal rights or remedies against any third party for any environmental claims.

(k) Patriot Act. The Borrower covenants and agrees to provide documentation as reasonably requested or required by the Trustee to enable the Trustee to comply with the requirements of the Patriot Act as described in Section 11.10 of the Indenture.

#### Section 5.6. Negative Covenants.

(a) Non-discrimination. The Borrower will not, and will require each contractor, subcontractor and commercial tenant of the Project to covenant that it will not, discriminate by reason of race, color, creed, handicap, national origin or sex in the employment of any Person employed by it in connection with the Project or working in or on the Project. The Borrower will require each manager of the Project to covenant that in the leasing of the Project it will not discriminate by reason of age, race, color, creed, handicap, national origin, sex, marital status, sexual orientation or gender identity, and will not discriminate against persons with minor dependents.

(b) Nature of Business. The Borrower will not change the general character of its business as contemplated to be conducted at the date hereof, or engage in any type of business not reasonably related to its business as normally conducted.

#### Section 5.7. Continuing Disclosure.

The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this

Agreement or the Indenture, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default hereunder or under the Indenture or a default with respect to the Bonds or the Mortgage Loan Documents.

Section 5.8. Reliance.

It is expressly understood and agreed by the parties to this Agreement that: (1) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to it by the Trustee, any Holder or the Borrower as to the existence of a fact or state of affairs required under this Agreement to be noticed by the Issuer; (2) the Issuer shall not be under any obligation to perform any recordkeeping or to provide any legal service, it being understood that such services shall be performed by the Trustee or the Borrower; and (3) none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds (apart from the proceeds of Bonds issued under this Indenture) or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights under this Agreement unless it first shall have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking such action.

Section 5.9. Allocation and Use of Proceeds to Eligible Costs.

Notwithstanding anything to the contrary set forth in any of the documents evidencing or securing the Bonds (the “Tax Exempt Obligation”), all of the proceeds of the Tax Exempt Obligation shall, for federal income tax purposes, be (1) allocated on a pro rata basis to each building in the Project and the land on which it is located, and (2) used exclusively to pay costs of the construction of the Project which are includable in the aggregate basis of any building and the land on which the building is located (“Eligible Costs”) in a manner such that each building satisfies the requirements of Section 42(h)(4)(B) of the Code. Accordingly, none of the proceeds of the Tax Exempt Obligation will be deemed to have been used to pay any of the costs of issuance in connection with the delivery of the Bonds, or to fund any reserve account other to be used to pay Eligible Costs.

Section 5.10. Compliance with Texas Government Code.

The Borrower 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 any of this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement, the Tax Regulatory Agreement and the Tax Exemption Agreement. The foregoing verification is made solely to comply with Section 2271.002, 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 Borrower understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Borrower and exists to make a profit.

To the extent this Agreement is a contract for goods or services, the Borrower 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 Borrower and 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 Borrower understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the Borrower and exists to make a profit.

## ARTICLE VI

### PREPAYMENT AND REMARKETING

#### Section 6.1. Prepayment.

The Loan is subject to optional prepayment by the Borrower according to the same terms and conditions of the Bonds set forth in Section 3.01 of the Indenture.

#### Section 6.2. Remarketing of Bonds.

The Borrower is hereby granted the right to (a) give notice of a remarketing of the Bonds in the manner and to the extent set forth in the Indenture, and (b) designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in the Indenture.

#### Section 6.3. Borrower's Obligations Upon Tender of Bonds.

If any Unredeemed Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Special Funds for the purpose of paying the redemption price of the Bonds pursuant to the Indenture, the Borrower will cause to be paid to the Trustee as set forth in the Indenture Eligible Funds equal to the amount by which the redemption price of the Bonds exceeds the amount otherwise available pursuant to the Indenture.

#### Section 6.4. Option to Terminate.

The Borrower shall have the option to cancel or terminate this Agreement at any time when the Indenture shall have been released in accordance with its provisions. Such option shall be exercised by the Authorized Borrower Representative, on behalf of the Borrower, giving the Issuer and the Trustee at least five days' notice in writing of such cancellation or termination and such

cancellation or termination shall become effective at the end of such notice period. The provisions of this Section shall not be deemed to permit a prepayment of the Note other than in accordance with its terms.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

#### Section 7.1. Events of Default.

Each of the following shall be an Event of Default hereunder:

(a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts credited as paid and/or transferred from the Collateral Fund and the Project Fund, are insufficient to pay the Bond Service Charges due on such date;

(b) The Borrower shall fail to observe and perform any other agreement, term or condition contained in this Agreement and the continuation of such failure for a period of 30 days after written notice thereof shall have been given to the Borrower by the Issuer or the Trustee, or for such longer period as the Issuer (with respect to the Reserved Rights) and the Trustee may, pursuant to the written direction of the Controlling Holders, agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within ninety (90) days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of ninety (90) days;

(d) Any representation or warranty made by the Borrower herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any adverse material respect when made or given; and

(e) There shall occur an “Event of Default” as defined in the Indenture.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give notice to the Trustee

and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; or partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal or state bankruptcy, insolvency, reorganization or similar law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, insolvency, liquidation or reorganization proceedings.

#### Section 7.2. Remedies on Default.

Whenever an Event of Default shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) If acceleration of the principal amount of the Bonds has been declared pursuant to Section 6.03 of the Indenture, the Trustee shall declare all Loan Payments to be due and payable together with any other amounts payable by the Borrower under this Agreement and the Note, whereupon the same shall become immediately due and payable;

(b) The Trustee may exercise any or all or any combination of the remedies specified in this Agreement or any other Financing Document;

(c) The Issuer or the Trustee may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the Borrower pertaining to the Project; or

(d) The Issuer (with respect to the Reserved Rights) or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement, the Tax Exemption Agreement and the Tax Regulatory Agreement and the Note or to enforce the performance and observance of any other obligation or agreement of the Borrower under those instruments.

Notwithstanding the foregoing, neither the Issuer nor the Trustee shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur

liability unless and until satisfactory indemnity has been furnished to the Issuer or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to payment of Bond Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 4.14 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Notwithstanding anything in this Agreement to the contrary, the Issuer shall have the right to independently enforce the Reserved Rights and shall not be required to obtain the consent of the Trustee, the Holders or any other person or entity in order to enforce any of the Reserved Rights.

Section 7.3. No Remedy Exclusive.

No remedy conferred upon or reserved to the Issuer or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement or the Note, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.

If an Event of Default should occur and the Issuer or the Trustee should incur expenses, including attorneys' fees, expenses and court costs, in connection with the enforcement of this Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement or the Note or the collection of sums due thereunder, the Borrower shall reimburse the Issuer and the Trustee, as applicable, for the reasonable expenses and court costs so incurred upon demand.

Section 7.5. No Waiver.

No failure by the Issuer or the Trustee to insist upon the strict performance by the Borrower of any provision hereof shall constitute a waiver of their right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Borrower to observe or comply with any provision hereof.

Section 7.6. Notice of Default.

The Borrower shall give written notice to the Trustee, the Issuer, the Investor Limited Partner and the Special Limited Partner immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

Section 7.7. Investor Limited Partner's Cure Rights.

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 cured by the Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Term of Agreement.

This Agreement shall be and remain in full force and effect from the date of delivery of the Bonds to the Holder until such time as all of the Bonds shall have been fully paid (or provision made for such payment) pursuant to the Indenture and all other sums payable by the Borrower under this Agreement and the Note shall have been paid, except for obligations of the Borrower under Sections 4.4, 5.3 and 5.4 hereof, which shall survive any termination of this Agreement as provided herein and the resignation or removal of the Trustee.

Section 8.2. Amounts Remaining in Funds.

Any amounts remaining in the Bond Fund, the Project Fund and the Collateral Fund after all of the outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Agreement, the Note and the Indenture have been paid, shall be paid as provided in Section 4.14 of the Indenture.

Section 8.3. Notices.

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or forwarded by overnight courier service, delivery charges prepaid, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Investor Limited Partner, the Lender or the Trustee shall also be given to the others. The Borrower, the Issuer, the Lender, the Investor Limited Partner and the Trustee, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 8.4. Certain Provisions Required by the Issuer.

(a) Non-Liability of the Issuer. The Issuer shall not be obligated to pay the Bond Service Charges on the Bonds or any costs incidental thereto, except from the Trust Estate. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Issuer, is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or any costs incidental thereto. The Issuer shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement, the Bonds or the Indenture, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement, and except as may result solely from the Issuer's own willful misconduct.

The Borrower hereby acknowledges that the Issuer's sole source of money to repay the Bonds is the Trust Estate, and hereby agrees that if the payments to be made under this Agreement shall ever prove insufficient to pay all principal, premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Trustee, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium, if any, or interest when due, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

(b) Waiver of Personal Liability. None of the Issuer Indemnified Persons shall be individually or personally liable for the payment of any Bond Service Charges on the Bonds or any costs incidental thereto or any sum hereunder or under the Indenture or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement or the Indenture except in the case of such Issuer Indemnified Person's own willful misconduct.

(c) No Obligation to Enforce Assigned Rights. Notwithstanding anything to the contrary in this Agreement, the Issuer shall have no obligation to and instead the Trustee may, without further direction from the Issuer, take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer (other than the Reserved Rights and any other rights specifically retained by the Issuer pursuant to the Indenture) under the Indenture or this Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower hereunder.

(d) Issuer's Performance. None of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless payable from the Trust Estate, or unless the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds or the Project (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Agreement, the Indenture, and any and every Bond executed, authenticated and delivered under the Indenture; provided, however, that (i)



the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Borrower or the Trustee; and (ii) the Issuer shall have received in a timely manner the instrument to be executed, in form and substance satisfactory to the Issuer.

(e) No Violations of Law. Any other term or provision in this Agreement to the contrary notwithstanding, in no event shall this Agreement be construed as depriving the Issuer of any right or privilege or requiring it or any member, agent, employee, representative or advisor to take or omit to take or permit or suffer the taking of any action by itself or by anyone else which deprivation or requirement would violate or result in the Issuer's being in violation of the Act or any other applicable state or federal law.

#### Section 8.5. Limited Liability of Borrower.

Anything in this Agreement to the contrary notwithstanding, the monetary obligations of the Borrower contained in this Agreement (except for fees, payments and indemnification under Sections 3.12, 4.4, 5.3 and 7.4 hereof) shall be limited obligations payable solely from the income and assets of the Project and neither the Borrower nor partner, manager, member, director, official or officer of the Borrower shall have any personal liability for the satisfaction of any obligation of the Borrower or claim against the Borrower, arising out of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, neither the Issuer nor the Trustee may assert any claim arising hereunder against the Borrower's interest in the Project, any reserve or deposit made with the Lender in connection with the Mortgage Loan, or in the rents or other income of the Project for the payment of any charge or obligation due hereunder except to the extent available from then currently available "Surplus Cash" as that term is defined in the Mortgage Loan Documents.

#### Section 8.6. Binding Effect.

This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Issuer, the Borrower, the Trustee and their respective permitted successors and assigns provided that this Agreement may not be assigned by the Borrower (except in connection with a sale or transfer of assets pursuant to Section 5.2 hereof) and may not be assigned by the Issuer except to the Trustee pursuant to the Indenture or as otherwise may be necessary to enforce or secure payment of Bond Service Charges. This Agreement may be enforced only by the parties, their permitted assignees and others who may, by law, stand in their respective places.

#### Section 8.7. Amendments and Supplements.

Except as otherwise expressly provided in this Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, this Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article X of the Indenture, as applicable.

Section 8.8. Execution Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.9. Severability.

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.10. Governing Law.

This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 8.11. Survival of Provisions.

The provisions of this Agreement and the Indenture and any other document in connection with the issuance of the Bonds to which the Issuer is a party concerning (i) the tax-exempt status of the Bonds; (ii) the interpretation of this Agreement; (iii) governing law; (iv) the Issuer's right to rely on written representations of others contained herein or in any other document, regardless of whether the Issuer is a party thereto; (v) the immunity, right to indemnification and lack of pecuniary liability of the Issuer Indemnified Persons; and (vi) any other provision of this Agreement not described or enumerated above that expressly provides for its survival, shall survive and remain in full force and effect notwithstanding the payment or redemption in full, or defeasance of the Bonds, the discharge of the Indenture, and the termination or expiration of this Agreement.

[signature pages follow]

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

**TEXAS DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to the Board

*Issuer Signature Page to Loan Agreement*

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

**EXHIBIT A**

**FORM OF NOTE**

*This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Trust Indenture and the Loan Agreement referred to herein.*

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

[October \_\_], 2020

**FISHPOND LIVING AT CORPUS CHRISTI, LP**, a Texas limited partnership (the “Borrower”), for value received, promises to pay in installments to the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “**Issuer**”), the principal amount of

[\_\_\_\_\_] AND 00/100 DOLLARS (\$[\_\_\_\_\_].00)

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate of [\_\_\_\_\_] % per annum, to but not including the Mandatory Tender Date, and at the Remarketing Rate from and after the Mandatory Tender Date until the payment of such principal sum has been made or provided for. The principal amount stated above shall be paid on or before [\_\_\_\_\_] 1, 203[\_\_\_\_]. Interest shall be calculated on the basis of a 360-day year of 12 equal months. Interest on this Note shall be paid on (a) May 1 and November 1 of each year, commencing May 1, 2021, (b) each Redemption Date, (c) each Mandatory Tender Date, and (d) the date of acceleration of the Bonds (the “**Interest Payment Dates**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the hereinafter defined Indenture.

This Note has been executed and delivered by the Borrower to the Issuer pursuant to a certain Loan Agreement dated as of October 1, 2020 (the “**Loan Agreement**”), between the Issuer and the Borrower.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer’s \$[\_\_\_\_\_] Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “**Bonds**”) to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments (“**Loan Payments**”) at the times and in the amounts set forth in this Note for application to the payment of Bond Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture dated as of October 1, 2020 (the “**Indenture**”), between the Issuer and BOKF, NA, as trustee (the “**Trustee**”).

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments on each Interest Payment Date in an amount equal to the Bond Service Charges on the Bonds payable on such Interest Payment Date. In addition, to provide funds to pay the Bond Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments on any other date on which any Bond Service Charges on the Bonds shall be due and payable,

whether at maturity, upon acceleration or otherwise, in an amount equal to those Bond Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its designated corporate trust office for the account of the Issuer and deposited in the Bond Fund created by the Indenture.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person.

This Note is subject to prepayment, in whole or in part, upon the terms and conditions set forth in Article VI of the Loan Agreement. Any prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 6.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 6.03 of the Indenture, the unpaid principal amount of and accrued interest on this Note shall also be due and payable on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Section 8.5 of the Loan Agreement.

The Borrower, the Trustee and the Issuer acknowledge that this Note, and all Borrower's obligations hereunder, are subject and subordinate to the Mortgage Loan Documents. In addition, (1) the indebtedness evidenced by this Note and all other documents evidencing or securing this Note (collectively, the "Bond Loan Documents") are and shall be subordinated in right of payment, to the prior payment in full of the indebtedness evidenced by the Mortgage Loan Documents, and (2) the Bond Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made.

In the event of any conflict between the provisions of (i) this Note or the Bond Loan Documents and (ii) the provisions of the Mortgage Loan Documents, the provisions of the Mortgage Loan Documents shall control.

Enforcement of the covenants in the Bond Documents will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project other than available “Surplus Cash” as defined in the Mortgage Loan Documents.

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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,  
a Texas limited partnership**

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

**ENDORSEMENT**

Pay to the order of BOKF, NA, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the 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: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to the Board

Dated: [October \_\_\_\_], 2020



## EXHIBIT B

### FORM OF DISBURSEMENT REQUEST

STATEMENT NO. \_\_\_\_\_ REQUESTING DISBURSEMENT OF FUNDS FROM  
PROJECT FUND PURSUANT TO SECTION 3.6 OF THE LOAN AGREEMENT

Pursuant to Section 3.6 of the Loan Agreement dated as of October 1, 2020 (the “**Loan Agreement**”) between the Texas Department of Housing and Community Affairs (the “**Issuer**”) and FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “**Borrower**”), the undersigned Authorized Borrower Representative hereby requests and authorizes BOKF, NA, as trustee (the “**Trustee**”), as depository of the Project Fund created by the Trust Indenture dated as of October 1, 2020 (the “**Indenture**”), between the Issuer and the Trustee, to pay **[to the Borrower] [to [\_\_\_\_\_], as Lender] [or to the Person(s) listed on the Disbursement Schedule hereto]** out of the money deposited in the Project Fund the aggregate sum of \$\_\_\_\_\_ to pay the costs of the items listed in the Disbursement Schedule. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Indenture and in the Tax Exemption Agreement.

In connection with the foregoing request and authorization, the undersigned hereby certifies that:

(a) Each item for which disbursement is requested hereunder is properly payable out of the Project Fund in accordance with the terms and conditions of the Loan Agreement and none of those items has formed the basis for any disbursement heretofore made from said Project Fund.

(b) Each such item is or was incurred in connection with the acquisition, construction, installation, equipment or improvement of the Project.

(c) The Borrower has received, or will concurrently with payment receive and deliver to the Trustee, appropriate waivers of any mechanics’ or other liens with respect to each item for which disbursement is requested hereunder.

(d) After taking into account the proposed disbursement,

(i) no more than 5% of the Net Proceeds of the Bonds will have been used for costs that are not Qualified Project Costs;

(ii) less than 25% of the Net Proceeds of the Bonds will have been used for the cost of acquiring land; and

(iii) not more than 2% of the Net Proceeds of the Bonds will have been used for Costs of Issuance.

(e) There is no current or existing default or event of default pursuant to the terms of the Loan Agreement, the Tax Regulatory Agreement or the Tax Exemption Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(f) There are no liens on the Project except Permitted Liens and those permitted or provided for by the Loan Agreement

(g) This statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warranty, protection and authority to the Trustee for its actions taken pursuant hereto.

[Remainder of page intentionally left blank]

This statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

This \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

**APPROVED:**

**STERLING BANK.,**  
a [\_\_\_\_\_]

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

Name: \_\_\_\_\_  
Authorized Lender Representative

DISBURSEMENT SCHEDULE

TO STATEMENT NO. \_\_\_\_\_ REQUESTING AND AUTHORIZING DISBURSEMENT  
OF FUNDS FROM PROJECT FUND PURSUANT TO SECTION 3.6 OF THE LOAN  
AGREEMENT

**EXHIBIT C**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(FISHPOND AT CORPUS CHRISTI APARTMENTS)  
SERIES 2020**

**COMPLETION CERTIFICATE**

Pursuant to Section 3.9 of the Loan Agreement dated as of October 1, 2020 (the “**Loan Agreement**”) between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “**Issuer**”) and **FISHPOND LIVING AT CORPUS CHRISTI, LP**, a Texas limited partnership (the “**Borrower**”), and relating to the above-captioned Bonds, the undersigned Authorized Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings ascribed thereto in the Loan Agreement or the Tax Exemption Agreement):

(a) The Project was substantially completed and available and suitable for use as multifamily housing on \_\_\_\_\_ (the “**Completion Date**”).

(b) The acquisition, construction, equipping and improvement of the Project have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar governmental regulations.

(c) The costs of the Project financed with the Loan were \$\_\_\_\_\_.

(d) The applicable governmental authority having jurisdiction over the Project has issued certificates of occupancy with respect to each building in the Project.

(d) The proceeds of the Bonds were used in accordance with the requirements of the Tax Exemption Agreement, including the requirement that at least 95% of the proceeds of the Bonds be expended for Qualified Project Costs and no more than 2% of the proceeds of the Bonds be expended for Costs of Issuance. The Project will be operated in accordance with the terms of the Tax Exemption Agreement and the Regulatory Agreement.

(e) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: \_\_\_\_\_  
Authorized Borrower Representative

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

FISHPOND LIVING AT CORPUS CHRISTI, LP,  
a Texas limited partnership,  
as Borrower

Dated as of October 1, 2020

Relating to

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

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(FishPond at Corpus Christi Apartments)  
Series 2020)

## TABLE OF CONTENTS

	Page
Section 1.	Definitions and Interpretation ..... 1
Section 1A.	Acquisition, Construction and Equipping of the Development ..... 5
Section 2.	Tax-Exempt Status of the Bonds ..... 6
Section 3.	Modification of Tax and State Restrictive Covenants ..... 9
Section 4.	Housing Development During the State Restrictive Period..... 9
Section 4.A.	Repairs and Maintenance Required by State Law ..... 11
Section 4.B.	Development Amenities ..... 11
Section 5.	[Reserved]..... 11
Section 6.	Persons With Special Needs ..... 11
Section 7.	Consideration ..... 11
Section 8.	Reliance ..... 12
Section 9.	Development in Nueces County ..... 12
Section 10.	Sale or Transfer of the Development or Change in General Partner ..... 12
Section 11.	Term..... 13
Section 12.	Covenants to Run With the Land..... 14
Section 13.	Burden and Benefit ..... 14
Section 14.	Uniformity; Common Plan ..... 14
Section 15.	Default; Enforcement by the Trustee and Issuer..... 14
Section 16.	Enforcement of Certain Provisions by Tenants and other Private Parties ..... 15
Section 17.	The Trustee ..... 16
Section 18.	Recording and Filing ..... 16
Section 19.	Reimbursement of Expenses..... 16
Section 20.	Governing Law ..... 17
Section 21.	Amendments ..... 17
Section 22.	Notices ..... 17
Section 23.	Severability ..... 17
Section 24.	Multiple Counterparts ..... 17
Section 25.	Authorization to Act for Issuer ..... 17
Section 26.	Subordination and Incorporation of Freddie Mac Rider ..... 17
EXHIBIT A	Property Description..... A-1
EXHIBIT B-1	Development Description..... B-1
EXHIBIT B-2	Development Amenities ..... B-2
EXHIBIT C	Tenant Supportive Services ..... C-1
EXHIBIT D	Freddie Mac Rider ..... D-1
EXHIBIT E	Form of Multi Family Mortgage Revenue Bond Qualified Project Period Certificate .. E-1

## 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, 2020, 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, and including in its capacity as the fiscal agent under the Funding Loan Agreement described below, the “Trustee”) and **FISHPOND LIVING AT CORPUS CHRISTI, LP**, a Texas limited partnership (together with its permitted successors and assigns, the “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 Borrower has requested the assistance of the Issuer in connection with the financing of 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 Borrower has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Issuer has determined to provide funds in connection with the financing of the Development by issuing its Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “Bonds”) in the original principal amount of \$[\_\_\_\_\_], and loaning the proceeds of the Bonds to the Borrower, upon the terms and conditions set forth in the Loan Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Bonds to be excluded from gross income for federal income tax purposes under the Code (as defined herein) and the Regulations (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 Borrower have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, construction, equipping and operation of the Development and in order to ensure that the Development will be acquired, constructed, used and operated 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 Borrower 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 in the Tax Exemption Agreement (each as defined herein), 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 excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and that is appointed by the Issuer, and initially means Bracewell LLP.

“**Bond Documents**” has the meaning set forth in the Indenture.

“**Bonds**” means the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020.

“**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 purchaser 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 and successor 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.

“**Continuing Covenant Agreement**” means \_\_\_\_\_.

“**Conversion Date**” has the meaning set forth in the Indenture.

“**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 structures and related buildings and other improvements to be constructed on the Development Site as more fully set forth in Exhibit B-1 hereto,

and all fixtures and other property owned by the Borrower 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 Federal Tax Status of the Bonds (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).

“**Housing Act**” means the United States Housing Act of 1937, as amended, or a successor thereto.

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

“**Indenture**” means Trust Indenture of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, as amended, modified, supplemented or restated from time to time, or, following the refunding of the Bonds, the trust indenture, funding loan agreement or similar document relating to the refunding obligations.

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

“**Loan Agreement**” means the Loan Agreement of even date herewith between the Issuer and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture, or, following the refunding of the Bonds, the loan agreement, project loan agreement or similar agreement relating to the refunding obligations.

“**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 (D) 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.

“**Multifamily Tax Subsidy Program Income Limit**” (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

“**Note**” has the meaning set forth in the Indenture.

“**Official Intent Date**” means July 25, 2019.

“**Organizational Documents**” means the [Amended and Restated Agreement of Limited Partnership Agreement] of the Borrower dated as of [\_\_\_\_\_], 2020, as the same may be amended, modified, supplemented or restated from time to time.

“**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 (a) the date that is 15 years after the date on which 50% of the Units are occupied, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) 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 [Replacement Reserve Fund] required to be established by the [Continuing Covenant Agreement].

“**Security Instrument**” means (i) prior to the Conversion Date, the mortgage securing the Mortgage Loan made by the Lender, and (ii) on and after the Conversion Date, the mortgage or similar document relating to the refunding obligations.

“**Set Aside**” means the requirement that at least 40% of the Available Units be occupied or set aside for occupancy at all times by Low-Income Tenants.

“**State Conversion Date**” means the date of the first amortization payment on the Note.

“**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 Borrower 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 Borrower takes legal possession of the Development and ending on the latest of (a) the date that is 35 years after the first day of the State Restrictive Period (as a result of the Borrower’s election to extend the affordability 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 of even date herewith among the Issuer, the Trustee and the Borrower, as in effect on the Closing Date and as it may thereafter be amended or supplemented or restated in accordance with its terms.

**“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 Borrower 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 Borrower 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 Borrower hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct in all material respects as and when made.

(b) The Borrower 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 Borrower 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.

(c) The Borrower will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Bonds to be applied in a manner consistent with the requirements of the Indenture, the Loan Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Borrower acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Borrower and the Development.

(d) The Borrower is a qualified “housing sponsor” as defined in the Act.

(e) The Borrower will not seek an exemption from ad valorem taxation for the Development without prior written notice to the Issuer.

Section 2. Tax-Exempt Status of the Bonds. The Borrower 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 Bonds from gross income for federal income tax purposes (subject to any exceptions contained in the opinion delivered upon the original issuance of the Bonds). With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and 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 Borrower 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 six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in Section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) 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 Borrower;

(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 longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants, seniors 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. 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, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file Tenant Income Certifications and supporting documentation from each Low Income Tenant, including (A) a Tenant Income Certification dated immediately prior to the initial occupancy of such Low Income Tenant in the Development and (B) thereafter, annual Tenant Income Certifications obtained on or before the anniversary of such Low Income Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Low Income Tenant's occupancy of a Unit; provided that the requirement

for annual recertification will not apply for any year in which no Unit in the Development is occupied by a new resident whose income exceeds the applicable income limit. The Borrower 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 Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income 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 Borrower 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 Borrower 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 Borrower 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). The Borrower will retain all documentation required by this Section 2(a)(xii) until the date that is three years after the end of the Qualified Project Period.

(b) That the Borrower 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 prior written notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Funding Lender, 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 Borrower pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Borrower 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 Borrower will provide to the Trustee and the Issuer a certificate in the form attached hereto as Exhibit E 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.

(d) That the Borrower 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; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Regulatory 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 Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower,

and which is required to be noticed, represented or certified by the Borrower hereunder or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

Section 3. Modification of Tax and State Restrictive Covenants. The Borrower, 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, the Funding Lender and the Borrower, are required by the terms thereof to be applied to the, and impose requirements upon, the ownership or operation of the Development that are 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 to be effective for the duration of such 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 Borrower, 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 Borrower 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 Borrower and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Borrower 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 Borrower 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 of a Unit 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 of a Unit 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 Borrower from time to time that (i) such lease is subordinate to [**the Security Instrument 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 Borrower, 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) 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 Borrower, 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 Borrower 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 prior written notice to permit any duly authorized representative of the Issuer, the Funding Lender or the Trustee to inspect the books and records of the Borrower 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 Borrower 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, 2022;

(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 in the manner provided in such Exhibit, or from any additional supportive services added to the Issuer's rules at any future date as agreed to in writing by the Issuer in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.405 of the Texas Administrative Code. The Borrower 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 Borrower 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 and other Issuer rules regarding affirmative marketing and written policies and procedures, 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 Borrower, and the Borrower will have 30 days following receipt of such notice 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 Borrower 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 Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower 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 under Section 2(a)(ix) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development;

(o) to ensure that the Development conforms to the federal Fair Housing Act; and

(p) the Development meets the requirements of the Housing for Older Persons Act under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly and is therefore considered by the Issuer to have a federal elderly limitation.

Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the [Replacement Reserve] required by and created pursuant to the [Continuing Covenant Agreement] or a similar account for the longer of: (a) the period of time required pursuant to the [Continuing Covenant Agreement], or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Borrower 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 Borrower 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 portion of the Development constituting the Units, all for the purpose, among others, of inducing the Borrower to acquire, construct, equip and operate the Development. In consideration of the

issuance of the Bonds by the Issuer, the Borrower 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 Borrower 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 purposes of federal income taxation of interest on the Bonds. In performing their duties and obligations hereunder, the Issuer, the Borrower 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 Borrower and upon audits of the books and records of the Borrower pertaining to the Development. In addition, the Issuer, the Borrower 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 Borrower or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Borrower and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Borrower's compliance with this Regulatory Agreement or by the Borrower 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 Nueces County. The Borrower hereby represents that the Development is located entirely within Nueces County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Borrower 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 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 Bond 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 Borrower under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Bond 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 and the Borrower, which opinion will be furnished at the expense of the Borrower or the transferee, (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 Borrower under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Bond Documents, and (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 C, Section 1.301, Texas Administrative Code, 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 Security Instrument and other Bond Documents. 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. The Borrower 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 Borrower of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower as set forth in the Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement or any other 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 Borrower from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Borrower of further liability for obligations under this Regulatory Agreement arising after the date of such transfer.

(c) The Borrower 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 Borrower'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 Borrower 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 Borrower 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 Borrower and its successors in interest.

Section 12. Covenants to Run With the Land. The Borrower 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 Borrower 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 Borrower'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 Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Development is rendered less valuable thereby. The Issuer, the Trustee and the Borrower 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 Units 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 Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Borrower 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 and after being indemnified as provided in the Indenture, 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 Borrower institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Borrower 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 Borrower, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Borrower.

During the existence of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified as provided in the Indenture and the Loan Agreement 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 Borrower 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 Borrower pertaining to the Development during regular business hours following reasonable prior written 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 Borrower hereunder.

The Borrower hereby agrees that specific enforcement of the Borrower'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 Borrower herein, and the Borrower therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower 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 Borrower (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) During the existence 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 Borrower 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 Borrower under Sections 4(i) and 4(j) hereof, such party has the right to recover attorney's fees directly from the Borrower, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and

covenants of the Borrower 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 in the Indenture and Loan Agreement, 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 as Fiscal Agent under the Funding Loan Agreement, 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 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 Borrower with the terms of this Regulatory Agreement. The Trustee may rely on certificates and reports delivered to the Trustee by the Borrower 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 Borrower pursuant to this Regulatory Agreement.

The Trustee may resign or be removed only as provided in Sections 5.07 and 5.08, respectively, of the Indenture. 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 Financing Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Indenture, the Borrower will pay to the Trustee a fee, in an amount mutually agreed upon by the Borrower and the Trustee at the time of such discharge, for the performance of the Trustee's duties under this Regulatory Agreement through the date upon which the Bonds are to be paid in full. After the date upon which the Bonds have been paid in full, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

Section 18. Recording and Filing. The Borrower will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Nueces 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 Borrower 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 Borrower 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 Borrower 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 (except that after discharge of the Indenture, consent of the Trustee will not be required), or their successors in title, and duly recorded in the real property records of Nueces County, Texas, and only upon receipt by the Issuer (with a copy to the Trustee and the Borrower) 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, the Borrower and the Investor Limited Partner will be given in the manner and to the address (or facsimile numbers) or via electronic means as 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 Borrower to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture, the Loan Agreement and the Tax Exemption 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, the Loan Agreement and the Tax Exemption Agreement. In addition, the Issuer hereby authorizes the Borrower 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 Borrower and execute any form of statement required by the Code or the Regulations to perfect any such election.

Section 26. Subordination and Incorporation of Freddie Mac Rider. Effective on the Conversion Date, the provisions of the Freddie Mac Rider attached to this Regulatory Agreement as Exhibit D (the "Freddie Mac Rider") are incorporated into this Regulatory Agreement by this reference as if fully set forth in this Section 26. Notwithstanding anything contained herein or in the Freddie Mac Rider, in no event shall the provisions of the Freddie Mac Rider be construed to contravene State law.



IN WITNESS WHEREOF, the Issuer, the Trustee and the Borrower 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 Governmental Lender

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to Board

(SEAL)

ACKNOWLEDGMENT

STATE OF TEXAS            §  
  §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on \_\_\_\_\_, 2020 by James B. "Beau" Eccles, Secretary to the 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: \_\_\_\_\_  
Kathy McQuiston  
Vice President

ACKNOWLEDGMENT

STATE OF TEXAS            §  
  §  
COUNTY OF DALLAS       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020 personally appeared Kathy McQuiston, a Vice President of BOKF, NA, a national banking association, who acknowledged that she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,  
a Texas limited partnership**

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared David Fournier, Managing Member of FishPond Corpus Christi Manager, LLC, a Texas limited liability company, the general partner of FishPond Living at Corpus Christi, 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.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

EXHIBIT A

PROPERTY DESCRIPTION

[TO COME FROM BORROWER]

## EXHIBIT B-1

### DESCRIPTION OF DEVELOPMENT

Borrower: FishPond Living at Corpus Christi Apartments, LP, a Texas limited partnership

Development: The Development is an approximately 112-unit multifamily community for seniors to be known as FishPond at Corpus Christi Apartments and to be located at 1002 6th Street, Corpus Christi, Nueces County, Texas 78404. It consists of two (2) residential apartment buildings with approximately 79,350 net rentable square feet. The Development will consist of 112 one-bedroom/one-bath units ranging from approximately 700 square feet to approximately 717 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 pre-application scoring process.

Development Common Amenities must include at least fourteen (14) points selected from the following list which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of amenities from each section. The Borrower 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 Borrower.

#### (i) Community Space for Resident Supportive Services

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) through (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Borrower and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) through (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification . Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement.

(-1-) The agreement must be between the Borrower and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Borrower's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b-)(-3-) of this subclause, the Borrower must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in subitem (-b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Borrower, the Borrower must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Borrower, the Borrower will not be considered to be in violation of its commitment to the Department. If the Borrower is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Borrower. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

- (I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);
- (II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);
- (III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);
- (IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);
- (V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/ Fitness / Play

- (I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);
- (II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, 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 and allow for after-hours access. (1 point);
- (III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, 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 and allow for after-hours access. (2 points);
- (IV) One Children's Playscape Equipped for five to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (V) of this subparagraph is not selected; or
- (V) Two Children's Playscapes Equipped for five 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, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected;
- (VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);
- (VII) Swimming pool (3 points);
- (VIII) Splash pad/water feature play area (1 point);
- (IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping



- (I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);
  - (II) Enclosed community sun porch or covered community porch/patio (1 point);
  - (III) 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);
  - (IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);
  - (V) Porte-cochere (1 point);
  - (VI) Lighted pathways along all accessible routes (1 point);
  - (VII) a resident-run community garden with annual soil preparation and mulch provided by the Borrower and access to water (which may be subject to local water usage restrictions) (1 point);
- (v) Community Resources
- (I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);
  - (II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);
  - (III) 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);
  - (IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);
  - (V) Furnished Community room (2 points);
  - (VI) Library with an accessible sitting area (separate from the community room) (1 point);
  - (VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);
  - (VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);
  - (IX) 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 residents; and seating (3 points);
  - (X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);
  - (XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);
  - (XII) Bicycle parking that allows for, at a minimum, one bicycle for every five 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);
  - (XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least one locker for every eight residential units (2 points);
  - (XIV) Recycling Service (includes providing a storage location and service for pick-up) (1 point);

(XV) Community car vacuum station (1 point).

Unit, Development Construction and Energy and Water Efficiency Features. The Development must include at least nine (9) points selected from the following list. At least two (2) points must be selected from clause (iii) Energy and Water Efficiency Features. The development must maintain the points associated with those amenities by maintaining the amenity selected or providing substitute amenities with equal or higher point values.

(i) Unit Features

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) 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);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) 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 point);

(X) Walk-in closet in at least one Bedroom (0.5 point);

(XI) 48" upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one bathroom (0.5 point); and

(XVI) Hard floor surfaces in over 50% of unit NRA (0.5 point).

(ii) Development Construction Features

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);

(II) Thirty year roof (0.5 point);

(III) Greater than 30% 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);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least 55 and a Sound Transmission Class (STC) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one of the categories described in items (-a-) through (-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) 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>.

(-b-) Leadership in Energy and Environmental Design (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).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (NGBS). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

(iii) Energy and Water Efficiency Features

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) 15 SEER HVAC, or in Region 13, an efficient evaporative cooling system. 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 point);

(VIII) 16 SEER HVAC, for New Construction or Rehabilitation (1.5 points); and

(IX) A rainwater harvesting/collection system and/or locally approved greywater collection system (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 which are grouped primarily for organizational purposes. The Borrower is not required to select a specific number of services from each section. The Borrower may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. Should the Department's rules in subsequent years provide difference services than those listed below, the Borrower may be allowed to select services listed therein as provided in 10 TAC §10.405(a)(2). 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 Borrower.

#### (A) Transportation Supportive Services

- (i) shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

#### (B) Children Supportive Services

- (i) provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7));
- (ii) twelve hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

#### (C) Adult Supportive Services

- (i) four hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) 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) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include 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);
- (iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

- (i) 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 resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);
- (ii) annual health fair provided by a health care professional (1 point);
- (iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);
- (iv) 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);

(E) Community Supportive Services

- (i) partnership with local law enforcement and/or local first responders 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.) (2 points);
- (ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);
- (iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);
- (iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);
- (v) specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);
- (vi) 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);
- (vii) 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);
- (viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);
- (ix) provision, by either the Borrower or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

## EXHIBIT D

### FREDDIE MAC RIDER

This Freddie Mac Rider (the “Rider”) is attached to and forms a part of the Regulatory and Land Use Restriction Agreement (the “Regulatory Agreement”), dated as of October 1, 2020, by and among the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Governmental Lender”), BOKF, NA, as fiscal agent (together with any successor in such capacity, the “Fiscal Agent”), and FISHPOND LIVING AT CORPUS CHRISTI, LP (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “Borrower”).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“**Freddie Mac**” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States.

“**Funding Lender**” means the holder of the Governmental Note, initially Berkadia Commercial Mortgage LLC, and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“**Funding Loan Agreement**” means the Funding Loan Agreement relating to the Governmental Note, among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“**Governmental Note**” means the Governmental Lender’s Multifamily Housing Revenue Note (FishPond at Corpus Christi Apartments) Series 2020, delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“**Project Loan**” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Fiscal Agent.

“**Project Loan Agreement**” means the Project Loan Agreement relating to the Governmental Note, among the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“**Project Loan Documents**” means the Security Instrument, the Project Note, the Project Loan Agreement, the Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“**Project Note**” means the Project Note, including applicable addenda, to be executed by the Borrower in favor of the Governmental Lender, evidencing the Borrower’s financial obligations under the Project Loan, and to be endorsed by the Governmental Lender, without recourse, to the order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

**“Security Instrument”** means the [Amended and Restated Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing], together with all riders thereto, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

**“Servicer”** means Berkadia Commercial Mortgage LLC, or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender and/or Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security

Instrument. No Person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 1A, 2, 3, 4 and 11, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

Berkadia Commercial Mortgage, LLC  
Suite 300  
323 Norristown Road  
Ambler, PA 19002  
Attention: Executive Vice President – Servicing  
Telephone: (215) 328-3200



Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

EXHIBIT E



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott  
GOVERNOR

BOARD MEMBERS

J.B. Goodwin, *Chair*  
Leslie Bingham, *Vice Chair*  
Paul A. Braden, *Member*  
Asusena Reséndiz, *Member*  
Sharon Thomason, *Member*  
Leo Vasquez, *Member*

**Multi Family Mortgage Revenue Bond  
Qualified Project Period**

The Texas Department of Housing and Community Affairs require the information in Sections A and B below to compute the Qualified Project Period for Mortgage Revenue Bond properties. Please complete the form as the appropriate dates are identified. Upload this form in TDHCA's Compliance Monitoring Tracking System (CMTS) to the attention of Sussette Kenney immediately after the property reaches the 50% Occupancy Date.

Section A

Property Name	
Address	
Contact Name	
Contact Phone #	

Section B

Initial Bond Closing Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

#6207818.3

E-1



**NOTE**

*This Note has not been registered under the Securities Act of 1933. Its transferability is restricted by the Trust Indenture and the Loan Agreement referred to herein.*

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

[October \_\_\_\_], 2020

**FISHPOND LIVING AT CORPUS CHRISTI, LP**, a Texas limited partnership (the “Borrower”), for value received, promises to pay in installments to the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “**Issuer**”), the principal amount of

[\_\_\_\_\_] AND 00/100 DOLLARS (\$[\_\_\_\_\_].00)

and to pay interest on the unpaid balance of such principal sum from and after the date hereof at the rate of [\_\_\_\_\_] % per annum, to but not including the Mandatory Tender Date, and at the Remarketing Rate from and after the Mandatory Tender Date until the payment of such principal sum has been made or provided for. The principal amount stated above shall be paid on or before [\_\_\_\_\_] 1, 203[\_\_\_\_]. Interest shall be calculated on the basis of a 360-day year of 12 equal months. Interest on this Note shall be paid on (a) May 1 and November 1 of each year, commencing May 1, 2021, (b) each Redemption Date, (c) each Mandatory Tender Date, and (d) the date of acceleration of the Bonds (the “**Interest Payment Dates**”). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the hereinafter defined Indenture.

This Note has been executed and delivered by the Borrower to the Issuer pursuant to a certain Loan Agreement dated as of October 1, 2020 (the “**Loan Agreement**”), between the Issuer and the Borrower.

Under the Loan Agreement, the Issuer has loaned the Borrower the principal proceeds received from the sale of the Issuer’s \$[\_\_\_\_\_] Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “**Bonds**”) to assist in the financing of the Project, and the Borrower has agreed to repay such loan by making payments (“**Loan Payments**”) at the times and in the amounts set forth in this Note for application to the payment of Bond Service Charges on the Bonds as and when due. The Bonds have been issued, concurrently with the execution and delivery of this Note, pursuant to, and are secured by, the Trust Indenture dated as of October 1, 2020 (the “**Indenture**”), between the Issuer and BOKF, NA, as trustee (the “**Trustee**”).

To provide funds to pay the principal of and interest on the Bonds as and when due as specified herein, the Borrower hereby agrees to and shall make Loan Payments on each Interest Payment Date in an amount equal to the Bond Service Charges on the Bonds payable on such Interest Payment Date. In addition, to provide funds to pay the Bond Service Charges on the Bonds as and when due at any other time, the Borrower hereby agrees to and shall make Loan Payments on any other date on which any Bond Service Charges on the Bonds shall be due and payable,

whether at maturity, upon acceleration or otherwise, in an amount equal to those Bond Service Charges.

If payment or provision for payment in accordance with the Indenture is made in respect of the Bond Service Charges on the Bonds from money other than Loan Payments, this Note shall be deemed paid to the extent such payments or provision for payment of Bonds has been made. Consistent with the provisions of the immediately preceding sentence, the Borrower shall have credited against its obligation to make Loan Payments any amounts transferred from the Project Fund or the Collateral Fund to the Bond Fund. Subject to the foregoing, all Loan Payments shall be in the full amount required hereunder.

All Loan Payments shall be made to the Trustee at its designated corporate trust office for the account of the Issuer and deposited in the Bond Fund created by the Indenture.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement, diminution or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Trustee or any other Person.

This Note is subject to prepayment, in whole or in part, upon the terms and conditions set forth in Article VI of the Loan Agreement. Any prepayment is subject to satisfaction of any applicable notice, deposit or other requirements set forth in the Loan Agreement or the Indenture.

Whenever an Event of Default under Section 6.01 of the Indenture shall have occurred and, as a result thereof, the principal of and any premium on all Bonds then outstanding, and interest accrued thereon, shall have been declared to be immediately due and payable pursuant to Section 6.03 of the Indenture, the unpaid principal amount of and accrued interest on this Note shall also be due and payable on the date on which the principal of and premium and interest on the Bonds shall have been declared due and payable; provided that the annulment of a declaration of acceleration with respect to the Bonds shall also constitute an annulment of any corresponding declaration with respect to this Note.

The payment obligations of this Note are non-recourse to the Borrower to the extent set forth in Section 8.5 of the Loan Agreement.

The Borrower, the Trustee and the Issuer acknowledge that this Note, and all Borrower's obligations hereunder, are subject and subordinate to the Mortgage Loan Documents. In addition, (1) the indebtedness evidenced by this Note and all other documents evidencing or securing this Note (collectively, the "Bond Loan Documents") are and shall be subordinated in right of payment, to the prior payment in full of the indebtedness evidenced by the Mortgage Loan Documents, and (2) the Bond Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made.

In the event of any conflict between the provisions of (i) this Note or the Bond Loan Documents and (ii) the provisions of the Mortgage Loan Documents, the provisions of the Mortgage Loan Documents shall control.

Enforcement of the covenants in the Bond Documents will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Project, the Mortgage Loan proceeds, any reserves or deposits required by the Lender in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project other than available "Surplus Cash" as defined in the Mortgage Loan Documents.

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

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name as of the date first above written.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

**ENDORSEMENT**

Pay to the order of BOKF, NA, a national banking association, without recourse, as Trustee under the Indenture referred to in the Note, as security for the 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: \_\_\_\_\_  
James B. "Beau" Eccles  
Secretary to the Board

Dated: [October \_\_\_\_], 2020

**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.**

SUBORDINATE  
MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING

from

FISHPOND LIVING AT CORPUS CHRISTI, LP,  
Grantor,

to

KATHY MCQUISTON,  
Trustee,

for the benefit of  
BOKF, NA

and

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
together, Grantee

Dated as of October 1, 2020

Relating to:

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

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments)  
Series 2020

**THIS SECURITY INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR AS "DEBTOR" AND GRANTEE AS "SECURED PARTY." THIS INSTRUMENT SHALL ALSO BE EFFECTIVE FROM THE DATE OF ITS RECORDING AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING PART OF THE PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES**



**TABLE OF CONTENTS**

**Page**

**ARTICLE I  
CERTAIN DEFINITIONS**

**ARTICLE II  
PARTICULAR COVENANTS OF GRANTOR**

Section 2.1.	Payment of Indebtedness .....	7
Section 2.2.	Warranty of Title .....	7
Section 2.3.	No Defaults .....	7
Section 2.4.	To Pay Impositions .....	7
Section 2.5.	To Maintain Priority of Lien.....	7
Section 2.6.	To Pay Recording Fees, Taxes and Other Charges .....	8
Section 2.7.	Maintenance of Mortgaged Property; Covenants Against Waste; Inspection by Grantee .....	8
Section 2.8.	After-Acquired Property .....	9
Section 2.9.	Further Assurances .....	9
Section 2.10.	Status of Grantor.....	9
Section 2.11.	Recorded Instruments .....	9
Section 2.12.	Environmental Provisions.....	10
Section 2.13.	Mold Coverage .....	11

**ARTICLE III  
CASUALTY AND CONDEMNATION**

Section 3.1.	Net Proceeds .....	12
Section 3.2.	Net Awards .....	13
Section 3.3.	Application of Net Proceeds and Net Awards.....	14

**ARTICLE IV  
ASSIGNMENT OF SPACE LEASES AND RENT**

Section 4.1.	Assignment of Space Leases and Rents.....	15
--------------	---	----

**ARTICLE V  
SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE**

Section 5.1.	Security Agreement .....	15
--------------	--------------------------	----

**ARTICLE VI  
EVENTS OF DEFAULT AND REMEDIES**

Section 6.1.	Events of Default Defined .....	17
Section 6.2.	Remedies.....	17

Section 6.3.	Foreclosure; No Marshaling of Assets; One Tract; Appointment of Receiver .....	19
Section 6.4.	Remedies Cumulative; No Waiver; Etc.....	20
Section 6.5.	No Merger.....	20

ARTICLE VII  
PROVISIONS OF GENERAL APPLICATION

Section 7.1.	Modifications .....	21
Section 7.2.	Notices .....	21
Section 7.3.	Grantee’s Rights to Perform Grantor’s Covenants .....	21
Section 7.4.	Additional Sums Payable by Grantor .....	22
Section 7.5.	Captions .....	22
Section 7.6.	Successors and Assigns .....	22
Section 7.7.	Gender and Number.....	22
Section 7.8.	Severability .....	22
Section 7.9.	Subrogation.....	23
Section 7.10.	Incorporation of the Financing Documents .....	23
Section 7.11.	Controlling Law.....	23

ARTICLE VIII  
SPECIAL PROVISIONS

Section 8.1.	Foreclosure—Power of Sale .....	23
Section 8.2.	Non-Recourse .....	25
Section 8.3.	Concerning the Trustee.....	25
Section 8.4.	Indemnity .....	27
Section 8.5.	Purpose of Loan.....	29
Section 8.6.	Extended Low-Income Housing Commitment .....	29
Section 8.7.	Subordination.....	30
Section 8.8.	Entire Agreement.....	30

EXHIBIT “A” LEGAL DESCRIPTION OF REAL ESTATE.....	A-1
---	-----

**SUBORDINATE  
MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING**

This SUBORDINATE MULTIFAMILY DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING, dated as of October 1, 2020 (as the same may be amended, modified or supplemented from time to time, this “**Deed of Trust**”), by FISHPOND LIVING AT CORPUS CHRISTI, LP, a Texas limited partnership (together with its successors and assigns, “**Grantor**”), having its principal office at 500 West 2nd Street, Suite 1900 #29, Austin, Texas 78701, to Kathy McQuiston and her successors and assigns (the “**Trustee**”), for the benefit of BOKF, NA, as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “**Bond Trustee**”), a national banking association organized and existing under the laws of the United States of America, having offices at 5956 Sherry Lane, Suite 1201, Dallas, Texas 75225 and TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “**Issuer**” and, together with the Bond Trustee, the “**Grantee**”), a public and official agency of the State of Texas having offices at 221 East 11th Street, Austin, Texas 78701.

W I T N E S S E T H:

**WHEREAS**, the Issuer is authorized by the provisions of Chapter 2306, Texas Government Code, as amended (the “**Act**”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance residential rental housing facilities for individuals and families of low, very low and extremely low income and families of moderate income; and

**WHEREAS**, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020, in the original aggregate principal amount of \$[ ] (the “**Bonds**”) pursuant to an Indenture of Trust between the Issuer and the Bond Trustee dated as of the date hereof (and any indenture supplemental thereto, the “**Indenture**”); and

**WHEREAS**, Grantor proposes to borrow an amount equal to the aggregate principal amount of the Bonds (the “**Loan Amount**”) from the Issuer pursuant to that certain Loan Agreement dated as of October 1, 2020 by and among the Issuer and the Grantor (as the same may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture, the “**Loan Agreement**”); and

**WHEREAS**, Grantor has executed and delivered to the Issuer, and the Issuer has assigned to the Bond Trustee that certain promissory note dated the Closing Date (as the same may be amended, modified or supplemented from time to time, the “**Borrower Note**”), which evidences the portion of the Loan Amount corresponding to the aggregate principal amount of the Bonds (the “**Loan**”) being \$[ ] and being made pursuant to the Loan Agreement; and

**WHEREAS**, the proceeds of the Loan will be utilized by Grantor to pay the costs of acquiring, equipping and rehabilitating a multifamily rental housing development known as FishPond at Corpus Christi Apartments (the “**Development**”); and

**WHEREAS**, the Borrower Note provides that the Loan matures on the final maturity date of the Bonds, being [\_\_\_\_\_] 1, 20[\_\_\_\_\_] (the “**Maturity Date**”), upon which date all of the outstanding and unpaid principal and interest under the Borrower Note will be due and payable; and

**WHEREAS**, the Issuer requires that this Deed of Trust be executed and delivered as a condition to making the Loan and as security for the Grantor’s obligations under the Loan Agreement pursuant to Section 4.01 of the Loan Agreement (the “**Borrower Note Payments**”).

### GRANTING CLAUSES

**NOW, THEREFORE**, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, in order to secure the payment of the Indebtedness (as hereinafter defined), and any other sums payable under the Financing Documents (as hereinafter defined); and to secure the performance and observance of all other provisions of the Financing Documents, Grantor hereby grants, bargains, sells, warrants, conveys, assigns, sets over and confirms to Trustee, in trust for the benefit of Grantee, with power of sale, and grants to Grantee a security interest and lien in, all of the following (all of which is hereinafter collectively referred to as the “**Mortgaged Property**”):

I. All of the real property located in Nueces County, Texas and more fully described on Exhibit A attached hereto (the “**Land**”) including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein;

II. All (i) buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Land or any part thereof (the “**Improvements**”); (ii) the name or names, if any, as may now or hereafter be used for each Improvement or otherwise in connection with the Land, and the books and records and good will associated therewith, and all licenses, permits, and approvals in connection with the construction and operation of the Improvements; and (iii) refrigerators, dishwashers, air conditioners, microwave ovens, washers, dryers, exercise equipment, lawn care equipment, pool equipment and furniture, devices, apparatus, interior improvements, appurtenances, heating, electrical, mechanical, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment and systems, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, fittings, fixtures, equipment and building materials of every kind and nature whatsoever now or

hereafter attached to or placed in or upon the Land or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Land or the Improvements or any business conducted thereon (except for fixtures and personal property that are at any time the property of Space Tenants, as hereinafter defined), all of the foregoing items set forth in this clause (iii), except as aforesaid, hereinafter collectively called the “**Equipment**”;

III. All screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture, furnishings, decorations, chattels and other personal property now or hereafter in, on or at said Land (except for trade fixtures, furniture and furnishings that are at any time the property of Space Tenants), all of the foregoing, except as aforesaid, hereinafter collectively called the “**Furnishings**”;

IV. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained, or caused to be obtained, by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof (collectively, “**Proceeds**”) and all awards and other compensation (collectively “**Awards**”) heretofore and hereafter made to the present and all subsequent owners of the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part thereof or any easement or other right therein, including Awards for any change of grade of streets, all of which Proceeds and Awards are hereby assigned to Grantee;

V. If applicable pursuant to Section 4.1 hereof, all of the rents, issues, income, receipts, revenues, benefits and profits of the Mortgaged Property (collectively, the “**Rents**”), including all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of Grantor as landlord in and to any of the same, including, without limitation, the interest of Grantor in and to all cash, promissory notes and securities deposited thereunder and the right to receive and collect the Rents and any other sums payable thereunder, all of which are hereby assigned to Grantee;

VI. All rights under any easement or related agreements and all royalties and rights appertaining to the use and enjoyment of the Land, including, without limitation, alley, vault, drainage, mineral, ditch, reservoir, water, oil and gas rights, if any, together with any and all other rights, privileges and interests appurtenant thereto or used in connection with the Land or the Improvements, whether existing now or hereafter acquired;

VII. All construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guarantees and warranties, plans and specifications, and permits and approvals relating to the construction of the Improvements, whether now or hereafter existing;

VIII. All books, records and good will associated with the Land and the Improvements, all logos, trademarks and tradenames used in connection with the Land and Improvements, all management contracts now in effect or hereafter entered into, and all extensions, renewals and

replacements thereof, and all permits, licenses and approvals for the operation of the Improvements;

IX. Upon foreclosure under this Deed of Trust, all tax credits or abatement certificates under Federal, State or local law arising out of or related to the Mortgaged Property and all of the Grantor's title and interest in and to any instrument, document or agreement relating thereto, including, without limitation, any regulatory agreement relating to the leasing of individual units comprising the Mortgaged Property; and

X. All extensions, improvements, betterments, substitutions and replacements of, and all additions and appurtenances to, the Land, the Improvements, the Equipment and the Furnishings, hereafter acquired by or released to Grantor or constructed, assembled or placed on the Land, and all conversions of the security constituted thereby immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

**TO HAVE AND TO HOLD** the Mortgaged Property, together with all rights, hereditaments and appurtenances in any wise appertaining or belonging thereto, unto Trustee, its substitutes or its successors and assigns, forever for the uses set forth herein, and Grantor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Trustee, its substitutes or successors and assigns, against the claim or claims of all Persons claiming or to claim the same or any part thereof.

## ARTICLE I

### CERTAIN DEFINITIONS

In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Deed of Trust otherwise requires. All other capitalized terms used herein which are defined in either the Indenture or the Loan Agreement, and not defined herein, shall have the respective meanings ascribed thereto in the Indenture or the Loan Agreement, unless otherwise expressly provided or unless the context otherwise requires.

(a) "Default Rate" shall mean a per annum rate of interest equal to the lower of (a) 12% per annum, or (b) the Maximum Amount.

(b) "Development" shall have the meaning ascribed to such term in the recitals to this Deed of Trust.

(c) "Due and Payable" shall mean (i) when used with reference to the Indebtedness, or when referring to any and all other sums secured by this Deed of Trust, due and payable, whether at the monthly or other date of payment as specified in the Loan Agreement or other Financing Documents, and (ii) when used with reference to Impositions, the last day upon which any such charge may be paid without penalty or interest and without becoming a lien upon the Mortgaged Property.

(d) “Environmental Laws” shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree, policy, guidance or decision, whether now existing or hereafter enacted, promulgated or issued, governing or relating to the protection of the environment, natural resources and human health and safety, with respect to any Hazardous Substances (as hereinafter defined), Environmentally Sensitive Areas (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or radon.

(e) “Environmentally Sensitive Area” shall mean (i) a wetland or other “water of the United States” for purposes of the Clean Water Act or other similar area regulated under any State Environmental Law, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable State Environmental Law, (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 Environmental Laws by reason of its physical characteristics or prior use.

(f) “Event of Default” shall mean each of the events and circumstances described as such in Section 6.1 hereof.

(g) “Financing Documents” shall mean this Deed of Trust, the Loan Agreement and the Tax Regulatory Agreement.

(h) “Governmental Authority” means any federal, state, county, municipal or local government or any department, commission, board, legislature or office thereof, having or claiming jurisdiction over the Mortgaged Property.

(i) “Hazardous Substances” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law, including, without limitation, asbestos, asbestos-containing materials, poly-chlorinated biphenyls, urea foam formaldehyde insulation, radon and lead-based paint.

(j) “Impositions” shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvement or benefit), charges for public utilities, excises, levies, licenses and permit fees and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature, whatsoever, which prior to or during the term of this Deed of Trust will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on, the Mortgaged Property or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by Grantor from the Space Leases (as hereinafter defined) by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office of bureau thereof or of any other Governmental Authority.

(k) “Indebtedness” shall mean and include all payments, sums, charges, obligations and liabilities of Grantor due or to become due at any time under the Loan Agreement, and all

other sums, charges, obligations and liabilities of Grantor due or to become due at any time to Grantee under this Deed of Trust or any other Financing Document.

(l) “Land” shall mean that certain parcel of land more particularly described in Exhibit A annexed hereto and incorporated herein, including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein.

(m) “Lender Loan” shall mean the Mortgage Loan defined in the Indenture.

(n) “Lender Loan Documents” shall mean the Mortgage Loan Documents defined in the Indenture.

(o) “Maximum Amount” shall mean the maximum amount permitted to be charged under applicable usury laws or other applicable laws relating to the payment of interest from time to time in effect including, without limitation, Chapter 1204 of the Texas Government Code.

(p) “Permitted Encumbrances” shall mean, collectively, the mortgages on the Development securing the Mortgage Loan, as defined in the Indenture (collectively referred to herein as the “**First Mortgage**”), the Tax Regulatory Agreement, those liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property set forth in Schedule B of the mortgagee policy of title insurance insuring this Deed of Trust (or commitment to issue such policy in existence as of the date of this Deed of Trust) and any other liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property approved in writing by the Grantee.

(q) “Person” shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, or public body.

(r) “Space Lease” shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the Mortgaged Property, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same.

(s) “Space Tenant” shall mean the tenant or other user or occupant of part or all of the Mortgaged Property under any Space Lease.

(t) “Spill” shall mean any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(u) “State” shall mean the state in which the Land is located.



(v) "Threat of Spill" shall mean a substantial likelihood of a Spill which requires action to prevent or mitigate damage to the environment which may result from such Spill.

## ARTICLE II

### PARTICULAR COVENANTS OF GRANTOR

Grantor covenants and agrees as follows:

SECTION 2.1. Payment of Indebtedness. Grantor shall duly and punctually pay to Issuer and/or to Bond Trustee, as applicable, as and when Due and Payable, the Indebtedness.

SECTION 2.2. Warranty of Title. Grantor warrants that (a) it is the lawful owner of fee title to the Land; (b) it has good, marketable, insurable and indefeasible fee simple title to the Land and to the remainder of the Mortgaged Property; (c) the Mortgaged Property is free and clear of all deeds of trust, deeds to secure debt, mortgages, liens, charges and encumbrances whatsoever except for the Permitted Encumbrances; (d) except as provided in Section 4.1 hereof, Grantor has not heretofore assigned the Rents; (e) it will maintain and preserve the lien and priority of this Deed of Trust until the Indebtedness has been paid in full and all other obligations owing to Grantee by Grantor in connection with the Loan have been satisfied; (f) it has good right and lawful authority to mortgage and assign the Mortgaged Property as provided in and by this Deed of Trust; and (g) except for the Permitted Encumbrances, it will warrant and defend the same against any and all claims and demands whatsoever.

SECTION 2.3. No Defaults. Grantor represents and warrants that no Event of Default or event which, with the giving of notice or passage of time, would constitute an Event of Default exists under the provisions of this Deed of Trust or the other Financing Documents or in the performance of any of the terms, covenants, conditions or warranties hereof or thereof on the part of Grantor to be performed or observed.

SECTION 2.4. To Pay Impositions. Grantor will pay or cause to be paid as and when due and payable all Impositions levied upon the Mortgaged Property or any part thereof and, within fifteen (15) days after the payment thereof, will deliver to Grantee receipts evidencing the payment or bonding of all such Impositions. Notwithstanding the foregoing, if by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Grantor shall have the right, provided that no Event of Default shall then exist under this Deed of Trust or any other of the Financing Documents, to exercise such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, as they fall due, and before any fine, penalty, further interest or cost may be added thereto.

SECTION 2.5. To Maintain Priority of Lien. Grantor will maintain this Deed of Trust as a valid lien on the Mortgaged Property, and Grantor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Property or any portion thereof, or against the Rents therefrom and will promptly discharge, any lien or charge whatsoever other than the Permitted Encumbrances, whether prior to, upon a parity with, or junior to the lien of this Deed of Trust; provided, however, that nothing herein contained shall require Grantor to pay

or cause to be paid any Imposition prior to the time the same shall become due and payable. Grantor will keep and maintain the Mortgaged Property, and every part thereof, free from all liens of Persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements, the Equipment or the Furnishings. If any such liens shall be filed against the Mortgaged Property, or any part thereof, Grantor shall immediately release or discharge the same of record, by payment, bonding or otherwise, or otherwise provide security satisfactory to Grantee in Grantee's sole discretion, within fifteen (15) days after the filing thereof. In the event that Grantor fails to make payment of or bond over, such liens, Grantee may make payment thereof, and any amounts paid by Grantee as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately due and payable by Grantor to Grantee 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 Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust. Grantor shall deliver to Grantee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which, if unpaid, may cause any such lien to be filed against the Mortgaged Property.

SECTION 2.6. To Pay Recording Fees, Taxes and Other Charges. Grantor will pay all filing, registration or recording fees, and all costs and expenses of Grantee, including without limitation, reasonable attorneys' fees actually incurred and disbursements, title insurance premiums, search fees and survey costs, incident to or in connection with the preparation, execution, delivery or acknowledgment of this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Loan and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Borrower Note, this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Loan, the other Financing Documents, or any instrument of further assurance.

SECTION 2.7. Maintenance of Mortgaged Property; Covenants Against Waste; Inspection by Grantee. Grantor will not commit or permit waste on the Mortgaged Property and will keep and maintain at its own expense the Improvements, the Equipment and the Furnishings in a condition and state of repair such that each of the same shall meet or surpass the requirements of any applicable Governmental Authority and customary standards in the general area set by buildings of similar type, age and function for attractiveness of appearance, cleanliness and general soundness of condition, but in any event consistent with multifamily housing projects of a similar type and purpose. Grantor shall do all such further maintenance and repair work as may be required under the Space Leases and applicable law. Grantor will neither do nor permit to be done anything to the Mortgaged Property that may impair the value thereof or which may violate any covenant, condition or restriction affecting the same, or any part thereof, or permit any change therein or in the condition or use thereof which could increase the danger of fire or other hazard arising out of the construction or operation thereof. The Improvements shall not be removed or demolished (except for tenant improvements), without the prior written consent of Grantee. The Equipment and Furnishings shall not be removed without the prior written consent of the Grantee, except where appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items

removed. Grantee and its authorized employees and agents, may enter and inspect the Mortgaged Property at any time upon advance notice during usual business hours, and Grantor shall, within fifteen (15) business days after demand by Grantee (or immediately upon demand in case of emergency), commence such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Property as the Grantee may, in its sole reasonable discretion, require in order to cause the Mortgaged Property to comply with the above standards, shall diligently make the same and shall complete the same as promptly as practicable.

SECTION 2.8. After-Acquired Property. All right, title and interest of Grantor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property hereafter acquired, constructed, assembled or placed by Grantor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof, but at any time and at all times Grantor, on demand, will execute, acknowledge and deliver to Grantee any and all such further assurances, mortgages, conveyances or assignments thereof as Grantee may require in its sole discretion for the purpose of expressly and specifically subjecting the same to the liens and security interests of this Deed of Trust.

SECTION 2.9. Further Assurances. Grantor shall, at its sole cost and without expense to Grantee, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Grantee shall from time to time require in its sole discretion for better assuring, conveying, assigning, transferring, confirming and perfecting unto Grantee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey, mortgage or assign to Grantee, or for carrying out the intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust.

SECTION 2.10. Status of Grantor. Grantor shall not without the prior written consent of Grantee: (a) change its name; (b) change its state of organization through dissolution, merger, transfer of assets or otherwise; or (c) change its type of organization through conversion, reorganization or otherwise.

SECTION 2.11. Recorded Instruments. Grantor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property. Grantor shall do or cause to be done all things required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Property. Other than Permitted Encumbrances, Grantor will not, without the prior written consent of the Grantee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property other than the Extended Low-Income Housing Commitment described in Section 8.6 hereof. Grantor shall, however, and shall cause all Space Tenants to, comply with all

lawful restrictive covenants and zoning ordinances and other public or private restrictions affecting the Mortgaged Property and other laws and ordinances of any Governmental Authority affecting the Mortgaged Property.

SECTION 2.12. Environmental Provisions. Grantor hereby represents, warrants and covenants that:

2.12.1. Except as set forth in the Phase I report prepared by [ ] and dated [ ], 2020, (a) no condition, activity or conduct exists on or in connection with the Mortgaged Property which constitutes a violation of any Environmental Laws; (b) there has been no Spill or Threat of Spill of any Hazardous Substances on, upon, into or from the Mortgaged Property nor, to Grantor's knowledge, a Spill which, through soil or groundwater migration, could reasonably be expected to come to be located on the Mortgaged Property; (c) there are no existing or closed underground or aboveground storage tanks on the Mortgaged Property; (d) there are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Land; (e) no notice has been issued to Grantor by any agency, authority, or unit of government that Grantor has been identified as a potentially responsible party under any Environmental Laws; (f) no portion of the Mortgaged Property constitutes an Environmentally Sensitive Area; (g) there exists no investigation, action, proceeding, or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property; (h) there has been no claim by any party that any use, operation, or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property; and (i) Grantor need not obtain any permit or approval for any part of the Development and need not notify any federal, state or local governmental authority having jurisdiction of the Development regarding any part of the Development pursuant to any Environmental Laws.

2.12.2. Grantor shall: (a) comply with and cause all activities at the Mortgaged Property to comply with all Environmental Laws; (b) not store or dispose of (except in compliance with all Environmental Laws pertaining thereto), nor Spill or allow the Spill of any Hazardous Substances on the Property; (c) neither directly nor indirectly transport or arrange for the transport of any Hazardous Substances (except in compliance with all Environmental Laws pertaining thereto); (d) neither install nor 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 Grantee to do so and in compliance with Environmental Laws; and (e) comply with all terms and conditions of all permits, authorizations, approvals, waivers, judgments or decrees or notices from Governmental Authorities issued or sent pursuant to Environmental Laws.

2.12.3. Grantor, promptly upon the written request of Grantee from time to time (but no more frequently than once per calendar year) shall provide Grantee, at Grantor's sole cost and expense, with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content reasonably satisfactory to the Grantee.

2.12.4. In the event of any Spill or Threat of Spill affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, or if Grantor or the Mortgaged Property otherwise shall fail to comply with any of the requirements of Environmental Laws, Grantee may at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Mortgaged Property and take any and all other actions as Grantee shall reasonably deem necessary or advisable in order to remedy said Spill or the conditions constituting a Threat of Spill 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 Grantee, shall be immediately due and payable by Grantor to Grantee 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 Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

2.12.5. Grantor covenants and agrees to conduct representative radon sampling in the Improvements on the Land following construction and/or rehabilitation of the Development to determine whether indoor radon levels are below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that said radon sampling results reveal indoor radon levels in excess of 4.0pCi/L, Grantor covenants and agrees to implement radon mitigation techniques to reduce or prevent the build-up or migration of radon in the Improvements on the Land. In the event that radon mitigation is required to be implemented, Grantor further covenants and agrees to conduct radon sampling in the Improvements on the Land following such implementation to confirm that the radon mitigation techniques have succeeded in reducing or preventing the build-up of radon in the Improvements on the Land to below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that such radon sampling results reveal that levels of radon in the Improvements on the Land are still in excess of the above-referenced United States Environmental Protection Agency threshold, Grantor covenants and agrees to undertake any additional measures necessary to reduce radon levels in the Improvements on the Land and bring the Mortgaged Property into compliance with applicable Environmental Laws.

2.12.6. The Grantor shall comply with the Environmental Laws and regulations with respect to on-site wetlands, including, but not limited to obtaining, complying with and maintaining any wetland permits, wetland permit requirements, development restrictions, setback and/buffers, habitat protection and mitigation requirements.

2.12.7. The Grantor shall handle any subsurface contamination encountered at the Land during the course of rehabilitation in accordance with a site-specific Health and Safety Plan developed in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations, and any such contamination shall be remediated and disposed of in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations.

SECTION 2.13. Mold Coverage. In the event that Grantor is covered by a commercial general liability insurance policy which contains an exclusion for loss or damage caused by mold, dangerous fungi, bacterial or microbial matter, contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells (collectively, "**Mold**") or a

property insurance policy which contains an exclusion for loss or damage caused by Mold, in connection with another covered peril (e.g., Mold in connection with water damage caused by a storm or fire), Grantor shall demonstrate to the satisfaction of Grantee that such insurance without the aforementioned exclusions is not available at ordinary and customary insurance rates and either: (i) Grantor shall demonstrate to the satisfaction of Grantee that the potential risk for loss or damage caused by Mold, fungus, moisture, microbial contamination or pathogenic organisms at the Mortgaged Property is minimal because of precautionary measures or techniques to be utilized in the construction or rehabilitation of the Improvements, including without limitation, the use of vapor barriers or other liners to limit the growth and reproduction of Mold; or (ii) Grantor shall implement a moisture management and control program (the “**Moisture Management Program**”) for the Improvements at the Mortgaged Property to prevent the occurrence of Mold, at, on or under the Mortgaged Property, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Mortgaged Property for Mold, (b) removing or cleaning up any Mold in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee, and (c) in the event that the Mold identified at the Improvements at the Mortgaged Property 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 Mortgaged Property, 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 Grantee. Grantor further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of Grantor hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Mortgaged Property shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

### ARTICLE III

#### CASUALTY AND CONDEMNATION

##### SECTION 3.1. Net Proceeds.

3.1.1. If any of the Improvements, Equipment or Furnishings shall be damaged or destroyed, in whole or part, by fire or other casualty, Grantor shall give prompt notice thereof to Grantee. The Grantee are hereby authorized and empowered by Grantor, to settle, adjust or compromise in a commercially reasonable manner any and all claims for loss, damage or destruction under any policy of insurance.

3.1.2. Subject to the provisions of the Lender Loan Documents, any Proceeds received as payment for any loss under any insurance policies required to be maintained by Grantor in accordance with this Section shall be paid over to the Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, “**Net Proceeds**” shall mean any Proceeds actually received by the Bond Trustee as payment for any loss, less all costs and expenses, including, without limitation, all reasonable architects’,

attorneys', engineers' and other consultants' and professionals' fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the casualty in question. Subject to the conditions set forth in Section 3.3 hereof, Grantee shall cause such Net Proceeds either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the damaged Improvements, Equipment or Furnishings that were subject to the applicable casualty upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor upon such terms and conditions as the Grantee may determine in its sole discretion and accompanied by an opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.

3.1.3. In the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtainable), resulting in damage to or destruction of the Mortgaged Property or any part thereof, if Grantee elects to apply any Net Proceeds received by it in connection with such casualty towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Proceeds, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

#### SECTION 3.2. Net Awards.

3.2.1. Grantor shall promptly notify Grantee if Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Mortgaged Property, 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**"); and shall keep Grantee currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to Grantee copies of all notices, pleadings, judgments, determinations and other papers received or delivered by Grantor therein. Grantee shall have the right to appear and participate therein and may be represented by counsel of its choice. Grantor will not, without the Grantee's prior written consent, enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

3.2.2. In the event of any such taking and subject to the terms of the Lender Loan Documents, the awards payable in connection therewith are hereby assigned to Grantee and shall be paid to Bond Trustee for deposit into the appropriate fund under the Indenture. For the purposes of this Deed of Trust, "**Net Awards**" shall mean any awards actually received by Bond Trustee less all costs and expenses, including, without limitation, all reasonable architects', attorneys', engineers' and other consultants' and professionals' fees actually incurred and disbursements incurred by Grantee or Grantor in connection with the taking in question. Subject to the conditions set forth in Section 3.3, Grantee shall cause such Net Awards either to be (a) applied to the redemption of the Bonds, (b) applied to the costs to repair, rebuild or replace the Improvements, Equipment or Furnishings that were subject to the taking, upon such terms and conditions as the Grantee shall determine in its sole discretion, or (c) released to Grantor

upon such terms and conditions as the Grantee may determine in its sole reasonable discretion and accompanied by an opinion of Bond Counsel to the effect that such release does not affect the excludability of interest on the Bonds from gross income for federal income tax purposes and is not in contravention of State law.

3.2.3. In the event of the happening of any permanent taking, provided that Grantee elects to apply any Net Awards received by it in connection with such taking towards the restoration of the Mortgaged Property (as provided in Section 3.3 hereof), Grantor shall promptly, whether or not the Net Awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Mortgaged Property not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

SECTION 3.3. Application of Net Proceeds and Net Awards. Notwithstanding any provision hereof to the contrary, in the event the Improvements, Equipment or Furnishings are damaged or destroyed by fire or other casualty or in the event of a temporary or partial taking in condemnation of a portion of the Land or Improvements, then the Grantee shall make the Net Awards or Net Proceeds, as the case may be, payable in connection therewith available, at intervals and in amounts in accordance with the provisions of the Indenture and the Loan Agreement, to pay for or to reimburse Grantor for costs and expenses actually incurred by Grantor in the repair and restoration of the Mortgaged Property or to be released to Grantor, provided each of the following conditions is fully satisfied:

- (a) the Net Awards or Net Proceeds, as the case may be, are paid to Grantee and deposited into the appropriate fund under the Indenture;
- (b) if restoration is contemplated, any plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Grantee in writing;
- (c) if restoration is contemplated, the Net Awards or Net Proceeds, as the case may be, are in the judgment of the Grantee sufficient to complete the restoration, or, in the event of an insufficiency, Grantor deposits into the appropriate account under the Indenture cash in an amount equal to the insufficiency;
- (d) no Event of Default under the Bonds, the Indenture or the Financing Documents shall have occurred and be continuing;
- (e) if restoration is contemplated, the Grantee determines, in its sole reasonable discretion, that the Improvements, Equipment and Furnishings are capable of being fully restored by the earlier of (i) the date which is 12 months from the occurrence of the loss or damage and (ii) the Maturity Date;
- (f) if restoration is contemplated a release of lien with respect to all restoration work theretofore performed is delivered to Grantee from all contractors and materialmen;



(g) Grantee shall receive an official search or a certificate of title from a title insurance company acceptable to it showing that there has not been filed any vendor's, mechanic's, laborer's or materialman's statutory or other lien affecting the Mortgaged Property which has not been bonded or satisfied and discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed;

(h) upon completion of restoration or upon release of Net Proceeds or Net Awards, the Development will be in compliance with the Regulatory Agreement; and

(i) Grantor shall deliver to Grantee, an opinion of Bond Counsel to the effect that restoration of the Development with the Net Awards or Net Proceeds or the release of Net Awards or Net Proceeds to Grantor, as the case may be, will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

Upon completion of the restoration, as certified by an inspecting engineer selected by the Grantee, any excess Net Awards or Net Proceeds, as the case may be, and accrued interest thereon (if any) shall be, at the option of the Grantee, (a) disbursed to Grantor or (b) applied to the redemption of Bonds; provided, however, that any excess Net Awards or Net Proceeds shall be applied to the redemption of Bonds unless Grantor shall deliver to Grantee an Opinion of Bond Counsel (as defined in the Indenture) to the effect that the alternative proposed application of such Net Proceeds or Net Awards will not adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

#### **ARTICLE IV**

##### **ASSIGNMENT OF SPACE LEASES AND RENT**

SECTION 4.1. Assignment of Space Leases and Rents. Contemporaneously with the execution of this Deed of Trust, Grantor has assigned its interests in the Space Leases and Rents to the Lender in the First Mortgage to secure the payment of the Lender Loan. In the event of the payment of the Lender Loan and release of the First Mortgage without the release of this Deed of Trust, Grantor hereby grants, conveys, assigns, transfers and sets over to Grantee to be effective as of the date of the release of the First Mortgage, the Space Leases now or hereafter entered into by Grantor with respect to all or any part of the Mortgaged Property, and all renewals, extensions, subleases or assignments thereof and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the Rents and proceeds arising therefrom and from the Mortgaged Property pursuant to and in accordance with the provisions of Chapter 64 of the Texas Property Code.

#### **ARTICLE V**

##### **SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE**

SECTION 5.1. Security Agreement. It is the intent of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State (the "UCC") with respect to so much of the Mortgaged Property as is

considered or as shall be determined to be of the type in which a security interest can be created under Article 9 of the UCC, together with all replacements thereof, substitutions therefor or additions thereto (the “**Collateral**”), and that a security interest shall attach thereto for the benefit of Grantee to secure the Indebtedness and all other sums and charges which may become due hereunder or under the Financing Documents. Grantor hereby authorizes Grantee to file financing and continuation statements and amendments thereto with respect to the Collateral without the signature of Grantor, if same is lawful; otherwise Grantor agrees to execute such financing and continuation statements and amendments thereto as Grantee may request. If there shall exist an Event of Default under this Deed of Trust, Grantee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real and personal property in accordance with its rights to both real and personal property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Grantee shall elect to proceed with respect to the Collateral separately from the real property, unless a greater period shall then be mandated by the UCC, five (5) days’ notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Grantee shall be assessed against Grantor and shall include, but shall not be limited to, reasonable attorneys’ fees, disbursements and other legal expenses incurred by Grantee. Grantor agrees that it will not remove or permit to be removed from the Mortgaged Property any of the Collateral without the prior written consent of Grantee, unless appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. All replacements, renewals and additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and the provisions of this Article. Grantor warrants and represents that all Collateral now is, and that replacements thereof, substitutions therefor or additions thereto, unless Grantee otherwise consents in writing, shall be free and clear of liens, encumbrances or security interests of others created after the date hereof other than Permitted Encumbrances.

From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Collateral which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

A. Name and Address of Debtor:

FishPond Living at Corpus Christi, LP  
500 West 2nd Street, Suite 1900 #29  
Austin, Texas 78701  
Attention: David Fournier  
Telephone: (512) 970-3889

B. Name and Address of Secured Party:

BOKF, NA  
Corporate Trust Department  
5956 Sherry Lane, Suite 1201  
Dallas, Texas 75225  
Attention: Kathy McQuiston

Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
Attn: Director of Multifamily Bonds

- C. This document covers goods which are or are to become fixtures.
- D. State of Debtor's Organization and Organizational Identification No.:  
State: Texas  
I.D. No.: 0803348341
- E. This filing is made in connection with a public finance transaction as described in Sections 9.515(b) and 9.102(a)(68) of the UCC.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. Events of Default Defined. The entire amount of the Indebtedness shall become due, at the option of Grantee, subject to any prepayment premium or penalty provided for in the Loan Agreement, if any, upon the happening of any of the following events (each, individually, an “**Event of Default**” and collectively, “**Events of Default**”):

6.1.1. if Grantor shall fail or neglect to comply with or otherwise perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Deed of Trust that is required to be complied with or otherwise performed, kept or observed by Grantor beyond any notice, grace or cure period expressly provided in this Deed of Trust; or

6.1.2. if an “Event of Default” as defined in any of the Financing Documents shall have occurred.

Grantee hereby agrees that any cure of a default or an Event of Default hereunder or under any of the other Financing Documents made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Grantor, and shall be accepted or rejected by the Grantee on the same basis as if made or tendered by the Grantor.

SECTION 6.2. Remedies. Upon the occurrence of any Event of Default hereunder, Grantee may, without notice, presentment, demand or protest, notice of intent to accelerate, or notice of acceleration, all of which are hereby expressly waived by Grantor to the extent permitted by applicable law, take such action as Grantee deems advisable, to protect and enforce its rights in and to the Mortgaged Property, including, but without limiting the generality of the foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Grantee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Grantee hereunder, under the other Financing Documents, or at law or in equity:

6.2.1. declare the entire amount of the Indebtedness, together with all accrued and unpaid interest thereon, to be immediately due and payable, and upon such declaration such amounts shall become and be immediately due and payable, anything in this Deed of Trust or the other Financing Documents to the contrary notwithstanding;

6.2.2. after such proceedings as may be required by any applicable law or ordinance and subject to the provisions of Section 8.7 hereof regarding the subordination of this Deed of Trust to the First Mortgage, either in person, or by its agents or attorneys, or by a court-appointed receiver, enter into and upon all or any part of the Mortgaged Property and each and every part thereof and exclude Grantor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, Grantee, at the expense of the Mortgaged Property, from time to time, either by purchase repairs or construction, may maintain and restore the Mortgaged Property and, likewise, may make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvement thereto and thereon as it may deem advisable; and in every such case Grantee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Grantor as Grantor's attorney-in-fact, or otherwise as it shall deem best; and Grantee shall be entitled to collect and receive all Rents and after deducting the expenses of conducting the business thereof and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for Impositions, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Grantee and for all attorneys, counsel, agents, clerks, servants and other employees or professionals engaged or employed by it, Grantee shall apply the moneys arising as aforesaid, first to the payment of the Indebtedness, whether or not then matured; next, to the payment of any other sums required to be paid by Grantor under this Deed of Trust; and the balance, if any, shall be turned over to Grantor or such other Person as may be lawfully entitled thereto; or

6.2.3. with or without entry, personally or by its agents or attorneys insofar as applicable:

(a) foreclose this Deed of Trust in accordance with the laws of the State and the provisions hereof, for the entire Indebtedness or for any portion of the Indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due, and for such purposes Grantor grants to Trustee for the benefit of Grantee a continuing power of sale of the Mortgaged Property; or

(b) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in this Deed of Trust or any other Financing Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Grantee shall elect.

SECTION 6.3. Foreclosure; No Marshaling of Assets; One Tract; Appointment of Receiver.

6.3.1. Grantee may foreclose this Deed of Trust either by judicial action or by non-judicial foreclosure through the Trustee. In the case of a foreclosure sale, all of the Mortgaged Property may be sold in one parcel, notwithstanding that the proceeds of such sale exceed or may exceed the Indebtedness. Moreover, Grantee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time. In the event that this Deed of Trust is foreclosed, Grantor hereby waives and releases any right to have the Mortgaged Property or any part thereof marshaled, and Grantor and Grantee have jointly agreed that the Mortgaged Property is one project and one tract for all purposes legal, economic and all other. Grantor for itself, its successors and assigns irrevocably waives any right it may have in the event of foreclosure to request that the Mortgaged Property be sold as separate tracts pursuant to any applicable law or statute.

6.3.2. Grantee, in any action to foreclose this Deed of Trust or otherwise upon the occurrence and during the continuance of an Event of Default, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the Indebtedness and without regard to the solvency of any Person liable for the payment thereof) to the appointment of a receiver of the Mortgaged Property and the Rents, if the assignment of Rents pursuant to Section 4.1 hereof is then effective.

6.3.3. Grantor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by Grantee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Deed of Trust or any right or remedies Grantee may have hereunder or by law.

6.3.4. If Grantor shall default hereunder and Grantee shall elect to accelerate the Indebtedness, Grantor, within five (5) days after demand, will pay over to Grantee, or any receiver appointed in connection with the foreclosure of this Deed of Trust, any and all amounts then held as security deposits under all Space Leases if the assignment of Space Leases pursuant to Section 4.1 hereof is then effective.

6.3.5. Upon the acceleration of the Indebtedness or upon an Event of Default under the Borrower Note or Event of Default hereunder, and in addition to all other rights of Grantee provided herein or by law, Grantor shall, on demand of Grantee, surrender possession of the Mortgaged Property to Grantee; and Grantor hereby consents that Grantee may exercise any or all of the rights specified herein. Grantor hereby irrevocably appoints Grantee attorney-in-fact, which appointment shall be coupled with an interest, of Grantor for such purposes. In the event that Grantor is an occupant of the Mortgaged Property, it agrees to vacate and surrender the possession of that portion of the Mortgaged Property which it occupies to Grantee immediately upon the acceleration of the Indebtedness or any Event of Default hereunder; and if Grantor remains in possession, such possession shall be as tenant of Grantee, and Grantor shall

pay monthly, in advance, to Grantee or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Grantor, and upon the failure of Grantor to make any such payment, Grantor may be evicted by summary proceedings or otherwise. In case of the appointment of a receiver of the Rents, the covenants of this subsection may be enforced by such receiver.

6.3.6. GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

SECTION 6.4. Remedies Cumulative; No Waiver; Etc.

6.4.1. No remedy herein conferred upon or reserved to Grantee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Grantee to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Deed of Trust to Grantee may be exercised from time to time as often as may be deemed expedient by Grantee. Nothing in this Deed of Trust or in any other Financing Document shall affect the obligation of Grantor to perform its obligations under the Financing Documents.

6.4.2. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, of any Financing Document shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Deed of Trust and of the other Financing Documents shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by Grantee.

6.4.3. Grantor hereby waives and renounces all homestead and similar exemption rights with respect to the Mortgaged Property provided for by the Constitution and the laws of the United States and the State as against the collection of the Indebtedness, or any part thereof, or the Financing Documents; and Grantor agrees that where, by the terms of this Deed of Trust or the other Financing Documents secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between Grantor and Grantee.

SECTION 6.5. No Merger. It is the intention of the parties hereto that if Grantee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, then and until the Indebtedness has been paid in full, the interest of Grantee hereunder and the lien of this Deed of Trust shall not merge or become merged in or with the estate and interest of Grantee as the holder and owner of title to all or any portion of the Mortgaged Property and that, until such payment, the estate of Grantee in the Mortgaged Property and the lien of this Deed of Trust and the interest of Grantee hereunder shall continue in full force and effect to the same extent as if Grantee had not acquired title to all or any portion of the Mortgaged Property. If, however, Grantee shall consent in writing to such merger or such merger shall nevertheless occur without its consent, then this Deed of Trust shall attach to and cover and be a lien upon the fee title or

any other estate, title or interest in the premises demised under the leasehold estate acquired by the fee owner and the same shall be considered as granted, released, assigned, transferred, pledged, and set over to Grantee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, set over and spread.

## ARTICLE VII

### PROVISIONS OF GENERAL APPLICATION

SECTION 7.1. Modifications. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing, dated and signed by the party against whom such change, amendment, modification, cancellation or discharge is sought to be enforced.

SECTION 7.2. Notices. Except for notices of foreclosure that shall be sent as required by law, all notices, demands, requests, consents, approvals, certificates or other communications hereunder (hereinafter collectively called the “**Notices**”) shall be sufficiently given if given in accordance with the provisions of Section 9.01 of the Loan Agreement.

SECTION 7.3. Grantee’s Rights to Perform Grantor’s Covenants. If Grantor shall fail to pay or cause payment to be made to Grantee in accordance with the terms of this Deed of Trust, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by Grantor under this Deed of Trust or any other Financing Document, without limiting any other provision of this Deed of Trust, and without waiving or releasing Grantor from any obligation or default hereunder, without notice to Grantor, Grantee (or any receiver of the Mortgaged Property) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without limitation, entry on the Mortgaged Property and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be performed or observed on behalf of Grantor or to protect the security of this Deed of Trust. All monies expended by Grantee in exercising its rights under this Section (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Grantee forthwith upon demand by Grantee, secured by this Deed of Trust and added to and deemed part of the Indebtedness with the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

If Grantor fails to maintain any insurance which is required by any of the Financing Documents, Grantee may obtain the same, but must secure the insurance only in its own name and may insure only its interest in the Mortgaged Property, and in connection with Grantee securing any such insurance, the following notice is given and delivered pursuant to Section 307.052 of the Texas Finance Code:

**NOTICE:**

**(A) GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT EQUAL TO GRANTOR'S INDEBTEDNESS TO GRANTEE; (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 GRANTEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS;**

**(B) GRANTOR MUST, IF REQUIRED BY GRANTEE, DELIVER TO GRANTEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND**

**(C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, GRANTEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.**

SECTION 7.4. Additional Sums Payable by Grantor. All sums which, by the terms of this Deed of Trust or the other Financing Documents secured hereby, or by the instruments executed and delivered by Grantor to Grantee as additional security for this Deed of Trust and the other Financing Documents, are payable by Grantor to Grantee shall, together with the interest thereon provided for herein or in the other Financing Documents, be secured by this Deed of Trust and added to and deemed 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 Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust, whether or not the provision which obligates Grantor to make any such payment to Grantee specifically so states.

SECTION 7.5. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Deed of Trust or the construction of any provision hereof.

SECTION 7.6. Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall run with the land and bind Grantor, the heirs, executors, administrators, principals, legal representatives, successors and assigns of Grantor and each Person constituting Grantor and all subsequent owners, encumbrancers and Space Tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Grantee, its successors and assigns and all subsequent beneficial owners of this Deed of Trust.

SECTION 7.7. Gender and Number. Wherever the context of this Deed of Trust so requires, the neuter gender includes the masculine or feminine gender and the singular number includes the plural.

SECTION 7.8. Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this



Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been included.

SECTION 7.9. Subrogation. Should the proceeds of the Loan be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Grantee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

SECTION 7.10. Incorporation of the Financing Documents. This Deed of Trust has been executed and delivered to secure the Indebtedness pursuant to the Financing Documents, the provisions of which, including, but not limited to, any usury saving provisions in the Loan Agreement, as the same may be amended, modified or supplemented from time to time, are incorporated herein by reference with the same force and effect as if herein fully set forth.

SECTION 7.11. Controlling Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

## ARTICLE VIII

### SPECIAL PROVISIONS

SECTION 8.1. Foreclosure—Power of Sale. Grantee may request 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:

8.1.1. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Grantee, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Chapter 51 of the Texas Property Code, as amended, or, if and to the extent the statutes within said Chapter 51 are 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.

8.1.2. 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 Trustee may require a bidding party (A) 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 (B) 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 Trustee's requirement in this regard, or if such Questioned Bidder does respond but the

Trustee 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 Trustee may continue the bidding with reservation; and in such event (1) the 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 Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may determine that a credit bid is in the best interest of Grantor and Grantee, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, (i) the Trustee shall have no obligation to accept any bid except an all cash bid and (ii) the Trustee shall be required to accept the highest bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the 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.

8.1.3. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if an Event of Default shall have occurred hereunder, Grantee may at once or at any time thereafter while an Event of Default is continuing, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without acceleration of the unmatured balance of the Indebtedness may be made hereunder whenever an Event of Default shall have occurred and be continuing hereunder, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

8.1.4. Sale of a part of the Mortgaged 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 Trustee may, after any request or direction by Grantee, sell not only the Land and the Improvements, but also the Equipment and Furnishings and other interests constituting a part of the Mortgaged 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 Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

8.1.5. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other

recitals therein made as to the identity of Grantee, the occurrence or existence 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 Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Grantee or by or on behalf of 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 Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

8.1.6. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged 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 Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged 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 Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax proration, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged 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 Mortgaged Property must be given by persons having at least five (5) years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

SECTION 8.2. Non-Recourse. The monetary obligations of the Grantor under this Deed of Trust shall be non-recourse to the Grantor to the extent provided in Section 8.5 of the Loan Agreement.

SECTION 8.3. Concerning the Trustee.

8.3.1. 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 Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Grantee and unless Trustee is tendered security and indemnity satisfactory to 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 Trustee shall act in accordance with Grantee's request. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Financing Documents, or for the proper authorization thereof, or for the sufficiency of the lien

and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Grantee.

8.3.2. With the approval of Grantee, 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 Grantee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Financing Documents, 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 Trustee, and 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 Grantee, or for any error of judgment or act done by Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith or failure to act in accordance with the terms hereof, and (iv) any and all other lawful action as Grantee may instruct Trustee to take to protect or enforce Grantee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. 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 Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

8.3.3. All moneys received by 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 Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

8.3.4. Trustee may resign by the giving of notice of such resignation in writing or verbally to Grantee. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Grantee shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Grantee shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Grantee, and if such Grantee 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. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

8.3.5. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute 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 Grantor.

8.3.6. Any substitute 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 Trustee herein; but nevertheless, upon the written request of Grantee or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

8.3.7. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Grantee pursuant to the Financing Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Grantee 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 Trustee or Grantee.

**SECTION 8.4. Indemnity. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS GRANTEE AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST AND DOES HEREBY RELEASE GRANTEE AND TRUSTEE FROM ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OR GROSS NEGLIGENCE (BUT NOT THE WILLFUL MISCONDUCT, FRAUD OR BAD FAITH) OF ANY PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:**

(i) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER FINANCING DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR GRANTEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR GRANTEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY GRANTEE OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER FINANCING DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE FINANCING DOCUMENTS, 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 OR THE OTHER FINANCING DOCUMENTS;

(iv) ANY ACTION BROUGHT BY GRANTEE OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER FINANCING DOCUMENTS, 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 MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE

PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

**GRANTEE AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER FINANCING DOCUMENTS, AND TO ADVISE AND DEFEND GRANTEE AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE GRANTEE AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE 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 GRANTEE AND/OR 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 8.4 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 GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY GRANTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE OTHER FINANCING DOCUMENTS.**

SECTION 8.5. Purpose of Loan. This Deed of Trust is given pursuant to the Financing Documents and secures Grantor's obligations to pay the Indebtedness as described herein and as advanced under the Financing Documents, to pay the costs of acquiring, constructing, improving and equipping the Development, among other purposes set forth in the Financing Documents.

SECTION 8.6. Extended Low-Income Housing Commitment. The Grantor and Grantee agree that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure or comparable conversion of the Loan, in accordance with Section 42(h)(6)(E) of the Internal Revenue Code. The Grantor acknowledges and agrees that any default, Event of Default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an Event of Default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees, incurred by the Grantee as a result of an Event of Default by the Grantor and any amounts paid to cure any default under the Extended Use Agreement, shall be an obligation of the Grantor and become a part of the Indebtedness secured by this Deed of Trust.

SECTION 8.7. Subordination and Standstill. The liens and security interests hereby granted and conveyed by Grantor to Grantee against the Mortgaged Property are subordinate to the First Mortgage and shall remain subordinate to the First Mortgage regardless of the frequency or manner of renewal, extension, change or alteration of the First Mortgage or of the Lender Loan; and provided further that the Grantee will not pursue any remedies hereunder until the Lender Loan are paid in full. By its acceptance of this Deed of Trust, the Grantee agrees to the subordination of this Deed of Trust to the First Mortgage and to the foregoing provisions and to the provisions of that certain [description of subordination agreement].

SECTION 8.8. Entire Agreement. THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMOUNT THE PARTIES HERETO.

*[Signature Page Follows]*



IN WITNESS WHEREOF, the Grantor has duly executed this Deed of Trust as of the day and year first above written.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

ACKNOWLEDGMENT

STATE OF TEXAS

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

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared David Fournier, Managing Member of FishPond Corpus Christi Manager, LLC, a Texas limited liability company, the general partner of FishPond Living at Corpus Christi, 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.

\_\_\_\_\_  
Notary Public, State of Texas

Notary's Name (Printed): \_\_\_\_\_

Notary Seal:

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**AFTER RECORDING  
RETURN TO:**

Elizabeth Bowes  
Bracewell LLP  
111 Congress Avenue  
Austin, Texas 78701

**ASSIGNMENT OF SECURITY INSTRUMENT**

This Assignment of Deed of Trust Documents (“Assignment”) is dated as of October 1, 2020 from the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas (the “Assignor”), to BOKF, NA, as Trustee (the “Assignee”) under the Trust Indenture (said Trust Indenture, and any indenture supplemental thereto, including the Funding Loan Agreement on and after the Conversion Date, is herein referred to as the “Indenture”) dated as of October 1, 2020, by and among the Assignor as Issuer and the Assignee as Trustee.

**RECITALS**

FISHPOND LIVING AT CORPUS CHRISTI, LP, a Texas limited partnership (the “Owner”), as Borrower, has:

(i) entered into with the Assignor and Assignee a Loan Agreement dated as of October 1, 2020 (said Loan Agreement as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture, including the Project Loan Agreement on and after the Conversion Date, is herein referred to as the “Loan Agreement”), evidencing indebtedness in the aggregate principal amount of \$[ ] (the “Loan”);

(ii) executed and delivered to the Assignor the Promissory Note dated as of October 1, 2020 (said Note together with all further supplements and amendments thereto is herein referred to as the “Borrower Note”) in the principal amount of \$[ ] and made to the order of the Assignor as Payee, further evidencing the Loan; and

(iii) executed and delivered to the Assignor the Subordinate Multifamily Deed of Trust, Security Agreement, and Fixture Filing dated as of October 1, 2020 made to a mortgage trustee for the benefit of the Assignor, securing the Borrower Note, and to be recorded in the Deed Records of Nueces County, Texas, and relating to the real estate described in **Exhibit A** hereto.

The documents identified in (i), (ii), and (iii) above, together with all financing and continuation statements to perfect the liens and security interests granted thereby, are collectively referred to herein as the “Deed of Trust Documents.”

The Assignor desires to assign and transfer to the Assignee all its right, title and interest in and to the Deed of Trust Documents, excluding the Reserved Rights, and the Assignee desires to acquire Assignor’s right, title and interest as aforesaid under the Deed of Trust Documents in accordance with the terms hereof. The Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof.

The Owner is joining in the execution of this Assignment in order to evidence its consent hereto and in order to agree that the Deed of Trust Documents shall be effective to secure the obligations of the Owner to the Assignee as more fully set forth therein and herein.

## AGREEMENT

For and in consideration of the premises, the sum of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Definitions. All words and phrases defined in the Indenture have the same meanings in this Assignment, which definitions are incorporated herein by reference, unless a different definition is set forth in this Assignment.

Section 2. Assignment. The Assignor assigns, sets over and transfers to the Assignee all the right, title and interest of the Assignor in, to and under the Deed of Trust Documents, excluding any Reserved Rights, and Assignee accepts such assignment and assumes Assignor's obligations under the Deed of Trust Documents. This Assignment is made and shall be without recourse, warranty or representation of the Assignor.

Section 3. Miscellaneous. In case any one or more of the provisions contained in this Assignment are invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not be affected or impaired thereby.

This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument.

It is the intention of the parties hereto that this Assignment and the rights and obligations of the parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of Texas, without reference to the conflicts of laws principles of the State of Texas.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the undersigned have executed this Assignment of Deed of Trust Documents as of the date first above written.

**ASSIGNOR:**

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Governmental Lender

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

Name: James B. "Beau" Eccles

Title: Secretary to the Board

Address: P.O. Box 13941  
Austin, Texas 78711-3941

Attention: Director of Multifamily Bonds

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by James B. "Beau" Eccles, Secretary to the Board of Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, on behalf of said agency.

\_\_\_\_\_  
Notary Public's Signature

(PERSONALIZED SEAL)

**ASSIGNEE:**

BOKF NA, as Trustee

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

Name: Kathy McQuiston

Title: Vice President

Address: 5956 Sherry Lane, Suite 1201

Dallas, Texas 75225

Attention: Kathy McQuiston

**ACKNOWLEDGMENT**

STATE OF TEXAS §

§

COUNTY OF DALLAS §

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Kathy McQuiston, a Vice President of BOKF, NA, a national banking association, on behalf of said association.

\_\_\_\_\_  
Notary Public's Signature

(PERSONALIZED SEAL)

The undersigned, being the Owner referred to in the foregoing Assignment of Deed of Trust Documents, hereby acknowledges receipt and acceptance thereof and consents and agrees to the assignment made therein and to the terms and provisions thereof.

**FISHPOND LIVING AT  
CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier, Managing Member

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ §  
  §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, personally appeared David Fournier, Managing Member of FishPond Corpus Christi Manager, LLC, a Texas limited liability company, the general partner of FishPond Living at Corpus Christi, 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 Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

EXHIBIT "A"

[TO COME FROM BORROWER]



---

---

**BOND PURCHASE AGREEMENT**

Dated October \_\_, 2020

by and among

**RAMIREZ & CO., INC.,**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

and

**FISHPOND LIVING AT CORPUS CHRISTI, LP**

---

---

Relating to:

**\$10,000,000**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY HOUSING REVENUE BONDS**

**(FISHPOND AT CORPUS CHRISTI APARTMENTS)**

**SERIES 2020**

---

---

## TABLE OF CONTENTS

	Page
Section 1. Definitions and Background. ....	1
Section 2. Purchase and Sale. ....	1
Section 3. Offering of Bonds and Issue Price Certificate. ....	2
Section 4. Closing. ....	2
Section 5. Official Statement; Disclosure Matters. ....	2
Section 6. Representations of the Issuer. ....	5
Section 7. Representations and Warranties of the Borrower. ....	6
Section 8. Covenants of the Issuer. ....	8
Section 9. Covenants of the Borrower. ....	9
Section 10. Conditions of Closing. ....	11
Section 11. Actions and Events at the Closing. ....	13
Section 12. Termination of Agreement. ....	13
Section 13. Fees and Expenses. ....	14
Section 14. Indemnification. ....	15
Section 15. Limitation of Liability. ....	18
Section 16. Miscellaneous. ....	18
Section 17. Survival of Certain Representations and Obligations. ....	19
EXHIBIT A TERMS OF BONDS .....	A-1
EXHIBIT B PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL .....	B-1
EXHIBIT C FORM OF OPINION OF COUNSEL TO THE BORROWER .....	C-1
EXHIBIT D FORM OF BORROWER RULE 15c2-12 CERTIFICATE .....	D-1
EXHIBIT E FORM OF ISSUE PRICE CERTIFICATE .....	E-1

## **BOND PURCHASE AGREEMENT**

Ramirez & Co., Inc. (the “*Underwriter*”), on its own behalf and not as your fiduciary, hereby offers to enter into this Bond Purchase Agreement dated October \_\_\_, 2020 (this “*Purchase Contract*”) with the Texas Department of Housing and Community Affairs (together with its successors and assigns, the “*Issuer*”) and FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “*Borrower*”), for the sale by the Issuer and the purchase by the Underwriter of the Bonds defined below which are being issued by the Issuer for the benefit of the Borrower. The Underwriter is an “underwriter” as defined in Section 2(a)(11) of the Securities Act of 1933, as amended (the “*1933 Act*”). This offer is made subject to the written acceptance hereof by the Issuer and the Borrower and delivery of such acceptance (in the form of one or more counterparts hereof) at or prior to 5:00 p.m., Eastern Daylight Time, on the date hereof, and will expire if not so accepted at or prior to such time (or such later time as the Underwriter may agree in writing). Upon such acceptance, this Purchase Contract will be binding upon each of the Issuer, the Borrower and the Underwriter.

### **Section 1. Definitions and Background.**

1.1 Capitalized terms used in this Purchase Contract but not defined herein have the meanings assigned to them in the Trust Indenture dated as of October 1, 2020 (the “*Indenture*”) between the Issuer and BOKF, NA (the “*Trustee*”).

1.2 This Purchase Contract is for the sale and delivery of the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “*Bonds*”), which are being issued by the Issuer to provide financing for the Project. The Bonds will be issued pursuant to (i) that certain resolution of the Issuer adopted September 3, 2020 (the “*Bond Resolution*”), (ii) Chapter 2306, Texas Government Code, as amended, and Chapter 1371, Texas Government Code (collectively, the “*Act*”), and (iii) the terms of the Indenture. The Bonds will be payable from sources pledged under the Indenture, including the moneys and securities from time to time held by the Trustee in the funds and accounts established under the terms of the Indenture (collectively, the “*Trust Estate*”). In connection with the issuance of the Bonds, the Issuer will execute and deliver this Purchase Contract; the Indenture; the Loan Agreement dated as of October 1, 2020 (the “*Loan Agreement*”), between the Issuer and the Borrower; the Tax Exemption Certificate and Agreement dated as of October 1, 2020 (the “*Tax Exemption Agreement*”), among the Issuer, the Trustee, and the Borrower; and the Regulatory and Land Use Restriction Agreement dated as of October 1, 2020 (the “*Tax Regulatory Agreement*”), among the Issuer, the Trustee, and the Borrower (such agreements are referred to herein collectively as the “*Issuer Documents*”), and the Borrower will execute and deliver this Purchase Contract, the Loan Agreement, the Note, the Continuing Disclosure Agreement, the Remarketing Agreement, the Tax Exemption Agreement, and the Tax Regulatory Agreement (collectively, the “*Borrower Documents*”). The Issuer Documents and the Borrower Documents are referred to herein collectively as the “*Financing Documents*.”

### **Section 2. Purchase and Sale.**

2.1 Subject to the terms and conditions set forth in this Purchase Contract, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter, at the Closing (as hereafter defined), \$10,000,000 aggregate principal amount of its Bonds at a price set forth in Exhibit A attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Indenture and (ii) have the payment related terms (that is, the dated date, the initial mandatory tender date, maturity date, interest rate and price) set forth in Exhibit A attached hereto, and will otherwise correspond to the description thereof contained in the Official Statement.

2.3 The Issuer, the Underwriter and the Borrower each acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Purchase Contract is an arm's-length commercial transaction among the Issuer, the Borrower, and the Underwriter, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriter is and has been acting solely as a principal and is not acting as the agent, municipal advisor, financial advisor, or fiduciary of the Issuer or the Borrower, (iii) the Underwriter has not assumed individually or collectively any advisory or fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has advised or provided other services or is currently advising or providing other services to the Issuer or the Borrower on other matters) and the Underwriter has no contractual obligation to the Issuer or the Borrower with respect to the offering contemplated hereby except the obligations expressly set forth in this Purchase Contract, and (iv) the Issuer and the Borrower have consulted their own legal, financial, accounting, tax and other advisors to the extent they deem appropriate in connection with the offering of the Bonds. The primary role of the Underwriter is to purchase the Bonds for resale to investors in an arm's-length commercial transaction among the Issuer, the Borrower and the Underwriter. The Underwriter has financial and other interests that differ from those of the Issuer and the Borrower.

**Section 3. Offering of Bonds and Issue Price Certificate.** The Underwriter hereby agrees that: (a) the Underwriter will make a bona fide public offering of the Bonds at the price shown in Exhibit A hereto; (b) at least 10% of each maturity of the Bonds were sold at the price shown for that Maturity (as defined in Exhibit E hereto) on the date hereof; and (c) the Underwriter will provide to the Issuer and Bracewell LLP ("*Bond Counsel*"), an executed Issue Price Certificate dated the Closing Date (as defined herein) in the form attached as Exhibit E hereto or such other form reasonably required by Bond Counsel in order to establish the issue price of the Bonds.

The Underwriter reserves the right to change such prices as it deems necessary in connection with the offering of the Bonds. Concessions from the public offering price may be allowed to selected dealers and special purchasers. The Borrower authorizes the Underwriter to complete a supplement to the Official Statement to insert the reoffering price for the Bonds selected by the Underwriter in its complete discretion.

**Section 4. Closing.** Subject to the terms and conditions hereof, the delivery of the Bonds and the payment of the purchase price of the Bonds as set forth in Exhibit A hereof (the "*Closing*") will take place at 10:00 a.m. Eastern Daylight Time on October \_\_, 2020, or at such other time or on such other date mutually agreed upon by the Issuer, the Borrower and the Underwriter, which date shall be referred to herein as the "*Closing Date*."

**Section 5. Official Statement; Disclosure Matters.**

5.1 The Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower each hereby (a) confirms its consent to the use by the Underwriter of the Preliminary Official Statement dated October \_\_, 2020, relating to the Bonds (the "*Preliminary Official Statement*") in the marketing of the Bonds and (b) authorizes the Underwriter to prepare, use and distribute (at the expense of the Borrower) the Official Statement dated October \_\_, 2020, relating to the Bonds (the "*Official Statement*") in final form in connection with the offering and sale of the Bonds.

5.2 The Issuer (to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower each agrees to the extent required and permitted by applicable law to cooperate (at the cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the requirements of Rule 15c2-12 ("*Rule 15c2-12*") under the Securities Exchange Act of 1934, as amended (the "*1934 Act*"), and any other rules of the U.S. Securities and Exchange Commission (the "*SEC*") and the Municipal Securities Rulemaking Board (the "*MSRB*"), in connection with the offer and sale of the Bonds.

5.3 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b) respectively:

(a) The Issuer hereby certifies and agrees that the information in the Preliminary Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” has been “deemed final” by the Issuer as of their date, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

(b) The Borrower hereby certifies and agrees that the Preliminary Official Statement has been “deemed final” by the Borrower as of their date, except for final information as to the offering prices, interest rates, selling compensation, amount of proceeds, delivery dates, other terms depending on such factors, and other information permitted to be omitted under part (b)(1) of Rule 15c2-12.

5.4 The Issuer and the Borrower hereby make the following representations in subsection (a) and (b), respectively:

(a) The Issuer hereby represents that the information in the Preliminary Official Statement and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The Issuer has not participated in the preparation of the Preliminary Official Statement and the Official Statement and makes no representations with respect thereto except as expressly set forth in the preceding sentence, and assumes no responsibility with respect to the sufficiency, accuracy, or completeness of any of the information contained in the Preliminary Official Statement and the Official Statement or any other document used in connection with the offer and sale of the Bonds.

(b) The Borrower hereby represents that the information in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

5.5 The Issuer and the Borrower will, at the sole expense of the Borrower, supply to the Underwriter the Official Statement, in such quantity as may be requested by the Underwriter no later than the earlier of (i) seven (7) business days after the date of this Purchase Contract or (ii) one (1) business day prior to the Closing Date, in order to permit the Underwriter to comply with Rule 15c2-12, and the applicable rules of the MSRB, with respect to distribution of the Official Statement. The Borrower shall provide to the Underwriter the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB’s Rule G-32 no later than one (1) business day prior to the Closing Date to enable the Underwriter to comply with MSRB Rule G-32.

5.6 During the period commencing on the date of this Purchase Contract and ending on the earlier of (a) 90 days from the End of the Underwriting Period or (b) the time when the Official Statement are available to any person from the MSRB, but in no case less than 25 days following the End of the Underwriting Period (the “*Update Period*”), if any event shall occur which would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and in the reasonable judgment of the Underwriter, such

event requires the preparation and publication of a supplement or amendment to the Preliminary Official Statement or the Official Statement, the Issuer (only to the extent of the provisions referred to in Section 5.4(a) hereof) and the Borrower will, at the sole expense of the Borrower, prepare or cooperate in the preparation of such supplement or amendment to the Preliminary Official Statement or the Official Statement in a form approved by the Underwriter and furnish or cooperate in the furnishing to the Underwriter (at the sole expense of the Borrower) a reasonable number of copies of an amendment of, or a supplement to, the Preliminary Official Statement or the Official Statement so that, as supplemented or amended, they will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. If the Preliminary Official Statement or the Official Statement are so supplemented or amended prior to the Closing, the approval by the Underwriter of a supplement or amendment to the Preliminary Official Statement or the Official Statement shall not preclude the Underwriter from thereafter terminating this Purchase Contract in accordance with the provisions of Section 12(c) hereof. The “*End of the Underwriting Period*” means the later of the delivery of the Bonds by the Issuer to the Underwriter or when the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the Bonds for sale to the public; provided, that the “*End of the Underwriting Period*” shall be deemed to be the Closing Date, unless the Underwriter otherwise notifies the Issuer and the Borrower in writing prior to such date that there is an unsold balance of the Bonds, in which case the End of the Underwriting Period shall be deemed to be extended for up to 30 days. The deemed End of the Underwriting Period may be extended for two additional periods of up to 30 days each upon receipt of an additional written notification from the Underwriter containing the same information as required in the initial written notice.

5.7 The Issuer will promptly notify the Underwriter, during the Update Period, if the Issuer becomes aware of any event relating to the information concerning the Issuer under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” of the Preliminary Official Statement or the Official Statement which would cause such portions of the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein with respect to the Issuer, in light of the circumstances under which they were made, not misleading.

5.8 The Issuer shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Issuer, of which the Issuer has actual knowledge, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.9 The Borrower shall promptly notify the Underwriter and Issuer, during the Update Period, if the Borrower becomes aware of any event which would cause the Preliminary Official Statement or the Official Statement to contain any untrue statement of a material fact or to omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

5.10 The Borrower shall promptly advise the Underwriter, during the Update Period, of any action, suit, proceeding, inquiry or investigation against the Borrower, of which they receive written or actual notice, seeking to prohibit, restrain or otherwise affect the use of the Preliminary Official Statement or the Official Statement in connection with the offering, sale or distribution of the Bonds.

5.11 The Borrower represents and warrants to the Underwriter and the Issuer that neither the Borrower nor any affiliates thereof are in default under any undertakings with respect to continuing disclosure requirements designed to comply with Rule 15c2-12 in connection with any issue of municipal securities.

**Section 6. Representations of the Issuer.**

6.1 The Issuer hereby makes the following representations to the Underwriter:

(a) The Issuer is a public and official agency of the State of Texas (the “State”), and has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents; and when executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding limited obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against units of government of the State;

(b) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has approved and authorized the distribution of the Preliminary Official Statement and the Official Statement and authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby;

(c) To the knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending, or to the Issuer’s knowledge, threatened against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the existence or powers of the Issuer relating to the sale of the Bonds;

(d) [reserved];

(e) (e) To the knowledge of the Issuer, the execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer’s part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment or decree to which the Issuer is subject, (ii) conflict with any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended, nor (iii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, financing agreement, indenture, bond, security, note, resolution, agreement or other instrument, except as provided by the Issuer Documents;

(f) Except (i) as may be required under Blue Sky or other securities laws of any state, (ii) the approval of the Bonds by the Attorney General of the State and the registration of the Bonds by the Comptroller of Public Accounts of the State, and (iii) for filings to be made with the Internal Revenue Service on Form 8038, to the Issuer’s knowledge, there is no consent, approval, authorization or other order of, or filing with, or certification by, any state court, or state or federal governmental agency, or public body of any state required for the execution and delivery of the

Issuer Documents or the consummation by the Issuer of the transactions on its part contemplated herein or therein, which has not been duly obtained or made on or prior to the date hereof; provided, however, that the Issuer makes no representation or warranty with respect to the registration of the Bonds under the Securities Act of 1933, as amended, or the qualification of the Indentures under the Trust Indenture Act of 1939, as amended;

(g) Upon delivery of the Bonds, the Issuer will have good right, full power and lawful authority to pledge and assign the Trust Estate described in the Indenture to the Trustee as provided in the Indenture and the Bond Resolution;

(h) The Issuer has complied in all material respects with the Bond Resolution and the Issuer Documents; and

(i) The Bonds, when delivered in accordance with the Indenture and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding special, limited obligations of the Issuer entitled to all the benefits and security of the Indenture.

6.2 The execution and delivery of this Purchase Contract by the Issuer shall constitute a representation by the Issuer to the Underwriter that the representations and agreements contained in this Section are true as of the date hereof; provided, however, that as to information furnished by the Borrower pursuant to this Purchase Contract or relating to the Borrower or the Project, the Issuer is relying solely on such information in making the Issuer's representations and agreements, and as to all matters of law the Issuer is relying on the advice of Bond Counsel; and provided further, that no member, officer, agent or employee of the Issuer shall be individually liable for the breach of any representation, or agreement contained herein.

6.3 It is understood that the representations and covenants of the Issuer contained in this Section 6 and elsewhere in this Purchase Contract shall not create any general obligation or liability of the Issuer, and that any obligation or liability of the Issuer hereunder or under the Issuer Documents is payable solely out of the Trust Estate. It is further understood and agreed that the Issuer makes no representations, except as set forth in paragraph 5.4(a) above, as to the Preliminary Official Statement or the Official Statement, or as to (i) the financial condition, results of operation, business or prospects of the Borrower, (ii) any statements (financial or otherwise), representations, documents or certification provided or to be provided by the Borrower in connection with the offer or sale of the Bonds, or (iii) the correctness, completeness or accuracy of such statements, representations, documents or certifications.

## **Section 7. Representations and Warranties of the Borrower.**

7.1 The Borrower hereby makes the following representations and warranties to the Underwriter and the Issuer, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is a limited partnership duly organized and existing under and pursuant to the laws of the State and is qualified to own the Project and conduct its business in the State.

(b) The Borrower has, and as of the Closing Date will have, full legal right, power and authority to (i) execute and deliver the Borrower Documents, (ii) assist in the preparation, distribution and use of the Preliminary Official Statement and the Official Statement, and (iii) otherwise consummate the transactions contemplated by the Borrower Documents.



(c) The Borrower has duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained in the Borrower Documents, (iii) preparation of the Preliminary Official Statement and the Official Statement, and (iv) consummation by the Borrower of all of the transactions contemplated by the Borrower Documents.

(d) The Borrower Documents are, and, when executed and delivered by the Borrower and the other parties thereto, will be, the legal, valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(e) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower for the execution and delivery by the Borrower of the Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing.

(f) The execution and delivery by the Borrower of the Borrower Documents and the consummation by the Borrower of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the organizational documents of the Borrower, (ii) to the Borrower's knowledge, any applicable law, rule, regulation, judgment, decree, order or other requirement to which the Borrower is subject, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties are bound.

(g) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower or any partner of the Borrower, in their respective capacities as such, nor, to the knowledge of the Borrower, any basis therefor, (i) which would restrain or enjoin the issuance or delivery of the Bonds, the use of the Preliminary Official Statement or the Official Statement in the marketing of the Bonds or the collection of revenues pledged under or pursuant to the Borrower Documents or (ii) which would in any way contest or affect the organization or existence of the Borrower or the entitlement of any officer of the Borrower to its position or (iii) which would contest or have a material and adverse effect upon (A) the due performance by the Borrower of the transactions contemplated by the Preliminary Official Statement, the Official Statement or the Borrower Documents, (B) the validity or enforceability of the Bonds, the Borrower Documents or any other agreement or instrument to which the Borrower is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, (C) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or (D) the financial condition or operations of the Borrower, (iv) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or (v) which questions the power or authority of the Borrower to carry out the transactions on its part contemplated by the Preliminary Official Statement, the Official Statement and the Borrower Documents, or the power of the Borrower to own or operate the Project. The Borrower is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(h) On the Closing Date, the Borrower shall not have granted any interests in or rights or options to sell the Bonds to any other party.

(i) All permits (including building permits), licenses and authorizations necessary for the acquisition, ownership and construction of its Project in the manner contemplated by the Preliminary Official Statement, the Official Statement and each of the Borrower Documents have been obtained or will be obtained, and said acquisition, ownership and construction are not in conflict with any zoning or similar ordinance applicable to the Project. To the knowledge of the Borrower, the Project conforms to all material environmental regulations.

(j) None of the Borrower, any guarantor of the Borrower or any “related person” to the Borrower within the meaning of Section 147 of the Code has acquired or shall acquire, pursuant to any arrangement, formal or informal, any Bonds.

(k) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(l) On the Closing Date, each of the representations and warranties of the Borrower contained in the Borrower Documents and all other documents executed by the Borrower in connection with the Bonds shall be true, correct and complete in all material respects.

(m) As of the Closing Date, the Borrower will not be in material default under any document, instrument or commitment to which the Borrower is a party or to which any of its property is subject which default would or could reasonably be expected to adversely affect the ability of the Borrower to carry out its obligations under the Borrower Documents. As of the Closing Date, the Borrower will be in compliance with all of its obligations under the Tax Regulatory Agreement.

(n) The statements and information contained in the Preliminary Official Statement and the Official Statement are true and correct in all material respects and do not contain an untrue statement of a material fact or omit any material facts necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(o) The Borrower is in compliance with all of its prior continuing disclosure undertakings, if any, entered into pursuant to Rule 15c2-12.

7.2 Each of the representations and warranties set forth in this section will survive the Closing.

7.3 Any certificate signed by any officer of the Borrower and delivered to the Underwriter in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Borrower to the Underwriter as to the statements made therein.

## **Section 8. Covenants of the Issuer.**

8.1 The Issuer hereby makes the following covenants with the Underwriter:

(a) Prior to the Closing, the Issuer will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter’s rights under Section 12(c) hereof.

(b) Prior to the Closing, the Issuer will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Issuer Documents without the prior written consent of the Underwriter.

(c) Prior to the Closing, except as provided in the Issuer Documents, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture, including, without limitation, the Bonds or the Issuer Documents.

(d) The Issuer will not 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 and described in the Official Statement or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(e) Prior to the Closing, the Issuer will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency that would constitute a condition precedent to the performance by it of its obligations under the Issuer Documents and the Bonds.

(f) The Issuer will reasonably cooperate with the Underwriter upon request, without cost to the Issuer, in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate; provided that the foregoing shall not require the Issuer to expend its own funds, execute a general or special consent to service of process or to qualify as a foreign corporation in connection with such qualification in any foreign jurisdiction.

(g) The Issuer will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing, unless the Issuer has obtained the opinion of Bond Counsel or other counsel to the Issuer, stating that such amendment or supplement is necessary in order that the Official Statement not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not misleading, and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the reasonable opinion of the Underwriter, to amend or supplement the Official Statement in order to make that Official Statement not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein not misleading in the light of the circumstances existing at the time it is delivered to the Underwriter, the Issuer shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriter) that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time of delivery to the Underwriter, not misleading.

## **Section 9. Covenants of the Borrower.**

9.1 The Borrower hereby makes the following covenants with the Underwriter and the Issuer:

(a) The Borrower will not supplement or amend the Official Statement or cause the Official Statement to be supplemented or amended without providing reasonable notice of such proposed supplement or amendment to the Underwriter and the Issuer. It is understood pursuant to Section 12(c) that, in the event there arises an event or condition which, in the reasonable

judgment of the Underwriter, requires the Official Statement to be amended or supplemented or has a material and adverse effect upon the marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds, the Underwriter shall have the right, pursuant to Section 12(c) hereof, to terminate this Purchase Contract without liability. Neither the receipt by the Underwriter of notice of a proposed supplement or amendment nor the consent by the Underwriter to such supplement or amendment shall abrogate the Underwriter's rights under Section 12(c) hereof.

(b) The Borrower will not adopt any amendment of or supplement to the Official Statement to which, after having been furnished a copy, the Underwriter shall reasonably object in writing and if any event relating to or affecting the Issuer or the Borrower shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in the light of the circumstances existing at the time it is delivered to the Underwriter, the Borrower shall cause to be forthwith prepared and furnished (at the sole expense of the Borrower) to the Underwriter a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Issuer and the Underwriter) that will amend or supplement the Official Statement so that they will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time of delivery to the Underwriter, not misleading.

(c) Prior to the Closing, the Borrower will not amend, terminate or rescind, and will not agree to any amendment, termination or rescission of the Borrower Documents without the prior written consent of the Underwriter.

(d) Prior to the Closing, the Borrower will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture.

(e) The Borrower will cooperate with the Issuer to cause the Bonds to be delivered to the address and at the time specified by the Underwriter in conjunction with the Closing.

(f) The Borrower will cause the proceeds of the Bonds, or other moneys on deposit in any fund or account in connection with the Bonds, to be applied in a manner as provided in the Indenture and described in the Preliminary Official Statement or the Official Statement and will not take or omit to take any action that would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(g) The Borrower will cooperate with the Underwriter in the qualification of the Bonds for offering and sale and the determination of their eligibility for investment under the laws of such jurisdictions as the Underwriter may designate.

(h) The Borrower agrees to cause the necessary amount to be paid to the Trustee on the Closing Date for deposit into the Costs of Issuance Funds as set forth in the Indenture to pay costs of issuance of the Bonds.

(i) The Borrower agrees to provide the Underwriter, at the Borrower's expense, a reasonable number of additional copies of the Financing Documents as the Underwriter shall request.

## **Section 10. Conditions of Closing.**

10.1 The obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the items described in Section 10.2 hereof and to the satisfaction of the following conditions:

(a) The Underwriter will not have discovered any material error, misstatement or omission in the representations and warranties made in this Purchase Contract, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) The Issuer and the Borrower will have performed and complied in all material respects with all agreements and conditions required by this Purchase Contract to be performed or complied with by such respective parties at or prior to Closing.

(c) The Bonds, the Financing Documents and the Official Statement shall each have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date and shall not have been amended, modified or supplemented prior to the Closing except as may have been agreed to in writing by the Underwriter and no event of default shall exist under any such documents.

(d) [Reserved].

(e) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriter.

(f) The Borrower shall have entered into the Continuing Disclosure Agreement containing covenants meeting the requirements of Rule 15c2-12.

10.2 In addition to the conditions set forth in Section 10.1, the obligations of the Underwriter to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Underwriter of the following items:

(a) An approving opinion of Bond Counsel, dated the Closing Date, relating to the validity of the Bonds and the tax-exempt status of the Bonds, substantially in the form attached to the Official Statement as Appendix E, together with a supplemental opinion of Bond Counsel, dated the Closing Date, substantially in the form attached hereto as Exhibit B.

(b) An opinion of counsel to the Borrower, dated the Closing Date, in substantially the form attached hereto as Exhibit C.

(c) An opinion of Tiber Hudson LLC, counsel to the Underwriter, satisfactory in form and substance to the Underwriter.

(d) A certificate of the Issuer, dated the Closing Date and signed by an authorized official or officer of the Issuer, to the effect that (i) each of the Issuer's representations contained herein and in the other Issuer Documents, which representations will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Issuer has performed and complied in all respects with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; and (iii) the

information contained in the Preliminary Official Statement and the Official Statement under the captions “THE ISSUER” and “ABSENCE OF LITIGATION – The Issuer” is true and correct in all material respects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(e) Evidence that a public hearing has been duly held and the issuance of the Bonds has been duly approved as required by the Code.

(f) A certificate of the Borrower, dated the Closing Date and signed by its authorized representative, to the effect that (i) each of the Borrower’s representations and warranties contained herein and in all Borrower Documents, which representations and warranties will be deemed to have been made again at and as of the time of Closing, are true and correct in all material respects; (ii) the Borrower has performed and complied with all agreements and conditions required by this Purchase Contract to be performed or complied with by it at or prior to the Closing; (iii) since the date of the Official Statement and except as set forth therein, there has not been any material adverse change in the Borrower’s operations, financial or otherwise; (iv) the information contained in the Preliminary Official Statement and the Official Statement is true and correct and does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and (v) such other matters as the Underwriter may reasonably request.

(g) A certificate or certificates of the Issuer and the Borrower, dated the Closing Date and signed by an authorized officer of the Issuer and the Borrower, as applicable, in form and substance satisfactory to the Issuer and Bond Counsel, respecting certain tax matters as may be reasonably required by Bond Counsel to enable it to give its opinion.

(h) A certificate of the Trustee, dated the Closing Date and signed by an authorized officer of the Trustee, in form and substance satisfactory to the Issuer, Bond Counsel and the Underwriter.

(i) The Borrower’s 15c2-12 Certificate, substantially in the form attached hereto as Exhibit D, duly executed by the Borrower.

(j) Certified copies of the organizational documents of the Borrower and copies of the resolutions or actions of its partners (if applicable) authorizing the execution and delivery of the Borrower Documents.

(k) The Financing Documents (or certified copies thereof) duly executed and delivered by the respective parties thereto, with such amendments, modifications or supplements as may have been agreed to by the Issuer, Bond Counsel and the Underwriter.

(l) Written evidence satisfactory to the Underwriter that Moody’s Investors Service, Inc. (the “Rating Agency”) has issued a rating of “Aaa/VMIG 1” for the Bonds and such rating shall be in effect on the Closing Date.

(m) Such additional legal opinions, certificates, instruments and other documents as the Underwriter or Bond Counsel may reasonably deem necessary to evidence the truth and accuracy as of the Closing Date of the respective representations and warranties of the Issuer and the Borrower herein contained and of the Official Statement, and to evidence compliance by the Issuer and the Borrower with this Purchase Contract and all applicable legal requirements, and the

due performance and satisfaction by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower.

10.3 If any of the conditions set forth in Section 10.1 or 10.2 have not been met on the Closing Date, the Underwriter may, at its sole option, terminate this Purchase Contract or proceed to Closing upon waiving any rights under this Purchase Contract with respect to any such condition. If this Purchase Contract is terminated pursuant to this Section, no party will have any rights or obligations to any other, except as provided in Section 13.

**Section 11. Actions and Events at the Closing.**

The following events will take place at the Closing:

(a) The Issuer will cause the Trustee to deliver the Bonds to the Underwriter, at the offices of Bond Counsel or at such other place or places as the Issuer, the Trustee and the Underwriter may mutually agree upon. The Bonds so delivered will be in the form required by the Indenture, duly authenticated by the Trustee, and will be fully registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York.

(b) The Issuer and the Borrower, as applicable, will deliver or cause to be delivered to the Underwriter at the offices of Bond Counsel, or at such other place or places as the Issuer, the Borrower and the Underwriter may mutually agree upon, the materials described in Section 10.1 and Section 10.2.

(c) The Underwriter will deliver to the Trustee, for the account of the Issuer, a wire, payable in immediately available funds, in an amount equal to the purchase price of the Bonds as set forth in Exhibit A.

**Section 12. Termination of Agreement.**

The Underwriter shall have the right to cancel its obligation to purchase the Bonds and to terminate this Purchase Contract by written notice to the Issuer and the Borrower if, between the date hereof to and including the Closing Date, in the Underwriter's sole and reasonable judgment any of the following events shall occur (each a "Termination Event"):

The market price or marketability of the Bonds, or the ability of the Underwriter to enforce contracts for the sale of the Bonds, shall be materially adversely affected by any of the following events:

(i) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere or the escalation of such calamity or crisis; or

(ii) a general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction.

(b) Legislation is enacted or introduced in the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either house of the Congress of the United States by a committee of such house to which such legislation has been referred for consideration, or a decision is rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice or official statement is issued or made: (i) by or on behalf of the President, the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the owners of the Bonds, or (ii) by or on behalf of the SEC, or any other governmental entity having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds or any arrangements underlying the Bonds, are not exempt from registration under the 1933 Act, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(c) Any event or condition which, in the reasonable judgment of the Underwriter, (i) renders untrue or incorrect, in any material respect as of the time to which the same purports to relate, the information contained in the Official Statement and the Issuer and the Borrower do not agree to supplement the Preliminary Official Statement or the Official Statement, or (ii) requires that information not reflected in the Preliminary Official Statement or the Official Statement be reflected therein in order to make the statements and information contained therein not misleading in any material respect as of such time and the Issuer and the Borrower do not agree to supplement the Preliminary Official Statement or Official Statement, as applicable, or (iii) has a material adverse effect upon the marketability of the Bonds, or (iv) would materially and adversely affect the ability of the Underwriter to enforce contracts for the sale of the Bonds;

(d) The imposition by the New York Stock Exchange or other national securities exchange, or any governmental entity, of any restrictions not now in force with respect to any of the Bonds or obligations of the general character of the Bonds or securities generally, or the increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of the Underwriter;

(e) An order, decree or injunction of any court of competent jurisdiction, or order, filing, regulation or official statement by the SEC, or any other governmental entity having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Bonds or the issuance, offering or sale of the Bonds or any arrangements underlying the Bonds, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of the federal securities laws as then in effect; or

(f) The rating of the Bonds shall have been downgraded or withdrawn by the Rating Agency; or

(g) A material disruption in commercial banking, securities settlement, payment, or clearance services shall have occurred.

### **Section 13. Fees and Expenses.**

13.1 The Borrower shall pay to the Underwriter a fee in the amount of \$ \_\_\_\_\_ plus \$ \_\_\_\_\_ for certain fees and expenses (the "Underwriter's Fee"), payable in immediately available funds on the Closing Date from which the Underwriter will pay certain expenses, [and an additional amount equal to



\$\_\_\_\_\_ (the “Underwriter’s Advance”) for initial deposit established under the Indenture]. [The Underwriter will be reimbursed on or before the Closing by the Borrower for the Underwriter’s Advance]. The Underwriter’s Fee shall not include the fee of the Underwriter’s counsel. The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Borrower has agreed to pay the Underwriter’s Fee set forth in this Section 13.1, and inclusive in the expense component of the Underwriter’s Fee are actual expenses incurred or paid for by the Underwriter on behalf of the Borrower in connection with the marketing, issuance, and delivery of the Bonds, including, but not limited to, advertising expenses, CUSIP fees, and transportation, lodging, and meals for the Borrower’s employees and representatives.

13.2 The Borrower shall pay the costs of issuance of the Bonds, including all expenses incident to the performance of the Underwriter’s and the Issuer’s obligations hereunder, including, but not limited to, (i) the cost of the preparation, printing or other reproduction of this Purchase Contract, the Preliminary Official Statement and the Official Statement, as either may be supplemented or amended, the Indenture and the other Financing Documents in reasonable quantities for distribution; (ii) the cost of engraving, reproducing and signing the definitive Bonds; (iii) the reasonable fees and disbursements of all applicable legal counsel, including Bond Counsel, counsel to the Trustee (if any), and counsel to the Underwriter; (iv) the initial fees and costs of paying the Trustee and all paying agents, transfer agents and registrars; (v) the fees and expenses of the Issuer; (vi) CUSIP fees; (vii) the cost of qualifying the Bonds for sale in various states chosen by the Underwriter and the cost of preparing or printing any Preliminary Blue Sky Survey to be used in connection with such sale; (viii) the fees and expenses of the experts retained by the Borrower with respect to the acquisition, rehabilitation and financing of the Project; (ix) the fees of the Rating Agency in connection with the rating of the Bonds; (x) normal travel costs, including reasonable transportation and lodging; (xi) ordinary and reasonable meals hosted by the Underwriter that are directly related to the offering contemplated by this Purchase Contract, [(xi) reimbursement to the Underwriter for the Underwriter’s Advance]; and (xii) all other applicable fees of professionals hired in conjunction with the issuance of the Bonds.

13.3 The Underwriter will pay all expenses (other than those described in Section 13.2) incurred by the Underwriter in connection with its public offering and sale of the Bonds.

13.4 In the event that the Issuer, the Borrower or the Underwriter shall have paid obligations of the other as set forth in this Section, appropriate adjustments promptly will be made.

13.5 In addition to the provisions set forth in Section 14 hereto, the Borrower shall indemnify the Issuer and the Underwriter with respect to the foregoing costs and expenses in the event that the purchase provided for herein is not consummated.

#### **Section 14. Indemnification.**

14.1 The Borrower will indemnify and hold harmless the Issuer and the Underwriter, and each of their officers, directors, employees, agents, officials, members, commissioners, board members and each person who “controls” (as such term is used in Section 15 of the 1933 Act and Section 20 of the 1934 Act) the Issuer (each referred to individually as an “Issuer Indemnified Party” and collectively as the “Issuer Indemnified Parties”), and the Underwriter (each referred to individually as an “Underwriter Indemnified Party” and collectively as the “Underwriter Indemnified Parties,” and together with the Issuer Indemnified Parties, the “Indemnified Party” individually or “Indemnified Parties” collectively) against any losses, claims, expenses (including, without limitation, to the extent permitted by law, reasonable attorneys’ fees and expenses actually incurred), damages or liabilities, causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred

to herein as the “Liabilities”) to which the Indemnified Parties may be threatened or become subject, caused by or directly or indirectly arising from or in any way relating to (i) (a) in the case of the Issuer Indemnified Parties, the Bonds, the Project, the loan of the proceeds of the Bonds, this Purchase Contract or any document related to the Bonds, the Project or the loan of the proceeds of the Bonds or any transaction or agreement, written or oral, pertaining to the foregoing, and (b) in the case of the Indemnified Parties, the breach by the Borrower of any representation, warranty or covenant of the Borrower contained herein or in any of the other Financing Documents, or (ii) any untrue statement or alleged untrue statement of any material fact contained in the Preliminary Official Statement or the Official Statement under the captions “THE PROJECT AND THE BORROWER,” “ABSENCE OF LITIGATION – The Borrower” and “CONTINUING DISCLOSURE”, or any supplement or amendment thereto, or (iii) any omission or alleged omission to state in the Preliminary Official Statement or the Official Statement under the captions “THE PROJECT AND THE BORROWER,” “ABSENCE OF LITIGATION – The Borrower” and “CONTINUING DISCLOSURE” a material fact necessary to be stated therein in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading. This indemnification provision shall not be construed as a limitation on any other liability which the Borrower may otherwise have to any indemnified person, provided that in no event shall the Borrower be obligated for double indemnification. Notwithstanding the foregoing, the Borrower shall not be required to indemnify any Underwriter Indemnified Party for the gross negligence or willful misconduct of an Underwriter Indemnified Party. The Borrower will not be required to indemnify any Issuer Indemnified Party for such Issuer Indemnified Party’s willful misconduct.

14.2 The indemnity agreements in paragraph 14.1 of this Section 14 shall be in addition to any liability which the Borrower may otherwise have hereunder or under the other Borrower Documents, and shall extend on the same terms and conditions to each member, principal, official, officer, commissioner, board member, attorney or employee of the Issuer.

14.3 Promptly after receipt by an Indemnified Party under paragraph 14.1 of this Section 14 of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Borrower under any such paragraph, such Indemnified Party will notify the Borrower in writing of the commencement thereof; provided that any delay or failure to give such notification shall be of no effect except to the extent that the Borrower is prejudiced thereby.

14.4 In case any action, claim or proceeding, as to which the Borrower is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Borrower of the commencement thereof, the Borrower may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Borrower shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

14.5 If the Borrower shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that either (a) there are conflicting interests between the Borrower or the Indemnified Parties or (b) there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Borrower or to any other Indemnified Party (hereinafter referred to as a “separate defense”), (i) the Borrower shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney’s fees and expenses actually incurred) shall be borne by the Borrower; provided, that the Borrower shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded

reasonably that a separate defense is available to it or any other Indemnified Party if (a) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request or (b) the Borrower agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full-time employee of any Indemnified Party. Nothing contained in this paragraph 14.5 will preclude any Indemnified Party, in the case of the Underwriter, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Borrower hereunder.

14.6 The Borrower agrees to reimburse any Indemnified Party for any reasonable expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Borrower will not be required to reimburse any Underwriter Indemnified Party if such court or administrative hearing arises out of the gross negligence of, willful misconduct or breach of, this Purchase Contract by an Underwriter Indemnified Party. The Borrower will not be required to reimburse any Issuer Indemnified Party if such court or administrative hearing arises out of an Issuer Indemnified Party's willful misconduct.

14.7 In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph 14.1 or 14.2 of this Section 14 is for any reason held to be unavailable, the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party (other than the Issuer) may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party (other than the Issuer) in connection with the issuance and administration of the Bonds bears to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds; and provided, further, that the foregoing limitation on an Indemnified Party's liability or responsibility shall not be applicable if the indemnity provided for in paragraph 14.1 or 14.2 is unavailable or inapplicable due to the gross negligence or willful misconduct of any Indemnified Party. No person guilty of fraudulent misrepresentation (within Section 10(b) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such misrepresentation.

14.8 The Indemnified Parties, other than the Underwriter and the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14. The provisions of this Section 14 will be in addition to all liability which the Borrower may otherwise have and shall survive any termination and cancellation of this Purchase Contract, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

14.9 The Underwriter agrees to indemnify and hold harmless the Issuer Indemnified Parties from and against any and all losses, claims, damages, liabilities, or expenses (including attorneys' fees), causes of action (whether based on negligence or otherwise), including reasonable costs of investigation, to which jointly or severally, any or all of the Issuer Indemnified Parties may become subject insofar as any such loss, claim, damage, liability or expense (or actions with respect thereto) arises out of or is based on any untrue statement or alleged untrue statement of a material fact furnished by the Underwriter expressly for use in the sections of the Preliminary or final Official Statement designated "UNDERWRITING."

Any Issuer Indemnified Party shall notify the Underwriter of the existence of any claim, demand, or other matter to which the Underwriter's indemnification obligations would apply, and shall give to the Underwriter a reasonable opportunity to defend the same at their own expense and with counsel satisfactory to the Issuer Indemnified Party; provided that the Issuer Indemnified Party shall at all times also have the right to fully participate in the defense. If the Issuer Indemnified Party is advised in an opinion of counsel that there may be legal defenses available to it which are different from or in addition to those available to the Underwriter or if the Underwriter shall, after this notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Issuer Indemnified Party, the Issuer Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim, demand or other matter on behalf of, for the account of, and at the risk of, the Underwriter. The Underwriter shall be responsible for the reasonable fees, costs, and expenses of the Issuer Indemnified Party in conducting its defense.

The Issuer Indemnified Parties, other than the Issuer, shall be considered to be third-party beneficiaries of this Purchase Contract for purposes of this Section 14.9.

**Section 15. Limitation of Liability.** The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions of any conceivable kind under any conceivable theory under this Purchase Contract or any document or instrument referred to herein (with the exception of the information under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer" in the Preliminary Official Statement and the Official Statement) or by reason of or in connection with this Purchase Contract or other document or instrument except to the extent it receives amounts from the Borrower available for such purpose.

Notwithstanding any provision herein to the contrary, any member, officer, director, partner, agent, commissioner, board members or employee of the Issuer, the Underwriter or the Borrower, including any person executing this Purchase Contract, shall not bear any liability as a result of any failure of the Issuer, the Underwriter or the Borrower to perform the obligations of each, respectively, set forth in this Purchase Contract.

**Section 16. Miscellaneous.**

16.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following address or such other address as either of the parties shall specify:

- |                        |   |
|------------------------|---|
| If to the Underwriter: | Ramirez & Co., Inc.<br>100 Congress Avenue, Suite 2000<br>Austin, TX 78701<br>Attention: Robin Redford                                      |
| If to the Issuer:      | Texas Department of Housing and Community<br>Affairs<br>P.O. Box 13941<br>Austin, TX 78711-3941<br>Attention: Director of Multifamily Bonds |
| If to the Borrower:    | FishPond Living at Corpus Christi, LP<br>_____<br>_____<br>_____  |

Attention: David M. Fournier

If to the Investor Limited  
Partner:

PNC Real Estate Tax Credit Capital Institutional Fund  
47, Limited Partnership  
121 S.W. Morrison Street, Suite 1300  
Portland, Oregon 97204-3143  
Attn: Fund Manager

With a copy to:

Nixon Peabody LLP  
799 9th Street NW Suite 500,  
Washington, DC 20001-5327  
Attention: Matthew W. Mullen

16.2 This Purchase Contract will inure to the benefit of and be binding upon the parties hereto and their successors and assigns and, except as provided in Section 14 hereof will not confer any rights upon any other person. The terms “successor” and “assigns” will not include any purchaser of any of the Bonds from the Underwriter merely because of such purchase.

16.3 This Purchase Contract may not be assigned by any of the parties hereto prior to the Closing.

16.4 If any provision of this Purchase Contract is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

16.5 This Purchase Contract will be construed in accordance with and governed by the internal laws of the State, without regard to conflict of law principles of the State.

16.6 This Purchase Contract may be executed in several counterparts (including counterparts exchanged by email in PDF format), each of which will be regarded as an original and all of which will constitute one and the same document.

**Section 17. Survival of Certain Representations and Obligations.**

The respective agreements, covenants, representations, warranties and other statements of the Issuer and the Borrower and each of their respective officers set forth in or made pursuant to this Purchase Contract shall survive delivery of and payment for the Bonds and shall remain in full force and effect, regardless of any investigation, or statements as to the results thereof, made by or on behalf of the Underwriter.

**Section 18. Compliance with Texas Government Code.** The Underwriter 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 Purchase Contract is a contract for goods or services, will not boycott Israel during the term of this Purchase Contract. The foregoing verification is made solely to comply with Section 2271.002, 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 Underwriter understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

The Underwriter 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>, or  
<https://comptroller.texas.gov/purchasing/docs/ftolist.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 each of the Underwriter’s 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 Underwriter understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

If the foregoing is in accordance with your understanding, please sign and return to us two counterparts hereof and, upon the acceptance hereof by the Issuer and the Borrower, this Purchase Contract and such acceptance shall constitute the binding agreement among us as to the matters set forth above.

Very truly yours,

**RAMIREZ & CO., INC.**

By:

\_\_\_\_\_  
Robin Redford  
Managing Director

[Signatures continue on following page]

[Issuer's signature page to Purchase Contract]

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Monica Galuski  
Director of Bond Finance/Chief Investment Officer

[Signatures continue on following page]



[Borrower's signature page to Purchase Contract]

**FISHPOND LIVING AT CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier  
Managing Member

**EXHIBIT A**

**TERMS OF BONDS**

**MULTIFAMILY HOUSING REVENUE BONDS  
(FISHPOND AT CORPUS CHRISTI APARTMENTS)  
SERIES 2020**

<b><u>Dated Date</u></b>	<b><u>Initial Mandatory Tender Date</u></b>	<b><u>Maturity Date</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price</u></b>
October __, 2020	____ 1, 20__	____ 1, 20__	\$10,000,000	___%	100%

**EXHIBIT B**

**PROPOSED FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL**

October \_\_\_, 2020

Texas Department of Housing and Community Affairs  
Austin, Texas

Ramirez & Co., Inc.  
Austin, Texas

BOKF, NA, as Trustee  
Dallas, Texas

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance of the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “Bonds”) pursuant to a Trust Indenture dated as of October 1, 2020 (the “Indenture”), between the Issuer and BOKF, NA, as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to optional redemption and mandatory tender prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture.

This opinion is rendered pursuant to Section 10.2(a) of the Bond Purchase Agreement dated August \_\_\_, 2020 (the “Purchase Contract”), among the Issuer, the Borrower and Ramirez & Co., Inc., as underwriter. In connection therewith, we have examined and are familiar with (i) certified or original executed counterparts of the documents referred to in our opinion of even date herewith relating to the Bonds, and the Official Statement relating to the Bonds (the “Official Statement”) and (ii) such other documents, instruments, certificates and opinions as we have deemed necessary to enable us to render this opinion.

You have authorized us to assume without independent verification (i) the genuineness of certificates, records and other documents (collectively, “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the documents described above by the parties thereto; (iii) that all documents submitted to us as originals are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

We have reviewed the statements appearing in the Official Statement under the captions “THE BONDS,” “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS,” “TAX MATTERS,” “APPENDIX A – Definitions of Certain Terms,” “APPENDIX B – Summary of Certain Provisions of the Indenture,” “APPENDIX C – Summary of Certain Provisions of the Loan Agreement,” “APPENDIX D – Summary of Certain Provisions of the Tax Regulatory Agreement,” and “APPENDIX E – Form of Bond

Counsel Opinion.” Such statements, insofar as they purport to summarize certain provisions of the Bonds, the Indenture, the Loan Agreement, the Regulatory Agreement and certain aspects of our firm’s opinion relating to the federal tax implications with respect to the Bonds, present a fair and accurate summary of such matters. Other than as set forth above, we were not requested to participate in and did not take part in the preparation of any information in the Official Statement and do not assume responsibility with respect thereto.

In rendering this opinion, we have relied upon the opinions and certificates delivered pursuant to the Purchase Contract.

The opinions expressed above are expressed only insofar as the laws of the State of Texas and the United States of America may be applicable. This opinion speaks only as of its date and only in connection with the Bonds and may not be applied to any other transaction. The opinions set forth above are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in law that may hereafter occur or become effective. Further, this opinion is furnished by us solely to the addressees, and is solely for your benefit, and no one else is entitled to rely upon this opinion. The addressees hereof are hereby authorized to rely on our Bond Counsel opinion of even date herewith as if such opinion were addressed to them.

Very truly yours,

**EXHIBIT C**

**FORM OF OPINION OF COUNSEL TO THE BORROWER**

October \_\_, 2020

Texas Department of Housing and Community Affairs  
Austin, Texas

Ramirez & Co., Inc.  
Austin, Texas

\$10,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(FishPond at Corpus Christi Apartments)  
Series 2020

Ladies and Gentlemen:

We have acted as counsel to FishPond Living at Corpus Christi, LP (the “Borrower”), in connection with the issuance of the above-captioned bonds (the “Bonds”) by the Texas Department of Housing and Community Affairs (the “Issuer”).

Capitalized terms used but not defined herein have the meanings assigned to them in the Indenture or the Bond Purchase Agreement (as defined herein).

In our capacity as such counsel, in rendering the opinions set forth below, we have examined, among other things, originals or copies, certified or otherwise identified to our satisfaction, of the following documents: (i) the Official Statement, dated October \_\_, 2020, of the Issuer relating to the Bonds (the “Official Statement”); (ii) the Regulatory and Land Use Restriction Agreement, among the Issuer, BOKF, NA, as trustee (the “Trustee”) and the Borrower, dated as of October 1, 2020; (iii) the Loan Agreement, dated as of October 1, 2020, between the Issuer and the Borrower; (iv) the Bond Purchase Agreement, dated October \_\_, 2020, among the Issuer, the Underwriter named therein and the Borrower (the “Bond Purchase Agreement”); (v) the Continuing Disclosure Agreement, dated as of October 1, 2020, between the Borrower and the Dissemination Agent named therein; (vi) the Remarketing Agreement, dated as of October 1, 2020, between the Borrower and the Remarketing Agent named therein; (vii) the promissory note, dated the Closing Date, executed by the Borrower; (viii) the Tax Exemption Certificate and Agreement, dated as of October 1, 2020, among the Issuer, the Borrower and the Trustee; and (ix) such other documents, certificates and instruments as we have deemed necessary for the purposes of reaching the opinion expressed herein. We have also relied as to matters of fact upon a certificate of the Borrower and examined certain other certificates and documents.

In such examination, we have assumed the genuineness of all signatures (other than those relating to the Borrower), the authenticity of all documents submitted to us as originals, and the conformity to the original document of all documents submitted to us as photostatic or certified copies. We have assumed due authorization, execution and delivery of all documents referenced herein by the parties thereto other than the Borrower and that each of such parties has full power, authority and legal right to execute and deliver each such instrument.

Based upon and subject to the foregoing, we are of the opinion that, as of the date hereof:

(i) The Borrower is (a) a limited partnership validly existing under the laws of the State of Texas (the “State”), (b) is in good standing and duly qualified to transact business in the State, and (c) has with full power and authority to execute and deliver the documents listed above numbered (ii) through (viii) (the “Financing Documents”) and the Official Statement and to perform its obligations under each respective agreement.

(ii) The Financing Documents have each been duly authorized, executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization and similar laws (including fraudulent conveyance laws) affecting the enforcement of creditors’ rights and remedies generally in effect from time to time, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The execution and delivery of the Financing Documents and the performance by the Borrower of the terms of the respective agreements do not conflict with or violate any other document, instrument, decree, indenture or agreement by which the Borrower is bound.

(iv) No approval, authorization or other action by, or filing with, the State or any agency thereof, is required in connection with the execution and delivery by the Borrower of the Bond Purchase Agreement.

(v) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before any court or public body pending or, to the best of our knowledge, threatened, to challenge the right, power or authority of the Borrower to acquire, own and operate the Project or to perform its obligations under the Bond Purchase Agreement or the other Financing Documents.

(vi) The information in the Official Statement does not contain an untrue statement of fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date hereof.

We express no opinion as to any matter whatsoever, relating to the accuracy or completeness of any financial accounting or projection information furnished to any party, the accuracy or completeness of any representation made by our clients, the financial status of our clients, the ability of our clients to meet their obligations under any of the above-referenced agreements or any other related document.

Very truly yours,

**EXHIBIT D**

**FORM OF BORROWER'S RULE 15c2-12 CERTIFICATE**

**\$10,000,000**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(FISHPOND AT CORPUS CHRISTI APARTMENTS)  
SERIES 2020**

The undersigned hereby certifies and represents to Ramirez & Co., Inc. (the "Underwriter") that the undersigned is authorized to execute and deliver this certificate on behalf of FishPond Living at Corpus Christi, LP, a Texas limited partnership (the "Borrower"), and hereby further certifies to the Underwriter as follows:

(a) This Certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the issuance and sale of the above captioned securities (the "Bonds").

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated October \_\_\_, 2020, relating to the Bonds (the "Preliminary Official Statement") setting forth information concerning the Bonds and the Borrower.

(c) As used herein, "Permitted Omissions" shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters and the identity of the Underwriter(s), all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The section of the Preliminary Official Statement entitled "CONTINUING DISCLOSURE" describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of October 1, 2020, executed by the Borrower and [BOKF, NA][Digital Assurance Certification LLC], as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: October \_\_\_, 2020

[Remainder of page intentionally left blank]

[Signature page to Rule 15c2-12 Certificate]

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

**FISHPOND LIVING AT CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier  
Managing Member



## EXHIBIT E

### FORM OF ISSUE PRICE CERTIFICATE

**\$10,000,000**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(FISHPOND AT CORPUS CHRISTI APARTMENTS)  
SERIES 2020**

The undersigned, on behalf of Ramirez & Co., Inc. (the “Underwriter”), on behalf of itself, hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. Sale of the Bonds. As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in Exhibit A attached to the Bond Purchase Agreement dated October \_\_, 2020, among the Underwriter, FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “Borrower”), and Texas Department of Housing and Community Affairs (the “Issuer”).

2. Defined Terms.

(a) “*Issuer*” means the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas.

(b) “*Maturity*” means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(c) “*Public*” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than the Underwriter or a related party to the Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(d) “*Underwriter*” means (i) Ramirez & Co., Inc., (ii) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (iii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (ii) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP, Austin, Texas, Bond Counsel, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

Dated: October \_\_\_, 2020

[Underwriter's signature page to Issue Price Certificate]

Dated as of the date hereof.

**RAMIREZ & CO., INC.**

By:

\_\_\_\_\_  
Robin Redford  
Managing Director

**PRELIMINARY OFFICIAL STATEMENT DATED OCTOBER \_\_, 2020**

**New Issue – Book-Entry Only**

**RATING: Moody's “\_\_\_”  
(See “RATING” herein)**

*In the opinion of Bracewell LLP (“Bond Counsel”), assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), except with respect to interest on any Bond for any period during which it is held by a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of Section 147(a) of the Code and (ii) interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer’s alternative minimum tax liability. See “TAX MATTERS” herein for a discussion of Bond Counsel’s opinion.*

**\$10,000,000\***

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BONDS  
(FISHPOND AT CORPUS CHRISTI APARTMENTS)  
SERIES 2020**

**Dated: Date of Delivery**  
**Initial Interest Rate: \_\_\_%**  
**Initial Offering Price: 100%**

**Initial Optional Redemption Date: \_\_\_\_\_ 1, 2022\***  
**Initial Mandatory Tender Date: May 1, 2023\***  
**Maturity Date: May 1, 2038\***  
**CUSIP: \_\_\_\_\_**

The above-captioned bonds (the “Bonds”) are issuable only as fully registered bonds without coupons in the denomination of \$5,000 principal amount or any greater integral multiple of \$5,000. Interest on the Bonds will be payable on each May 1 and November 1, commencing May 1, 2021\*. Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Bonds will be registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York. Principal of and interest on the Bonds is payable by BOKF, NA, as trustee (the “Trustee”), to Cede & Co., which is to remit such payments to the Direct Participants (as defined herein) for subsequent disbursement to the purchasers of the Bonds. See “BOOK-ENTRY ONLY SYSTEM” herein.

The Bonds are being issued by the Texas Department of Housing and Community Affairs (the “Issuer”), pursuant to a Trust Indenture (the “Indenture”), dated as of October 1, 2020, between the Issuer and the Trustee, to provide financing to FishPond Living at Corpus Christi, LP, a Texas limited partnership, for the acquisition, construction, and equipping of a 112-unit residential rental housing project located in Corpus Christi, Texas. Under the terms of the Indenture, an amount equal to the principal amount of the Bonds is to be deposited in the Project Fund established under the Indenture and invested pursuant to the Indenture.

At all times the Bonds will be secured by Eligible Funds sufficient, with interest earnings thereon (without the need for reinvestment), to pay all of the interest on the Bonds when due and to pay the principal of the Bonds on the earlier of any Mandatory Tender Date or any Redemption Date, as further described herein. Eligible Funds will be invested in Eligible Investments under the Indenture. See “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.

The Bonds are subject to optional and mandatory redemption prior to maturity as set forth herein. See “THE BONDS” herein.

The Bonds are subject to mandatory tender for purchase on the Initial Mandatory Tender Date, subject to satisfaction of the applicable terms and conditions of remarketing set forth in the Indenture, or mandatory redemption, if the conditions to remarketing the Bonds are not met on or before the Initial Mandatory Tender Date. All Bondholders must tender their Bonds for purchase on the Initial Mandatory Tender Date. The Bonds may be remarketed and a new interest rate for the Bonds may be determined on the Initial Mandatory Tender Date in accordance with the terms of the Indenture, or the Bonds may be redeemed and cancelled on the Initial Mandatory Tender Date. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

THE BONDS, 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 THE 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 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 BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

*The Bonds are offered when, as and if issued and received by Ramirez & Co., Inc. (the “Underwriter”), subject to the approving opinion of the Attorney General of the State of Texas and the opinion of Bracewell LLP, Austin, Texas, Bond Counsel. Certain financial advisory services will be provided to the Issuer by Stifel, Nicolaus & Company, Incorporated. Certain legal matters will be passed upon for the Underwriter by its counsel,*

\* Preliminary; subject to change.

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. The Bonds may not be sold, nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

*Tiber Hudson LLC, Washington, D.C., and for the Borrower by its counsel, The Law Offices of Claire G. Palmer, PLLC, Irving, Texas. It is expected that the Bonds will be available for delivery through the facilities of The Depository Trust Company on or about October \_\_\_\_, 2020.*

**Ramirez & Co., Inc.**

October \_\_\_\_, 2020

No broker, dealer, salesman or other person has been authorized by the Issuer or the Underwriter to give any information or to make any representations with respect to the Bonds other than those contained in this Official Statement, and, if given or made, such information or representations must not be relied upon as having been authorized by the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor will there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The Issuer has not and does not assume any responsibility as to the accuracy or completeness of the information in this Official Statement, other than the information concerning the Issuer under the caption “THE ISSUER” and “ABSENCE OF LITIGATION — The Issuer.” The other information set forth herein has been obtained from sources believed to be reliable, but is not guaranteed as to accuracy and is not to be construed as a representation of such by the Underwriter or the Issuer. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder will, under any circumstances, create any implication that there has been no change in the information or opinions set forth herein since the date hereof. The Issuer has not confirmed, and assumes no responsibility for, the accuracy, completeness, sufficiency or fairness of any statements in this Official Statement or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Borrower, the Project, or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or contained otherwise in this Official Statement.

The Trustee has neither reviewed nor participated in the preparation of this Official Statement.

The Underwriter has provided the following sentence for inclusion in this Official Statement:

The Underwriter has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

Upon issuance, the Bonds will not be registered by the Issuer under the Securities Act of 1933, as amended, or any state securities law, and will not be listed on any stock or other securities exchange. Neither the U.S. Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the accuracy or adequacy of this Official Statement or, other than the Issuer (to the extent described herein) approved the Bonds for sale.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT TEND TO STABILIZE OR MAINTAIN THE MARKET PRICE FOR THE BONDS ABOVE THE LEVELS THAT WOULD OTHERWISE PREVAIL. SUCH ACTIVITIES, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**TABLE OF CONTENTS**

	<u>Page</u>
<b>INTRODUCTION .....</b>	<b>1</b>
<b>THE MORTGAGE LOAN, COLLATERAL PAYMENTS AND DISBURSEMENT OF BOND PROCEEDS 2</b>	
<b>THE ISSUER .....</b>	<b>3</b>
<b>THE BONDS.....</b>	<b>6</b>
<b>BOOK-ENTRY ONLY SYSTEM.....</b>	<b>9</b>
<b>SECURITY AND SOURCES OF PAYMENT FOR THE BONDS .....</b>	<b>11</b>
<b>THE PROJECT AND THE BORROWER.....</b>	<b>12</b>
<b>CERTAIN BONDHOLDERS' RISKS.....</b>	<b>17</b>
<b>FINANCIAL ADVISOR .....</b>	<b>20</b>
<b>TAX MATTERS .....</b>	<b>21</b>
<b>UNDERWRITING .....</b>	<b>23</b>
<b>RATING .....</b>	<b>24</b>
<b>CERTAIN LEGAL MATTERS .....</b>	<b>24</b>
<b>ABSENCE OF LITIGATION .....</b>	<b>24</b>
<b>CONTINUING DISCLOSURE.....</b>	<b>25</b>
<b>MISCELLANEOUS .....</b>	<b>25</b>
<b>APPENDIX A DEFINITIONS OF CERTAIN TERMS</b>	
<b>APPENDIX B SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE</b>	
<b>APPENDIX C SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT</b>	
<b>APPENDIX D SUMMARY OF CERTAIN PROVISIONS OF THE TAX REGULATORY</b>	
<b>AGREEMENT</b>	
<b>APPENDIX E FORM OF OPINION OF BOND COUNSEL</b>	
<b>APPENDIX F FORM OF CONTINUING DISCLOSURE AGREEMENT</b>	

**\$10,000,000\***  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**MULTIFAMILY HOUSING REVENUE BONDS**  
**(FISHPOND AT CORPUS CHRISTI APARTMENTS)**  
**SERIES 2020**

**INTRODUCTION**

This Official Statement, including the Appendices, has been prepared in connection with the issuance of the above-captioned Bonds (the “Bonds”) by the Texas Department of Housing and Community Affairs (the “Issuer”), a public and official agency of the State of Texas (the “State”) (the “State”). See “THE ISSUER” herein. The Issuer has authorized the issuance of the Bonds by a resolution relating to the issuance of the Bonds adopted by the Governing Board of the Issuer on September 3, 2020 (the “Bond Resolution”) and the Bonds are issued pursuant to a Trust Indenture dated as of October 1, 2020 (the “Indenture”), by and between the Issuer and BOKF, NA, as trustee (the “Trustee”). Certain capitalized terms that are used in this Official Statement and not otherwise defined shall have the definitions ascribed to them in “APPENDIX A — DEFINITIONS OF CERTAIN TERMS” hereto.

The Bonds will be issued pursuant to the provisions of Chapter 2306, Texas Government Code, as amended, and Chapter 1371, Texas Government Code, as amended (collectively, the “Act”), for the purpose of providing funds to make a mortgage loan (the “Loan”) to FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “Borrower”), for the acquisition, construction and equipping of a 112-unit residential rental housing project located in Corpus Christi, Texas (the “Project”). See “THE PROJECT AND THE BORROWER” herein. The terms of the financing are to be as set forth in the Loan Agreement, dated as of October 1, 2020, between the Issuer and the Borrower (the “Loan Agreement”). The obligation of the Borrower to repay the Loan pursuant to the Loan Agreement will be evidenced by a promissory note (the “Note”).

Under the terms of the Indenture, on the date of delivery an amount equal to the proceeds of the Bonds is to be deposited into the Project Fund established under the Indenture, and invested in Eligible Investments. See “APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE — Investment of Special Funds” hereto.

The principal of and interest on the Bonds (the “Bond Service Charges”) are payable from the security pledged under the Indenture, including the payments on the investment of funds under the Indenture. Under the Indenture, the Trustee is to invest amounts held under the Indenture in Eligible Investments.

**At all times the Bonds will be secured by Eligible Funds sufficient, with interest earnings thereon (without the need for reinvestment), to pay all of the interest on the Bonds when due and to pay the principal of the Bonds on the earlier of any Mandatory Tender Date or any Redemption Date, as further described herein. Eligible Funds will be invested in Eligible Investments under the Indenture, as further described in “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS” herein.**

Upon the deposit of Eligible Funds into the Collateral Fund, and subject to the other provisions set forth in the Indenture, a like amount of funds will be disbursed by the Trustee from the Project Fund to or

---

\* Preliminary; subject to change.



at the direction of the Borrower pay the costs of the Project. See “THE MORTGAGE LOAN, COLLATERAL PAYMENTS AND DISBURSEMENT OF BOND PROCEEDS” herein.

The Borrower’s operation of the Project will be subject to the terms of a Tax Exemption Certificate and Agreement, dated as of October 1, 2020, among the Borrower, the Trustee and the Issuer (the “Tax Exemption Agreement”), and a Regulatory and Land Use Restriction Agreement, dated as of October 1, 2020, among the Borrower, the Trustee and the Issuer (the “Tax Regulatory Agreement”), each of which contains covenants required to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Tax Regulatory Agreement will require that for the Qualified Project Period (as defined therein), at least 40% of the dwelling units in the Project (except for dwelling units reserved for a resident manager, security personnel and maintenance personnel) are reserved for tenants whose combined annual income does not exceed 60% of the median gross income for the area in which the Project is located, adjusted for family size.

The Bonds will bear interest on the outstanding principal amount thereof at the Initial Interest Rate set forth on the cover page hereof (the “Initial Interest Rate”) from the date of delivery to but not including May 1, 2023\* (the “Initial Mandatory Tender Date”), payable on each May 1 and November 1, commencing May 1, 2021\* (each an “Interest Payment Date”).

The Bonds are subject to mandatory tender for purchase or mandatory redemption on the Initial Mandatory Tender Date. In the event the conditions to remarketing set forth in the Indenture are not met, or if any portion of the Bonds cannot be remarketed, all of the Bonds will be subject to mandatory redemption on the Initial Mandatory Tender Date. All Bondholders must tender their Bonds for purchase on the Initial Mandatory Tender Date. A new interest rate for the Bonds may be determined on the Initial Mandatory Tender Date in accordance with the terms of the Indenture. If the Bonds are remarketed on the Initial Mandatory Tender Date, the terms of the Bonds after such date may differ materially from the description provided in this Official Statement. Therefore, prospective purchasers of the Bonds on and after the Initial Mandatory Tender Date cannot rely on this Official Statement, but rather must rely upon any disclosure documents prepared in connection with such remarketing.

Brief descriptions of the Issuer, the Bonds, the security for the Bonds, the Borrower, the Project, the Indenture, the Tax Regulatory Agreement, the Tax Exemption Agreement and the Loan Agreement are included in this Official Statement. All references herein to the Indenture, the Loan Agreement, the Tax Regulatory Agreement and other documents and agreements are qualified in their entirety by reference to such documents and agreements, copies of which are available for inspection at the offices of the Trustee.

The Bonds are subject to optional and mandatory redemption prior to maturity as set forth herein under “THE BONDS.”

### **THE MORTGAGE LOAN, COLLATERAL PAYMENTS AND DISBURSEMENT OF BOND PROCEEDS**

Simultaneously with the issuance of the Bonds, the Borrower will obtain a mortgage loan (the “Mortgage Loan”) from Sterling Bank (the “Lender”). Over time, funds provided by the Lender are expected to be deposited into the Collateral Fund (collectively, the “Collateral Payments”) in an amount equal to all or a portion of such disbursement as security for the Bonds in exchange for a like amount of Bond proceeds from the Project Fund, which is to be disbursed by the Trustee to or at the direction of the Lender for purposes of paying costs of the Project, all in accordance with the Loan Agreement and the

---

\* Preliminary; subject to change.

Indenture. The maximum aggregate amount of funds from the Lender to be deposited as Collateral Payments over time will be \$10,000,000\*.

Bond Service Charges will be payable as they become due, in the following order: (i) from money on deposit in the Bond Fund (excluding the Negative Arbitrage Account therein), (ii) from money on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, and (iv) from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Notwithstanding any provision of the Loan Agreement or the Indenture to the contrary, the Trustee will not disburse funds from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until (i) an amount equal to or greater than the requested disbursement amount has been deposited in the Collateral Fund in accordance with the provisions of the Indenture and (ii) the Trustee has determined that the sum of the amount then held in the Collateral Fund and the amount then on deposit in the Project Fund, less the anticipated amount of the disbursement from the Project Fund, is at least equal to the then outstanding principal amount of the Bonds. Upon receipt of a Collateral Payment, subject to the foregoing provisions, the Trustee may disburse Bond proceeds to or at the direction of the Lender for use by the Borrower to pay costs of the Project, in accordance with the terms of the Loan Agreement.

The amounts on deposit in the Project Fund, the Bond Fund and the Collateral Fund will be invested on the date of delivery of the Bonds in Eligible Investments. See “APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE — Investment of Special Funds.” At all times the Bonds will be secured by Eligible Investments or other Eligible Funds sufficient, together with interest earnings thereon (without the need for reinvestment), to pay all of the interest on the Bonds when due and to pay the principal of the Bonds at the earlier of any Redemption Date or any Mandatory Tender Date, as further described herein.

## THE ISSUER

*The following information has been provided by the Issuer for use herein. While the information is believed to be reliable, none of the Trustee, the Borrower, the Underwriter, the Lender, nor any of their respective counsel, members, officers or employees makes any representations as to the accuracy or sufficiency of such information.*

### General

The Issuer, a public and official governmental agency of the State and a body corporate and politic, was created pursuant to the Act, effective September 1, 1991. The Issuer is the successor agency to the Texas Housing Agency (the “Agency”) and the Texas Department of Community Affairs, both of which were abolished by the Act and their functions and obligations transferred to the Issuer. One of the purposes of the Issuer is to provide assistance to individuals and families of low and very low income and families of moderate income and persons with special needs to obtain decent, safe and sanitary housing. Pursuant to the Act, the Issuer may issue bonds, notes or other obligations to finance or refinance residential housing and to refund bonds previously issued by the Agency, the Issuer or certain other quasi-governmental issuers. The Act specifically provides that the revenue bonds of the Agency become revenue bonds of the Issuer.

The Issuer is subject to the Texas Sunset Act (Chapter 325, Texas Government Code, as amended, hereinafter referred to as the “Sunset Act”), and its continued existence is subject to a periodic review process that resulted in passage of legislation in the 2013 Texas legislative session which continues the

---

\* Preliminary; subject to change.

Issuer in existence until September 1, 2025, at which time it will again be subject to review. The Sunset Act, however, recognizes the continuing obligation of the State to provide for the payment of bonded indebtedness incurred by a State agency abolished under the provisions thereof and provides that the Governor will designate an appropriate State agency to continue to carry out all covenants with respect to any bonds outstanding, including the payment of any bonds from the sources provided in the proceedings authorizing such bonds.

In the Act, the State also pledges and agrees with the holders of any bonds issued under the Act (such as the Bonds) that the State will not limit or alter the rights vested in the Issuer to fulfill the terms of any agreements made with the holders thereof that would in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, interest on any unpaid installments of interest and all costs and expenses incurred in connection with any action or proceeding by or on behalf of such holders are fully met and discharged.

### **Organization and Membership**

Governing Board. The Issuer is governed by a governing board (the “Board”) consisting of seven public members appointed by the Governor, with the advice and consent of the State Senate. Board members hold office for six-year staggered terms. Each member serves until his or her successor is appointed and qualified. Each member is eligible for reappointment. Members serve without compensation, but are entitled to reimbursement for actual expenses incurred in performing their duties of office. The Act requires the Governor to make appointments so that the places on the Board are occupied by persons who have a demonstrated interest in issues related to housing and support services and who broadly reflect the geographic, economic, cultural and social diversity of the State, including ethnic minorities, persons with disabilities, and women.

The Governor designates a member of the Board to serve as the presiding officer (the “Chair”) of the Board at the pleasure of the Governor. The Chair presides at all meetings and performs such other duties as may be prescribed from time to time by the Board and by the Act. In addition, the members of the Board elect one of its members as assistant presiding officer (the “Vice Chair”) to perform the duties of the Chair when the Chair is not present or is incapable of performing such duties. The Board also elects a Secretary and a Treasurer (which offices may be held by one individual, neither of which is required to be a Board member) to perform the duties prescribed by the Board.

One seat on the Board is currently vacant and two other Board members have resigned. J.B. Goodwin conducted his last meeting as chair on December 12, 2019 and Asusena Reséndiz has resigned resulting in another vacant seat. The remaining members of the Board, their occupations and their terms of office are as follows:

LESLIE BINGHAM, Vice Chair and Board Member. Chief Executive Officer of Valley Baptist Medical Center-Brownsville, Brownsville, Texas. Her term expires January 31, 2019.

PAUL A. BRADEN, Board Member. Partner and Head of Public Finance for the United States at Norton Rose Fulbright, Dallas, Texas. His term expires January 31, 2023.

SHARON THOMASON, Board Member. President of S Arthur Services, Lubbock, Texas. Her term expires January 31, 2021.

LEO VASQUEZ, Board Member. Executive Vice President of Cadeco Industries, Houston, Texas. His term expires January 31, 2023.

All of the above Board members have been appointed by the Governor and confirmed by the State Senate. Texas law requires that confirmations of any such appointment be considered at the next legislative session, whether regular or special. Pursuant to Article XVI, Section 17, of the Texas Constitution, any Board member whose term has expired continues to serve until his or her successor has been appointed.

Administrative Personnel. The Act provides that the Issuer is to be administered by an Executive Director to be employed by the Board with the approval of the Governor. The Executive Director serves at the pleasure of the Board, but may also be removed by a newly elected Governor who did not approve the Executive Director's appointment by action taken within 90 days after such Governor takes office. The Executive Director is responsible for administering the Issuer and its personnel. The Executive Director may employ other employees necessary for the discharge of the duties of the Issuer, subject to the annual budget and the provisions of any resolution authorizing the issuance of the Issuer's bonds.

Currently, the Issuer has 299 employees. The following is a biographical summary of certain of the Issuer's senior staff members who have responsibility with respect to multi-family housing bond matters:

ROBERT WILKINSON, Executive Director. Mr. Wilkinson was hired by the Governing Board to serve as the Executive Director at the Board meeting of July 25, 2019, and he began his tenure on August 15, 2019. Most recently, Mr. Wilkinson served as the Deputy Budget Director to Texas Governor Greg Abbott. Mr. Wilkinson served in the Budget and Policy Division within the Office of the Governor for the first three legislative sessions of Governor Abbott's administration; 2015, 2017, and 2019. His duties included the development of the Governor's proposed budgets, the analysis and tracking hundreds of filed bills including the General Appropriations Act, the development of policy, and the coordination of governance with executive state agencies. Housing and TDHCA were important elements of Mr. Wilkinson's portfolio of responsibility from 2014 (under former Governor Rick Perry) through 2019. Before 2014, Mr. Wilkinson held other positions within the Office of the Governor and worked in the private sector in various capacities including a stint as a project manager at a large commercial electrical contractor. Mr. Wilkinson received his Bachelor of Arts from the University of Texas at Austin.

MONICA GALUSKI, Director of Bond Finance and Chief Investment Officer. Ms. Galuski has over 20 years of experience in municipal finance, including 14 years as a single-family housing banker. She joined the Department in 2014. She is responsible for single family debt and portfolio management and oversees the Department's Single Family Mortgage Revenue Bond Program and Taxable Mortgage Program, which finance the Department's single family homeownership programs. She is also responsible for ongoing compliance and monitoring, as well as disclosure requirements related to the Department's investments and single family and multifamily bond programs. Ms. Galuski received a Bachelor of Science in Financial Management from Arizona State University.

JAMES "BEAU" ECCLES, General Counsel. J. Beau Eccles joined the Issuer in June 2015 as its General Counsel and is responsible for coordination of all internal and external legal counsel for the Issuer. Before joining the Issuer, Mr. Eccles served as an Assistant Texas Attorney General for thirteen years, including five years as Deputy Chief, then two years as Chief, of the General Litigation Division. Mr. Eccles is a graduate of the Texas Tech School of Law and received his B.A. from the University of Texas at Austin.

TERESA MORALES, Director of Multifamily Bonds. Ms. Morales began her career with the Department in 1999 as a Senior Accountant responsible for back-end compliance relating to the Department's Residential Mortgage Revenue Bond and Multifamily Bond Trust Indentures. Since 2004 she has overseen the Department's Multifamily Private Activity Bond and 4% Housing Tax Credit programs resulting in the issuance of over \$1.1 billion in Private Activity Bonds and over \$300 million in

4% Housing Tax Credits. Ms. Morales earned her Bachelor's degree in Psychology and her Master's degree in Applied Sociology from Texas State University.

The offices of the Issuer are located at 221 East 11th Street, Austin, TX 78701-2410, and the telephone number for the Issuer is 512/475-3800 or toll-free 800/525-0657.

### **Other Indebtedness of the Issuer**

Single Family Mortgage Revenue Bonds. As of June 30, 2020, the aggregate outstanding principal amount of bonded indebtedness of the Issuer for single-family purposes was \$825,929,254 and includes both single family mortgage revenue bonds and residential mortgage revenue bonds.

Multifamily Housing Revenue Bonds. As of June 30, 2020, the aggregate outstanding principal amount of multifamily housing revenue bonds was \$982,551,421, which have been issued pursuant to separate trust indentures and are secured by individual trust estates which are separate and distinct from each other.

THE ISSUER HAS NOT REVIEWED THIS OFFICIAL STATEMENT AND IS NOT RESPONSIBLE FOR ANY INFORMATION CONTAINED HEREIN, EXCEPT FOR THE INFORMATION IN THIS SECTION AND UNDER THE CAPTION "ABSENCE OF LITIGATION—THE ISSUER" HEREIN.

### **THE BONDS**

The Bonds are available in book-entry only form. See "BOOK-ENTRY ONLY SYSTEM" below. So long as Cede & Co., as nominee of The Depository Trust Company, is the registered owner of the Bonds, references herein to the Bondholders or holders or registered owner or owners of the Bonds mean Cede & Co. and not the beneficial owners of the Bonds.

### **General**

The Bonds are issuable in the denomination of \$5,000 principal amount or any integral multiple of \$5,000 thereof. The Bonds will initially bear interest at the Initial Interest Rate from the date of delivery to but not including the Initial Mandatory Tender Date and will mature on May 1, 2038\* (the "Maturity Date"), subject to mandatory tender for purchase or mandatory redemption on the Initial Mandatory Tender Date and redemption on any Redemption Date. Interest will be payable on each Interest Payment Date in accordance with the provisions of the Indenture. Interest will be calculated and be due on the basis of a 360-day year consisting of twelve 30-day months. Principal of and interest on the Bonds will be payable by the Trustee to Cede & Co. as nominee of DTC. See "BOOK-ENTRY ONLY SYSTEM" below.

### **Special Obligations**

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

---

\* Preliminary; subject to change.

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 THE 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 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 BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

### **Optional Redemption**

The Bonds are subject to optional redemption prior to their maturity from Eligible Funds, at the written direction of an Authorized Borrower Representative (with delivery of a Cash Flow Projection and written notice to the Trustee and the Issuer at least thirty-five (35) days prior to the proposed redemption date (15 days if the proposed Redemption Date is the Conversion Date) and, in the case of a redemption in part, specifying the principal amount of the Bonds to be redeemed), either in whole or in part, on each Optional Redemption Date at a redemption price equal to the principal amount of the Bonds to be redeemed, plus accrued interest, but without premium, to the Optional Redemption Date.

### **Mandatory Redemption**

The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Indenture have not been met by the dates and times set forth in the Indenture, or (iii) the amount on deposit in the Remarketing Proceeds Account at 11:00 a.m. Eastern time on the Mandatory Tender Date is insufficient to pay the Purchase Price (as defined below) of the outstanding Unredeemed Bonds on such Mandatory Tender Date, or (iv) the Trustee has not received an executed copy of the Opinion of Bond Counsel as described in the Indenture by 11:00 a.m. Eastern time on the Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Bond Fund, other than funds in the Negative Arbitrage Account therein, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the written direction of an Authorized Borrower Representative.

### **Purchase in Lieu of Redemption**

At the election of the Borrower in connection with a redemption in whole of the Bonds, by written notice from an Authorized Borrower Representative to the Trustee, the Issuer and the Remarketing Agent given not less than five (5) Business Days in advance of the Redemption Date, the Bonds will be deemed tendered for purchase in lieu of the redemption on such date and the call for redemption shall be cancelled. The purchase price of Bonds so purchased in lieu of redemption shall be the redemption price had the Bonds been redeemed on such date, and shall be payable on the date scheduled for the redemption thereof. Bonds

so purchased in lieu of redemption shall remain Outstanding and shall be registered to or upon the written direction of an Authorized Borrower Representative.

### **Notice of Redemption**

Unless waived by any Holder of Bonds to be redeemed, and if the Bonds are not then held in a Book-Entry System, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days (10 days in the case of optional redemption on the Conversion Date) nor more than 30 days prior to the date fixed for redemption. A second notice of redemption shall be given, as soon as practicable, by first-class mail to the Holder of each Bond which has been so called for redemption but has not been presented and surrendered to the Trustee within 30 days following the date fixed for redemption of that Bond. So long as DTC is the registered owner of the Bonds, notice of any redemption with respect to the Bonds will be given only to DTC or its nominee. Any failure of DTC to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds. Failure to receive notice as provided in the Indenture or any defect in that notice regarding any Bond shall not affect the validity of the proceedings for the redemption of any other Bond. With respect to a mandatory redemption pursuant to the heading “Mandatory Redemption” above, the notice of Mandatory Tender provided to Holders pursuant to the Indenture shall serve as the notice of redemption required by this section and shall satisfy the requirements of this section and no further notice of redemption will be required to the Holders.

### **Mandatory Tender**

(a) The Unredeemed Bonds are subject to mandatory tender in whole and not in part on the Mandatory Tender Date and shall be purchased at a price (the “Purchase Price”) equal to 100% of the principal amount of such Bonds, without premium. No later than 10:00 a.m., Eastern Time, on the Mandatory Tender Date, the Holders of the Unredeemed Bonds shall deliver such Bonds to the Trustee. The Trustee shall utilize the following sources of payments to pay the Purchase Price of the Unredeemed Bonds not later than 2:30 p.m. Eastern time on the Mandatory Tender Date, in the following priority: (i) amounts on deposit in the Remarketing Proceeds Account, and (ii) any other Eligible Funds available or made available for such purpose at the written direction of an Authorized Borrower Representative.

(b) Not less than thirty (30) days before the Mandatory Tender Date, the Trustee shall give written notice of tender and remarketing to the Holders of Unredeemed Bonds by first class mail, postage prepaid (or, when the Bonds are in Book-Entry Form, pursuant to applicable procedures, the Depository), at their respective addresses appearing in the Register. The notice shall state the Mandatory Tender Date and that:

(i) all outstanding Unredeemed Bonds are subject to mandatory tender for purchase on the Mandatory Tender Date and must be tendered for purchase on the Mandatory Tender Date;

(ii) all outstanding Unredeemed Bonds will be purchased on the Mandatory Tender Date at a price equal to the Purchase Price;

(iii) Holders will not have the right to elect to retain their Unredeemed Bonds and any such Bonds not tendered will nevertheless be deemed to have been tendered and will cease to bear interest from and after the Mandatory Tender Date; and

(iv) the address of the office of the Trustee at which Holders should deliver their Unredeemed Bonds for purchase on the Mandatory Tender Date.

If notice is given as stated in this subsection, failure of any Holder to receive such notice, or any defect in the notice, shall not affect the remarketing or the validity of the proceedings for the remarketing of the Unredeemed Bonds.

### **No Additional Parity Bonds**

The Indenture does not permit the Issuer to issue additional indebtedness prior to or on a parity with the Bonds.

### **BOOK-ENTRY ONLY SYSTEM**

*The following information on the Book-Entry System applicable to all Bonds has been supplied by DTC and neither the Issuer, the Borrower nor the Underwriter make any representation, warranties or guarantees with respect to its accuracy or completeness.*

The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC or its agent.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found [at www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished



by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the Trustee and request that copies of the notices be provided directly to them.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions and dividends ("debt charges payments") on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from the Issuer or Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions or dividends ("debt charges") to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, Bond certificates are required to be printed and delivered. The Issuer may decide

to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Bond certificates will be printed and delivered to DTC.

The information above in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer and the Underwriter take no responsibility for the accuracy thereof. The Issuer has no role in the purchases, transfers or sales of book entry interests. The rights of Beneficial Owners to transfer or pledge their interests, and the manner of transferring or pledging those interests, may be subject to applicable state law. Beneficial Owners may want to discuss with their legal advisers the manner of transferring or pledging their book-entry interests. The Issuer has no responsibility or liability for any aspects of the records or notices relating to, or payments made on account of, beneficial ownership, or for maintaining, supervising or reviewing any records relating to that ownership. The Issuer cannot and does not give any assurances that DTC, Direct Participants, Indirect Participants or others will distribute to the Beneficial Owners payments of debt charges on the Bonds made to DTC as the registered owner, or any redemption, if any, or other notices, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will serve or act in a manner described in this Official Statement.

*Direct Participants and Indirect Participants may impose service charges on Beneficial Owners in certain cases. Purchasers of book-entry interests should discuss that possibility with their brokers.*

#### SECURITY AND SOURCES OF PAYMENT FOR THE BONDS

**At all times the Bonds will be secured by Eligible Funds sufficient, with interest earnings thereon (without the need for reinvestment), to pay all of the interest on the Bonds when due and to pay the principal of the Bonds on the earlier of any Mandatory Tender Date or any Redemption Date, as further described herein. Eligible Funds will be invested in Eligible Investments under the Indenture.**

The Bonds will be secured under the Indenture by all right, title and interest of the Issuer in and to (i) the Revenues, including, without limitation, all Loan Payments, Collateral Payments and other amounts receivable by the Trustee in respect of repayment of the Loan other than amounts received by the Issuer with respect to Reserved Rights, (ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money, (iii) the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money required to be rebated to the United States of America under the Internal Revenue Code of 1986, as amended (the "Code")) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security under the Indenture by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture, (iv) the Note, (v) the Subordinate Mortgage and (vi) the Loan Agreement, except in all cases for the Reserved Rights of the Issuer (the foregoing collectively referred to as the "Trust Estate").

Amounts deposited in the Special Funds and the Rebate Fund are to be invested in Eligible Investments. See "APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE — Investment of Special Funds" hereto.

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 THE 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 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 BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

**THE PROJECT AND THE BORROWER**

*The information under this heading has been provided solely by the Borrower and has not been independently verified by the Issuer, the Underwriter or any of their respective counsel, members, officers or employees, or Bond Counsel. No representation whatsoever as to the accuracy, adequacy or completeness of such information is made by the Issuer, the Underwriter or any of their respective counsel, members, officers or employees or Bond Counsel.*

**The Project**

The Project, known as FishPond at Corpus Christi Apartments, is comprised of 112 residential apartment units in two buildings located at 1006 Sixth Street, Corpus Christi, TX 78404. Common amenities include covered parking, a fitness center, community room and outdoor courtyard. There are 71 parking spaces for tenant use. Unit amenities include fully furnished kitchens, washer-dryer connections, central HVAC and energy-efficient fixtures..

It is anticipated that construction will commence immediately upon the issuance of the Bonds and funding of the tax credit equity and will be completed in approximately 14 months. The unit type, the unit mix and approximate square footage for the units of the Project will be as follows:

<b>Unit Type</b>	<b>Average Square Feet</b>	<b>Number of Units</b>
1 Bedroom/1 Bath	700	112
<b>TOTAL</b>		<b><u>112</u></b>

**The Borrower**

The Borrower is FishPond Living at Corpus Christi, LP, a Texas limited partnership. The Borrower is a single asset entity formed for the specific purpose of developing and owning the Project. The general partner of the Borrower is Fish Pond Corpus Christi Manager, LLC, a Texas limited liability company (the

“General Partner”), which will have a 0.01% ownership interest in the Borrower. PNC Real Estate Tax Credit Capital Institutional Fund 47, Limited Partnership, a Delaware limited partnership (the “Investor Limited Partner”) will own a 99.99% interest in the Borrower.

The Borrower has not acquired and does not intend to acquire any substantial assets or engage in any substantial business activities other than those related to the Project. However, affiliates of the Borrower may engage in the acquisition, development, ownership and management of other similar types of projects that may be competitive with the Project.

### **The Developer**

The Developer is \_\_\_\_\_ (the “Developer”), whose members are David Fournier, Alan Stalcup and BETCO Consulting, LLC (“BETCO”). BETCO was started in 2011 and has 9 years of experience in affordable housing development. BETCO has developed 596 units in Texas. David Fournier has 20 years of experience in affordable housing and, under his development company, FishPond Development, he has developed 100 units of affordable housing in Texas. Alan Stalcup, the principal of GVA Management and has acquired and renovated 14,500 units in Texas, Colorado, and Tennessee.

### **Investor Limited Partner**

The Borrower has entered into a commitment with the Investor Limited Partner to offer to it a 99.99% ownership interest in the Borrower. Pursuant to the offer, the equity funding arrangements for the funding of the tax credit equity are expected to be approximately \$5,659,128\* paid in stages during and after construction of the Project. These funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the estimates set forth herein and neither the Issuer nor the Placement Agent makes any representation as to the availability of such funds.

### **The Property Manager**

The Project will be managed by GVA Management or its affiliates (collectively, the “Property Manager”). The Property Manager is an affiliate of the Developer. The Property Manager has been involved in the management of apartment complexes since 2000. The Property Manager currently manages more than 62 apartment complexes comprising a total of approximately 14,500 units throughout the United States. The Property Manager was formed in 2000 and currently has a staff of 20 corporate personnel and 300 site employees.

### **The General Contractor**

The general contractor for the Project will be WayForward, a Texas 501(c)(3) non-profit corporation (the “General Contractor” or “WayForward”). The General Contractor has subcontracted to Watermark Commercial Contractors, LLC (the “Master Subcontractor”). The Master Subcontractor is not an affiliate of the Developer. The General Contractor and its affiliated construction companies have been constructing and rehabilitating multifamily rental housing developments for more than 47 years and have constructed over 250 projects, with over 45,000 units.

---

\* Preliminary; subject to change.

## The Architect

The architect for the Project is Architettura Inc. (Frank Pollacia) (the “Architect”). The Architect is not an affiliate of the Developer. The Architect has been a licensed architect for 35 years and has been the principal architect for approximately 400 multifamily developments with an excess of 35,000 units throughout Texas, Georgia, Iowa, Kansas, Louisiana, Missouri, Oklahoma, Illinois, Indiana, New Mexico, South Carolina, Florida and North Carolina.

## Limited Assets and Obligation of Borrower, General Partner and Investor Limited Partner

The Borrower and the General Partner have no substantial assets other than the Project and do not intend to acquire any other substantial assets or to engage in any substantial business activities other than those related to the ownership of the Project. However, the General Partner, the Investor Limited Partner, and their affiliates are engaged in and will continue to engage in the acquisition, development, ownership and management of similar types of housing projects. They may be financially interested in, as officers, members or otherwise, and devote substantial times to, business and activities that may be inconsistent or competitive with the interests of the Project.

The obligations and liabilities of the Borrower under the Loan Agreement and the Note are of a non-recourse nature and are limited to the Project and moneys derived from the operation of the Project. Neither the Borrower nor its members have any personal liability for payments on the Note to be applied to pay the principal of and interest on the Bonds. Furthermore, no representation is made that the Borrower has substantial funds available for the Project. Accordingly, neither the Borrower’s financial statements nor those of its members are included in this Private Placement Memorandum.

## Plan of Financing

The Borrower is acquiring, constructing, equipping and improving the Project with funds loaned to it by the Lender simultaneously with the issuance of the Bonds, as well as with funds available from the proceeds from the sale of the Bonds and certain equity contributions as shown below.

The costs of the Project and the sources of funds to pay those costs are estimated by the Borrower as follows\*:

<b>Sources of Funds</b>	
Bond Proceeds <sup>1</sup>	\$10,000,000
Mortgage Loan	7,300,000
Low Income Housing Tax Credit Proceeds	5,659,128
TDHCA Loan	4,000,000
Corpus Christi Loan	500,000
Corpus Christi HOME Funds	350,000
Deferred Developer Fee	<u>585,995</u>
<b>Total</b>	<b><u>\$18,395,123</u></b>

---

\* Preliminary; subject to change.

<b>Uses of Funds</b>	
Acquisition Costs	\$203,000
Construction Costs	13,273,760
Soft Costs	1,102,700
Costs of Issuance	1,247,500
Developer Fee	2,250,000
Reserves and Escrows	318,163
Repayment of Bond Principal	<u>10,000,000</u>
<b>Total</b>	<b><u>\$18,395,123</u></b>

<sup>1</sup> Subject to the satisfaction of certain conditions, the Bonds may be redeemed on or prior to the Initial Mandatory Tender Date with certain Eligible Funds, including the proceeds of a loan in the maximum principal amount of \$ \_\_\_\_\_\* (the "Funding Loan") from Berkadia Commercial Mortgage LLC, in its capacity as the Freddie Mac Seller/Servicer (the "Freddie Mac Seller/Servicer"), which Funding Loan, if issued, is expected to be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac").

All costs of issuing the Bonds, including the Underwriter's fee, will be paid by the Borrower.

*The Construction Loan.* The Project will utilize a Construction Loan in the principal amount of up to \$10,000,000\* (the "Construction Loan"). The Construction Loan will be secured by a senior mortgage on the Project and the obligation to repay the Construction loan will be evidenced by a promissory note (the "Construction Note") from the borrower to Sterling Bank, a \_\_\_\_\_ (the "Construction Lender") [Describe here.]

*The Mortgage Loan.* The Project will utilize a Mortgage Loan in the principal amount of up to \$7,300,000\* (the "Mortgage Loan"). The Mortgage Loan will be secured by a senior mortgage on the Project and the obligation to repay the Mortgage Loan will be evidenced by a promissory note (the "Mortgage Note") from the Borrower to [Berkadia] (the "Lender"). The Mortgage Note will have a term of 180 months, with the right to one six-month extension, and will bear interest at 3.5%\* per annum, with no payments of principal during the term, and with all unpaid principal and interest due at maturity. The Mortgage Loan proceeds will be disbursed from time to time by the Lender to the Trustee for deposit into the Collateral Fund to allow for a corresponding amount of Bond proceeds to be disbursed to the Project.

*The Low Income Housing Tax Credit Proceeds.* Prior to the issuance of the Bonds, the Borrower sold to the Investor Limited Partner a 99.99% ownership interest in the Borrower. Pursuant to the sale, the funding of the Federal Low Income Housing Tax Credit equity will total approximately \$5,659,128\*. The funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the projections set forth above and neither the Issuer nor the Underwriter makes any representation as to the availability of such funds.

*Deferred Developer Fee.* The Project will also utilize deferred developer fee in the amount of \$585,995\* as a source of funding. The deferred fee will be repaid through surplus cash flow received from the operation of the Project.

*The TDHCA Multifamily Direct Loan.* The Project will also utilize a loan in the principal amount of \$4,000,000\* (the "TDHCA Loan"). The obligation to repay the TDHCA Loan will be set forth in a promissory note (the "TDHCA Note") from the Borrower to the Issuer in its capacity as lender of the TDHCA Loan (the "TDHCA Lender") and will be repayable out of cash flow and other non-Project sources on the terms and conditions set forth therein. The TDHCA Note will be secured by a subordinate mortgage against the Project subordinate to the Mortgage Loan. The TDHCA Note will have a term [equal to that of

the Mortgage Loan][of [35] years] and will bear interest at a rate of 2.5% per annum, with annual principal and interest not otherwise paid, due at maturity.

*The Corpus Christi Type A Grant.* The Project will also utilize grant funds loaned by the City of Corpus Christi in the amount of \$500,000\* (the “Type A Loan”). The Type A Loan will be granted to WayForward (a non-profit which is a 5% owner of the Borrower), which will loan the funds to the Owner of the Project (the “WayForward Type A Loan”). The obligation to repay the WayForward Type A Loan will be set forth in a promissory note (the “WayForward Type A Note”) from the Borrower to WayForward and will be repayable out of cash flow and other non-Project sources on the terms and conditions set forth therein. The WayForward Note will be unsecured. The WayForward Type A Note will have a term of 35 years and will bear interest at a rate of 1.0% per annum, with annual principal and interest not otherwise paid, due at maturity.

*The Corpus Christi HOME Grant.* The Project will also utilize City of Corpus Christi HOME Funds in the amount of \$350,000\* (the “HOME Funds”). The HOME Funds will be granted to WayForward, which will loan the funds to the Owner of the Project (the “WayForward HOME Loan”). The obligation to repay the WayForward HOME Loan will be set forth in a promissory note (the “WayForward HOME Note”) from the Borrower to WayForward and will be repayable out of cash flow and other non-Project sources on the terms and conditions set forth therein. The WayForward HOME Note will be unsecured. The WayForward HOME Note will have a term of 35 years and will bear interest at a rate of 1.0% per annum, with annual principal and interest not otherwise paid, due at maturity.

## **The HAP Contract**

The Borrower will receive the benefit of a new Section 8 Housing Assistance Payment Contract (the “HAP Contract”) covering 64 of the 112 units at the Project; the HAP contract will be for 20 years and will be effective as date of the Mortgage Loan closing. In addition, the Borrower will receive the benefit of Tenant Protection Vouchers for any resident that is not covered by the HAP to ensure that every resident will have an opportunity to relocate to the Project.

Funding under the HAP Contract is subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the United States Housing Act of 1937, as amended, and in the case of Section 8 contracts is administered by contract administrators or HUD. Renewals of Section 8 HAP contracts are governed by the Multifamily Housing Mortgage and Assistance Restructuring Act, as amended (“MAHRA”) [and renewal of the HAP Contract will be subject to the terms of HUD’s Mark up to Market Program – (“MUTM”)]. The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income for the area as determined by HUD), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the “contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in MAHRA and the HAP Contract, are the “contract rents” for the Project. The HAP Contract will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of the HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under the HAP Contract, or take other sanctions. MUTM program rules collectively require that upon the expiration of the initial 20-year term of the HAP Contract and the request of the Borrower, HUD shall renew the HAP Contract under the Section

8 Program. However, because the HAP Contract is subject to receipt of annual appropriations by Congress, there is no assurance that the HAP Contract will be renewed or replaced upon its expiration. Funding for HAP contracts is appropriated by Congress, generally on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues sufficient to pay the principal of and interest of the Loan.

### **Regulatory Restrictions**

In order to obtain low income housing tax credits, the Project will be operated as a qualified residential rental project with at least 40% of the residential units in the Project occupied by Qualified Tenants during the Qualified Project Period, in accordance with Section 142(d) of the Code.

In addition to the rental restrictions imposed upon the Project by the Regulatory Agreement, the Ground Lease, and the HAP Contract, the Project will be further encumbered by a tax credit restrictive covenant, to be executed by the Borrower in connection with the low-income housing tax credits (the "LIHTCs") anticipated to be granted for the Project and in compliance with the requirements of Section 42 of the Code. Section 42 of the Code will restrict the income levels of 100% of the residential units in the Project (the "Tax Credit Units"). 100% of the Tax Credit Units shall be held available for rental to persons whose adjusted family income is equal to or less than 60% of the AMI adjusted for family size and the rents which may be charged for occupancy of units in the Project will be restricted to not more than 30% of 60% of AMI, adjusted for family size.

### **CERTAIN BONDHOLDERS' RISKS**

*The purchase of the Bonds will involve a number of risks. The following is a summary, which does not purport to be comprehensive or definitive, of some of such risk factors.*

#### **General**

Payment of the Bond Service Charges and the Borrower's obligations with respect to the Bond Service Charges, will be primarily secured by and payable from Bond proceeds held in the Project Fund and money deposited into the Collateral Fund and the Bond Fund, including the Negative Arbitrage Account held in the Bond Fund. Although the Borrower will execute the Note to evidence its obligation to repay the Loan, it is not expected that any revenues from the Project or other amounts, except money in the Special Funds, will be available to satisfy that obligation. The Indenture requires the Trustee to verify, before any disbursement of funds from the Project Fund, that the sum of the funds on deposit in the Project Fund and the Collateral Fund is at least equal to the then outstanding principal amount of the Bonds. It is expected that funds on deposit in the Collateral Fund and Negative Arbitrage Account of the Bond Fund will be sufficient to pay the debt service on the Bonds.

#### **Limited Security; Investment of Funds**

The Bonds are special limited obligations of the Issuer payable solely from the Trust Estate, which includes certain funds pledged to and held by the Trustee pursuant to the Indenture.

The Bonds are offered solely on the basis of the amounts held under the Indenture and are not offered on the basis of the credit of the Borrower, the feasibility of the Project or any other security. As a consequence, limited information about the Project and no information about the financial condition or



results of operations of the Borrower is included in this Official Statement. The Bonds are offered only to investors who, in making their investment decision, rely solely on the amounts held under the Indenture and not on the credit of the Borrower, the feasibility of the Project or any other security.

The principal of and interest on the Bonds are payable from and secured by certain revenues and funds pledged thereto under the Indenture. The Trustee is required to invest amounts held in the Special Funds in Eligible Investments, as defined in the Indenture. See “APPENDIX B — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE — Investment of Special Funds.” Failure to receive a return of the amounts so invested could affect the ability to pay the principal of and interest on the Bonds.

### **Early Redemption of the Bonds**

Any person who purchases a Bond should consider the fact that the Bonds are subject to optional redemption prior to the Initial Mandatory Tender Date. See “THE BONDS —Optional Redemption” herein.

### **Taxability**

The Bonds would not be subject to redemption, and the rate of interest on the Bonds would not be subject to adjustment, if the interest on the Bonds were to become included in gross income for purposes of federal income taxation. Such event could occur if the Borrower (or any subsequent owner of the Project) does not comply with the provisions of the Tax Regulatory Agreement, the Tax Exemption Agreement and the Loan Agreement that are designed, if complied with, to satisfy the continuing compliance requirements of the Code in order for the interest on the Bonds to be excludable from gross income for purposes of federal income tax.

### **Enforceability of Remedies**

The remedies available to the Trustee and the owners of the Bonds upon an event of default under the Loan Agreement or the Indenture are in many respects dependent upon regulatory and judicial actions which are often subject to discretion and delay. Under existing law and judicial decisions, the remedies provided for under the Loan Agreement or the Indenture may not be readily available, and the Borrower will have no personal liability for the satisfaction of any obligation of the Borrower under such agreements or of any claim against the Borrower arising out of such agreements or the Indenture.

If a default in the payment of the Loan occurs and is continuing, the Issuer has agreed with the Borrower and the Lender not to commence foreclosure proceedings with respect to the Project or exercise any other rights or remedies it may have under the Note or the Loan Agreement, including, but not limited to, accelerating the Loan, without the Lender’s prior written consent.

The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified to the extent that the enforceability of certain legal rights related to the Bonds and the documents described above is subject to limitations imposed by such things as the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or a court of equity), including judicial limitations on rights to specific performance and bankruptcy, insolvency, reorganization, moratorium or other similar laws heretofore or hereafter in effect affecting creditors’ rights, to the extent constitutionally applicable.

## **Secondary Markets and Prices**

The Underwriter will not be obligated to repurchase any of the Bonds, and no representation is made concerning the existence of any secondary market for the Bonds. No assurance can be given that any secondary market will develop following the completion of the offering of the Bonds contemplated by this Official Statement, and no assurance can be given that the Bonds can be resold at their initial offering prices for any period of time.

## **Issuer Limited Liability**

The Bonds will not be insured or guaranteed by any governmental entity or by the Issuer or any member or program participant of the foregoing. The holders of the Bonds will have no recourse to the Issuer in the event of an event of default on the Bonds.

## **Eligible Investments**

Proceeds of the Bonds deposited into the Project Fund and Eligible Funds received by the Trustee for deposit into the Collateral Fund are required to be invested in Eligible Investments. See “APPENDIX A — DEFINITIONS OF CERTAIN TERMS” hereto for the definition of Eligible Investments. There can be no assurance that there will not be a loss resulting from any investment held for the credit of the Project Fund or the Collateral Fund, and any failure to receive a return of the amounts so invested could affect the ability to pay the principal of and interest on the Bonds.

## **Rating Based on Eligible Investments**

The rating on the Bonds is based on the amounts in the Project Fund and the Collateral Fund being invested in Eligible Investments. If one or more of such investments fail to meet the rating standards for Eligible Investments after their acquisition and prior to maturity, such a change may result in a downgrade or withdrawal of the rating on the Bonds.

## **Subordination to Mortgage Loan Documents**

The Indenture, the Loan Agreement, the Note, and the Tax Regulatory Agreement contain provisions regarding subordination of such documents to the Mortgage Loan Documents. No assurance can be given that such provisions will not impair the excludability of interest on the Bonds from gross income for federal income tax purposes.

## **Future Legislation; IRS Examination**

The Project, its operation and the treatment of interest on the Bonds are subject to various laws, rules and regulations adopted by the local, State and federal governments and their agencies. There can be no assurance that relevant local, State or federal laws, rules and regulations may not be amended or modified or interpreted in the future in a manner that could adversely affect the Bonds, the trust estate created under the Indenture, the Project, or the financial condition of or ability of the Borrower to comply with its obligations under the various transaction documents.

In recent years, the Internal Revenue Service (“IRS”) has increased the frequency and scope of its examination and other enforcement activity regarding tax-exempt bonds. Currently, the primary penalty available to the IRS under the Code is a determination that interest on bonds is subject to federal income taxation. Such event could occur for a variety of reasons, including, without limitation, failure to comply with certain requirements imposed by the Code relating to investment restrictions, periodic payments of

arbitrage profits to the United States of America, the timely and proper use of Bond proceeds and the facilities financed therewith and certain other matters. See “TAX MATTERS” herein. No assurance can be given that the IRS will not examine the Issuer, the Borrower, the Project or the Bonds. If the Bonds are examined, it may have an adverse impact on their price and marketability.

### **Potential Impact of Pandemics**

The spread of the strain of coronavirus commonly known as COVID-19 is altering the behavior of businesses and people in a manner that is having negative effects on global, state and local economies. There can be no assurances that the spread of a pandemic, including a strain of coronavirus known as COVID-19, will not materially impact both local and national economies and, accordingly, have a materially adverse impact on the Project’s operating and financial viability. This could include, among other things, the length of time necessary to complete the construction and/or rehabilitation of the Project, suspension or delay of site inspections and other on-site meetings, the engagement of material participants in the Project, the length of time necessary to conduct lease-up at the Project, and increased delinquencies and/or vacancies, all of which could impact the Borrower’s ability to cover scheduled debt service payments on the Mortgage Loan and result in an acceleration thereof.

### **Legislative Response to COVID-19**

Recent federal legislation, passed to address the economic effects of COVID-19, known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “CARES Act”), provides for a temporary moratorium on eviction of tenants due to nonpayment of rents when the landlord’s mortgage on that property is supplemented or assisted in any way by HUD. This moratorium expired on July 25, 2020. While Congress has not extended the moratorium, pursuant to Executive Order 13945, “Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners” published on August 8, 2020, the Presidential Administration, to the extent reasonably necessary to prevent further spread of COVID-19, will take all lawful measures to prevent residential evictions and foreclosures resulting from financial hardships caused by COVID-19. Such Executive Order would apply to the Project which receives HUD assistance under the HAP Contract. If such provision of the CARES Act was extended, such eviction moratorium and the Borrower’s inability to evict non-paying tenants of the Project and replace them with paying tenants would also be extended. No assurances can be given that subsequent federal, state or local legislation enacted in response to the COVID-19 pandemic will not adversely affect the Borrower’s ability to collect rent and evict tenants for nonpayment of rent or otherwise operate the Project as planned.

### **Summary**

The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. In order for potential investors to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement, including the Appendices hereto.

### **FINANCIAL ADVISOR**

Stifel, Nicolas & Company, Incorporated (the “Financial Advisor”) has served as a financial advisor to the Issuer for purposes of assisting the Issuer with the development and implementation of the bond program in connection with the Bonds. The Financial Advisor has not been engaged by the Issuer to compile, create or interpret any information in this Official Statement relating to the Issuer, including (without limitation) any of the Issuer’s financial and operating data, whether historical or projected. Any information contained in this Official Statement concerning the Issuer, any of its affiliates or contractors and any outside parties has not been independently verified by the Financial Advisor, and inclusion of such

information is not and should not be construed as a representation by the Financial Advisor as to its accuracy or completeness or otherwise. The Financial Advisor is not a public accounting firm and has not been engaged by the Issuer to review or audit any information in this Official Statement in accordance with accounting standards.

The Financial Advisor does not assume any responsibility for the covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

## TAX MATTERS

**The following discussion of certain federal income tax considerations is for general information only and is not tax advice. Each prospective purchaser of the Bonds should consult its own tax advisor as to the tax consequences of the acquisition, ownership and disposition of the Bonds.**

### Tax Exemption

#### *In General*

In the opinion of Bond Counsel, assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Code, except with respect to interest on any Bond for any period during which it is held by a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of Section 147(a) of the Code and (ii) interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer’s alternative minimum tax liability.

The Code imposes a number of requirements that must be satisfied for interest on state or local obligations, such as the Bonds, to be excludable from gross income for federal income tax purposes. These requirements include, among other things, limitations on the use of the bond-financed project, limitations on the use of bond proceeds, limitations on the investment of bond proceeds prior to expenditure, a requirement that excess arbitrage earned on the investment of bond proceeds be paid periodically to the United States, and a requirement that the Issuer file an information report with the IRS. The Issuer and the Borrower have covenanted in the Indenture, Loan Agreement, Tax Exemption Agreement and Tax Regulatory Agreement that they will comply with these requirements.

Bond Counsel’s opinion will assume continuing compliance with the covenants of the Indenture, Loan Agreement, Tax Exemption Agreement and Tax Regulatory Agreement pertaining to those sections of the Code that affect the excludability from gross income of interest on the Bonds for federal income tax purposes and, in addition, will rely on representations by the Issuer, the Borrower and the Underwriter with respect to matters solely within the knowledge of the Issuer, the Borrower and the Underwriter, respectively, which Bond Counsel has not independently verified. If the Issuer or the Borrower should fail to comply with the covenants in the Indenture, Loan Agreement, Tax Exemption Agreement and Tax Regulatory Agreement or if the foregoing representations should be determined to be inaccurate or incomplete, interest on the Bonds could become includable in gross income for federal income from the date of original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

Except as stated above, Bond Counsel will express no opinion as to the amount of interest on the Bonds or any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds.

Bond Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on Bond Counsel's knowledge of facts as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel's attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, Bond Counsel's opinions are not a guarantee of result and are not binding on the IRS; rather, such opinions represent Bond Counsel's legal judgment based upon its review of existing law and in reliance upon the representations and covenants referenced above that it deems relevant to such opinions. The IRS has an ongoing audit program to determine compliance with rules that relate to whether interest on state or local obligations is includable in gross income for federal income tax purposes. No assurance can be given whether or not the IRS will commence an audit of the Bonds. If an audit is commenced, in accordance with its current published procedures the IRS is likely to treat the Issuer as the taxpayer and the Bondholders may not have a right to participate in such audit. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit regardless of the ultimate outcome of the audit.

### *Operation of the Project*

In the case of bonds used to provide residential rental housing, such as the Bonds, Section 142 of the Code requires that such bonds also satisfy the tenant eligibility requirements applicable to "qualified residential rental projects" under Section 142(d) of the Code. Section 142(d) of the Code requires that at all times during the "qualified project period" a certain percentage of the available units in the Project be occupied by individuals with income below certain levels pursuant to the Issuer's election made under Section 142(d)(1) of the Code. The "qualified project period" for the Project will commence on the first day on which 10 percent of the residential units in the Project are occupied (which date may be the delivery date of the Bonds) and will end on the latest of the following: (1) the date that is 15 years after the date on which 50 percent of the residential units in the Project are occupied (which date may be the delivery date of the Bonds); (2) the first day on which no tax-exempt private activity bond issued with respect to the Project remains outstanding for federal income tax purposes; or (3) the date on which any assistance provided with respect to the Project under the Section 8 Program, terminates. Treasury Regulations (the "Regulations") setting forth requirements for compliance with a comparable provision of the predecessor of Section 142 of the Code require, among other things, that (1) the low-income set aside requirement must be met on a continuous basis during the "qualified project period", and (2) all of the units in the Project must be rented or available for rental to the general public on a continuous basis during such period. Under the Regulations, the failure to satisfy the foregoing requirements on a continuous basis or the failure to satisfy any of the other requirements of the Regulations, unless corrected within a reasonable period of not more than 60 days after such non-compliance is first discovered or would have been discovered by the exercise of reasonable diligence, will cause interest on the Bonds to be includable in gross income for federal income tax purposes as of the date of their original issue, irrespective of the date such non-compliance actually occurred.

The Issuer has established requirements, procedures and safeguards that it believes to be sufficient to ensure compliance with the requirements of the Code and the Regulations with respect to the Project. Such requirements, procedures and safeguards are incorporated into the Tax Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the Indenture. In addition, the Issuer and the Trustee have each covenanted in the Tax Exemption Agreement to follow and enforce such procedures to ensure compliance with such requirements. However, no assurance can be given that in the event of a breach of any of the provisions or covenants described above, the remedies available to the Issuer and the Trustee can be judicially enforced in such manner as to assure compliance with the Code and therefore to prevent the loss of the excludability from gross income for federal income tax purposes of the interest on the Bonds. Furthermore, if the Borrower fails to comply with the Tax Regulatory Agreement, the Tax Exemption Agreement or the Loan Agreement, the enforcement remedies available to the Issuer, the Trustee and the

Bondholders are severely limited and may be inadequate to prevent the loss of the excludability from gross income for federal income tax purposes of the interest on the Bonds retroactive to the date of issuance of the Bonds. In such event, there is no provision for acceleration or redemption of the Bonds, and the holders of the Bonds may be required to hold the Bonds until maturity bearing interest that is includable in gross income for federal income tax purposes.

Bond Counsel's opinions assume continuous compliance with all covenants and requirements set forth in the Tax Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the excludability from gross income of interest on the Bonds for federal income tax purposes. Bond Counsel's opinions assume continuous compliance with all covenants and requirements set forth in the Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the excludability of interest on the Bonds from gross income for federal income tax purposes. Prospective purchasers should be aware that the Federal Home Loan Mortgage Association ("Freddie Mac") has required the inclusion of a section in the Regulatory Agreement (the "Freddie Mac Requirements") that provides that, after Conversion, any action taken under the Regulatory Agreement may not conflict with applicable Freddie Mac requirements. Bond Counsel expresses no opinion as to whether any of the covenants and requirements set forth in the Regulatory Agreement conflict with such Freddie Mac requirements. Furthermore, Bond Counsel expresses no opinion as to whether the interest on the Bonds will be excludable from gross income for federal income tax purposes in the event that the Freddie Mac Requirements preclude compliance with any other of the covenants or requirements of the Regulatory Agreement.

#### **Additional Federal Income Tax Considerations**

Prospective purchasers of the Bonds should be aware that the ownership of tax-exempt obligations may result in collateral federal income tax consequences to financial institutions, property and casualty insurance companies, certain S corporations with Subchapter C earnings and profits, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, low and middle taxpayers otherwise qualifying for the health insurance premium assistance credit and individuals otherwise qualifying for the earned income tax credit. In addition, certain foreign corporations doing business in the United States may be subject to the new "branch profit tax" on their effectively-connected earnings and profits, including tax-exempt interest such as interest on the Bonds. These categories of prospective purchasers should consult their own tax advisors as to the applicability of these consequences. Under the Code, taxpayers are required to report on their returns the amount of tax-exempt interest, such as interest on Bonds, received or accrued during the year.

#### **Tax Legislative Changes**

Current law may change so as to directly or indirectly reduce or eliminate the benefit of the excludability of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation, whether or not enacted, could also affect the value and liquidity of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed, pending or future legislation.

#### **UNDERWRITING**

Ramirez & Co., Inc. (the "Underwriter"), is offering the Bonds at the price set forth on the cover hereof. The initial offering price may be changed from time to time and concessions from the offering price may be allowed to dealers, banks and others. The Underwriter also agrees to advance \$\_\_\_\_\_ (the "Underwriter's Premium") for initial deposits established under the Indenture. The Underwriter has agreed

to purchase the Bonds at a price equal to the principal amount thereof. For its services as such, the Underwriter is to be paid a fee equal to \$ \_\_\_\_\_ plus \$ \_\_\_\_\_ for certain fees and expenses (not including the fees and expenses of its counsel), and will be reimbursed by the Borrower for the Underwriter's Premium. From its fees, the Underwriter will pay certain of its expenses relating to the offering.

The Underwriter does not guarantee a secondary market for the Bonds and is not obligated to make any such market in the Bonds. No assurance can be made that such a market will develop or continue. Consequently, investors may not be able to resell Bonds should they need or wish to do so for emergency or other purposes.

In addition to serving as Underwriter, Ramirez & Co., Inc. has been designated to serve as Remarketing Agent and will receive a fee for its remarketing services in connection with the remarketing of the Bonds on the Initial Mandatory Tender Date.

### **RATING**

Moody's Investors Service, Inc. ("Moody's") has assigned to the Bonds the rating set forth on the cover page hereof. The rating reflects only the view of Moody's at the time the rating was issued and an explanation of the significance of such rating may be obtained from Moody's. The rating is not a recommendation to buy, sell or hold the Bonds. There is no assurance that any such rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. Any such downward revision or withdrawal of such rating can be expected to have an adverse effect on the market price of the Bonds.

### **CERTAIN LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Bonds will be subject to the approving opinion of the Attorney General of the State of Texas and the opinion of Bracewell LLP, Austin, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by its counsel, Tiber Hudson LLC, Washington, D.C., for the Issuer by its General Counsel, and for the Borrower by its counsel, The Law Offices of Claire G. Palmer, PLLC, Irving, Texas. Compensation for certain of such counsel is contingent upon the issuance of the Bonds.

### **ABSENCE OF LITIGATION**

#### **The Issuer**

It is a condition to the Underwriter's acceptance of the Bonds on the date of delivery that the Issuer deliver a certificate to the effect that there is no litigation pending or, to the knowledge of the Issuer, threatened, against the Issuer that in any way questions or affects the validity of the Bonds or any proceedings or transactions relating to their issuance.

#### **The Borrower**

It is a condition to the Underwriter's acceptance of the Bonds on the date of delivery that the Borrower deliver a certificate to the effect that there are no legal proceedings pending or, to the Borrower's knowledge threatened, to restrain or enjoin the issuance, sale or delivery of the Bonds or the payment, collection or application of the proceeds thereof or of the revenues and other money and securities pledged or to be pledged under the Indenture or in any way contesting or affecting any authority for or the validity of the Bonds or the Indenture.

## CONTINUING DISCLOSURE

The Borrower has undertaken responsibility for any continuing disclosure to Bondholders as described below, and the Issuer will have no liability to the Holders of the Bonds or any other person with respect to such disclosures.

The Borrower will enter into a Continuing Disclosure Agreement dated as of October 1, 2020 (the “Continuing Disclosure Agreement”) with Digital Assurance Certification LLC, as the Dissemination Agent, obligating the Borrower to send, or cause to be sent, certain financial information with respect to the Project to certain information repositories annually and to provide notice, or cause notice to be provided, to the Municipal Securities Rulemaking Board, if any, of certain enumerated events for the benefit of the Beneficial Owners and Holders of any of the Bonds, in order to allow the Underwriter to meet the requirements of Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-12 (the “Rule”). See “APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT” hereto.

Because the Borrower is a new entity established to acquire and operate the Project, it has not previously entered into any undertakings similar to the Continuing Disclosure Agreement. For certain projects, certain affiliates of the Borrower have failed to comply with certain undertakings under the Rule during the five-year period prior to the date of this Official Statement, including instances of failure to file financial and/or operating data. A failure by the Borrower to comply with the provisions of the Continuing Disclosure Agreement will not constitute a default under the Loan Agreement (although Holders will have any available remedy at law or in equity for obtaining necessary disclosures). Nevertheless, such a failure to comply is required to be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds.

## MISCELLANEOUS

The foregoing summaries and explanations do not purport to be comprehensive, and are expressly made subject to the exact provisions of documents referred to herein. Copies of the Indenture and the Loan Agreement may be obtained from the Trustee or, during the initial marketing of the Bonds, the Underwriter. Any statements in this Official Statement involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement among the Issuer, the Borrower, or the Underwriter and the purchasers or Holders of any Bonds.

[Remainder of page intentionally left blank]



The execution and delivery of this Official Statement and the incorporation of the appendices hereto have been duly authorized by the Borrower.

**FISHPOND LIVING AT CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier  
Managing Member

**APPENDIX A**  
**DEFINITIONS OF CERTAIN TERMS**

“**Act**” means, collectively, Chapter 2306, Texas Government Code, as amended, and Chapter 1371, Texas Government Code, as amended.

“**Act of Bankruptcy**” means written notice to the Trustee that the Borrower has become insolvent or has failed to pay its debts generally as such debts become due or has admitted in writing its inability to pay any of its indebtedness or has consented to or has petitioned or applied to any court or other legal authority for the appointment of a receiver, liquidator, trustee or similar official for itself or for all or any substantial part of its properties or assets or that any such trustee, receiver, liquidator or similar official has been appointed or that a petition in bankruptcy, insolvency, reorganization or liquidation proceedings (or similar proceedings) has been instituted by or against the Borrower; provided that, if in the case of an involuntary proceeding, such proceeding is not dismissed within 90 days after commencement thereof.

“**Additional Payments**” means the amounts required to be paid by the Borrower pursuant to the Loan Agreement.

“**Administrative Expenses**” means the Ordinary Trustee Fees and Expenses and the Dissemination Agent Fee.

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

“**Authorized Borrower Representative**” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person’s authority to act in such capacity. The initial Authorized Borrower Representative is the Chief Executive Officer of the sole member of the General Partner.

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

“**Beneficial Owner**” means with respect to the Bonds, the Person owning the Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“**Beneficial Ownership Interest**” means the right to receive payments and notices with respect to the Bonds held in a Book-Entry System.

**“Bond Counsel”** means Bracewell LLP or other 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.

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

**“Bond Fund”** means the Bond Fund created in the Indenture.

**“Bond Payment Date”** means each Interest Payment Date and any other date Bond Service Charges on the Bonds are due, whether at maturity, Mandatory Tender, upon redemption or acceleration or otherwise.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, dated October \_\_\_, 2020, among the Underwriter, the Issuer and the Borrower.

**“Bond Resolution”** means the certain resolution relating to the issuance and sale of the Bonds, adopted by the Governing Body on September 3, 2020.

**“Bond Service Charges”** means, for any period or payable at any time, the principal of and interest on the Bonds for that period or payable at that time whether due at maturity, Mandatory Tender or upon redemption or acceleration.

**“Bonds”** means the Issuer’s Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 authorized in the Bond Resolution and the Indenture in an aggregate principal amount not to exceed \$10,000,000\*.

**“Book-Entry Form”** or **“Book-Entry System”** means, with respect to the Bonds, a form or system, as applicable, under which (a) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository and (b) the ownership of book-entry interests in Bonds and Bond Service Charges thereon may be transferred only through a book-entry made by others than the Issuer or the Trustee. The records maintained by others than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in those Bonds and Bond Service Charges thereon.

**“Borrower”** means FishPond Living at Corpus Christi, LP, a Texas limited partnership, and its authorized successors and assigns.

**“Borrower Documents”** means the Financing Documents to which the Borrower is a party.

**“Business Day”** means a day other than a Saturday or a Sunday or any other day on which (a) banking institutions in the City of New York or in the city in which the Designated Office of the Trustee is located is authorized or obligated by law or executive order to be closed, or (b) the New York Stock Exchange is closed.

**“Cash Flow Projection”** means a cash flow projection prepared by an independent firm of certified public accountants, a financial advisory firm, a law firm or other independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Rating Agency, establishing, to the satisfaction

---

\* Preliminary; subject to change.

of the Rating Agency, the sufficiency of (a) the amount on deposit in the Project Fund and the Collateral Fund, (b) projected investment income to accrue on amounts on deposit in the Project Fund and Collateral Fund during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in the Indenture, (iii) a release of Eligible Funds from the Negative Arbitrage Account, as provided in the Indenture, (iv) the optional redemption of the Bonds as provided in the Indenture, (v) the sale or other disposition by the Trustee of Eligible Investments prior to maturity at a price below par in connection with an optional redemption prior to a Mandatory Tender Date, as described in the Indenture, or (vi) the purchase, sale or exchange of Eligible Investments as provided in the Indenture.

“**Closing Date**” means October \_\_\_, 2020.

“**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 Fund**” means the Collateral Fund created in the Indenture.

“**Collateral Payments**” means Eligible Funds paid to the Trustee for the benefit of the Borrower in respect to the repayment of the Loan for deposit into the Collateral Fund pursuant to the Loan Agreement and the Indenture as a prerequisite to the advance of money in the Project Fund.

“**Completion Certificate**” means the certificate attached as an exhibit to the Loan Agreement.

“**Completion Date**” means the date of completion of the Project evidenced in accordance with the requirements of the Loan Agreement.

“**Construction Phase Financing Agreement**” means the Construction Phase Financing Agreement dated as of the Closing Date among the Lender, the Freddie Mac Seller/Servicer and Freddie Mac.

“**Continuing Disclosure Agreement**” means the Continuing Disclosure Agreement dated as of October 1, 2020, between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“**Controlling Holders**” means in the case of consent or direction to be given under the Indenture, the Holders of the majority in aggregate principal amount of the outstanding Bonds.

“**Conversion**” means the conversion of the Loan from the Construction Phase (as defined in the Construction Phase Financing Agreement) to the Permanent Phase (as defined in the Construction Phase Financing Agreement) on the Conversion Date.

“**Conversion Date**” means the date the Freddie Mac Seller/Servicer acquires the Funding Loan upon the satisfaction of the Conditions to Conversion (as defined in the Construction Phase Financing Agreement), as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of

Conversion (as defined in the Construction Phase Financing Agreement); provided, however, the Conversion Date shall occur no earlier than November 1, 2022\*.

**“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; 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 created in the Indenture.

**“Depository”** means, with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under a federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in Bonds and to effect transfers of book-entry interests in Bonds.

**“Designated Office”** means the office of the Trustee at the notice address set forth in the Indenture.

**“Dissemination Agent”** means Digital Assurance Certification LLC, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

**“Dissemination Agent Fee”** means the fee payable to the Dissemination Agent as compensation for its services and the reimbursement to the Dissemination Agent of its expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under the Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to the Loan Agreement.

**“DTC”** means The Depository Trust Company (a limited purpose trust company), New York, New York, and its successors or assigns.

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

- (a) the proceeds of the Bonds (including any additional amount paid by the Underwriter to the Trustee as the purchase price of the Bonds);
- (b) money received by the Trustee constituting proceeds of the Mortgage Loan;
- (c) remarketing proceeds of the Bonds (including any additional amount paid by the Remarketing Agent to the Trustee as the remarketing price of the Bonds) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer or any Affiliate of either the Borrower or the Issuer);
- (d) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or

---

\* Preliminary; subject to change.

Beneficial Owner of Bonds is an “insider” within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B) payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

(e) the proceeds of draws by the Trustee on any letter of credit provided to the Trustee for the benefit of the Borrower;

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

(g) the proceeds of the Funding Loan; and

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

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

(a) Government Obligations;

(b) Shares or units in any money market mutual fund rated “Aaa-mf” by Moody’s (or the equivalent Highest Rating Category given by the Rating Agency for that general category of security), including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor that are registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of direct obligations of the government of the United States of America; and

(c) Obligations of any state or political subdivision of any state or instrumentality thereof that (i) are rated at the time of purchase in the Highest Rating Category by the Rating Agency and (ii) have an interest accrual period, interest payment dates and principal payment dates that provide for timely payments that are unconditionally and directly payable from the obligations of the character described in (a) and (b) above in amounts sufficient to meet the payment obligations on the Bonds.

“*Event of Default*” means (a) with respect to the Indenture, any of the events described as an Event of Default in the Indenture and (b) with respect to the Loan Agreement, any of the events described as an Event of Default in the Loan Agreement.

“*Expense Fund*” means the Expense Fund created in the Indenture.

“*Extraordinary Issuer Fees and Expenses*” means the fees, expenses and disbursements payable to the Issuer under the Indenture or any other Financing Document for Extraordinary Services and

Extraordinary Expenses, including extraordinary fees, costs and expenses incurred by the Issuer, Bond Counsel and counsel to the Issuer which are to be paid by the Borrower pursuant to the Loan Agreement.

“**Extraordinary Services**” and “**Extraordinary Expenses**” mean all services rendered and all reasonable expenses properly incurred by the Trustee or the Issuer under the Indenture, the Loan Agreement or any other Financing Document, 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, a default or an Event of Default.

“**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 Opinion of Bond Counsel to the effect that such action will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes (subject to the inclusion of any exceptions contained in the opinion delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

“**Federal Tax Status**” means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond during any period during which it is held by a “substantial user” or “related person” to such a substantial user within the meaning of Section 147(a) of the Code).

“**Financing Documents**” means the Indenture, the Bonds, the Loan Agreement, the Note, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the Mortgage Loan Documents and any secondary financing documents, and any documents relating to low income housing tax credit equity.

“**Force Majeure**” means any of the causes, circumstances or events described as constituting Force Majeure in the Loan Agreement.

“**Freddie Mac**” means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“**Freddie Mac Seller/Servicer**” means Berkadia Commercial Mortgage LLC, a Delaware limited liability company.

“**Funding Loan**” means the tax-exempt loan relating to the refunding of a portion of the Bonds, if originated, evidenced by a note made by the Issuer and purchased by the Freddie Mac Seller/Servicer in the maximum principal amount of \$\_\_\_\_\_\*.

“**General Partner**” means FishPond Corpus Christi Manager, LLC, a Texas limited liability company, and its permitted successors and assigns.

“**Governing Body**” means the Governing Board of the Issuer.

“**Government Obligations**” means (i) noncallable, non-redeemable direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of

---

\* Preliminary; subject to change.

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.

**“Highest Rating Category”** means, with respect to an Eligible Investment, that the Eligible Investment is rated by a Rating Agency in the highest rating given by that Rating Agency for that Rating Category, provided that such rating shall include but not be below “Aaa” or “Aaa/VMIG 1” if rated by Moody’s or “A-1+” or “AA+” if rated by S&P.

**“Holder”** or **“Holder of a Bond”** means the Person in whose name a Bond is registered on the Register.

**“Indenture”** means the Trust Indenture, dated as of October 1, 2020, between the Issuer and the Trustee, as amended or supplemented from time to time.

**“Independent”** when used with respect to a specified Person means such Person has no specific financial interest direct or indirect in the Borrower or any Affiliate of the Borrower and in the case of an individual is not a director, trustee, officer, partner, member or employee of the Borrower or any Affiliate of the Borrower and in the case of an entity, does not have a partner, director, trustee, officer, member or employee who is a director, trustee, partner, member, officer or employee of any partner or member of the Borrower or any Affiliate of the Borrower.

**“Initial Bond”** means the initial Bond registered by the Texas Comptroller of Public Accounts and subsequently canceled and replaced by a definitive Bond pursuant to the Indenture.

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

**“Initial Mandatory Tender Date”** means May 1, 2023\*.

**“Interest Payment Date”** means (a) each May 1 and November 1 of each year beginning May 1, 2021\*, (b) each Mandatory Tender Date and (c) each Redemption Date. In the case of a payment of defaulted interest, “Interest Payment Date” also means the date of such payment established pursuant to the Indenture.

**“Interest Rate”** means the Initial Interest Rate to but not including the Initial Mandatory Tender Date, and thereafter the applicable Remarketing Rate.

**“Investor Limited Partner”** means PNC Real Estate Tax Credit Capital Institutional Fund 47, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

**“Issuer”** means the Texas Department of Housing and Community Affairs, a public and official agency of the State, together with its successors and assigns, in its capacity as issuer of the Bonds.

**“Issuer Administrative Fee”** means the fee payable annually in advance to the Issuer on each October 1, in the amount of 0.10% per annum of the aggregate principal amount of the Bonds outstanding at the inception of each payment period. On the Closing Date, the Borrower will pay the Issuer Administrative Fee to the Issuer for the period from the Closing Date to September 30, 2022. 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 Administrative Fee due on or after October 1, 2022.

**“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 (as defined in the Tax Regulatory Agreement) in the Project for the duration of the State Restrictive Period (as defined in the Tax Regulatory Agreement). The first annual 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, 2023. The Issuer’s Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

**“Issuer Fees and Expenses”** means the Issuer Administrative Fee, the Issuer Compliance Fee and the Extraordinary Issuer Fees and Expenses.

**“Lender”** means Sterling Bank, a [State entity], and its successors and assigns.

**“Loan”** means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

**“Loan Agreement”** means the Loan Agreement, dated as of October 1, 2020, between the Issuer and the Borrower, as amended or supplemented from time to time and assigned by the Issuer to the Trustee, except for the Reserved Rights.

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

**“Mandatory Tender”** means a tender of the Bonds required by the Indenture.

**“Mandatory Tender Date”** means (i) the Initial Mandatory Tender Date and (ii) if the outstanding Bonds are remarketed pursuant to the Indenture for a Remarketing Period that does not extend to the final maturity of the Bonds, the Remarketing Date following such Remarketing Period.

**“Maturity Date”** means May 1, 2038\*.

**“Moody’s”** means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

**“Mortgage Loan”** means the mortgage loan to be made by the Lender to the Borrower in the principal amount of \$ \_\_\_\_\_\*.

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

**“Negative Arbitrage Account”** means the Negative Arbitrage Account of the Bond Fund created in the Indenture.

---

\* Preliminary; subject to change.

“**Note**” means the promissory note of the Borrower, dated as of even date with the Bonds initially issued, in the form attached as an exhibit to the Loan Agreement and in the principal amount of \$10,000,000\*, evidencing the obligation of the Borrower to make Loan Payments.

“**Opinion of Bond Counsel**” means an opinion of Bond Counsel.

“**Opinion of Counsel**” means an opinion from an attorney or firm of attorneys, acceptable to the Trustee, with experience in the matters to be covered in the opinion, which may be legal counsel of the Issuer or the Borrower.

“**Optional Redemption Date**” means November 1, 2022\*, or any Business Day thereafter.

“**Ordinary Services**” and “**Ordinary Expenses**” mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to the 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, while the Bonds are outstanding in an annual amount equal to \$ \_\_\_\_\_; provided, however, the amount of Ordinary Trustee Fees and Expenses payable under the Indenture is limited to money withdrawn from the Costs of Issuance Fund and the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Ordinary Trustee Fees and Expenses pursuant to the Loan Agreement. 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 the Loan Agreement.

“**Outstanding Bonds**,” “**Bonds outstanding**” or “**outstanding**” as applied to Bonds mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under the Indenture, except:

- (a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment on or prior to that date;
- (b) Bonds, or the portion thereof, for the payment or purchase for cancellation of which sufficient money has been deposited and credited with the Trustee on or prior to that date for that purpose (whether upon or prior to the maturity of those Bonds);
- (c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Indenture; and
- (d) Bonds in lieu of which others have been authenticated under the Indenture.

“**Person**” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, limited liability companies, public or governmental bodies, other legal entities and natural persons.

“**Project**” means the approximately 112-unit multifamily housing facility known as FishPond at Corpus Christi Apartments, located at 1006 Sixth Street, Corpus Christi, TX 78404.

“**Project Costs**” means the costs of the Project specified in the Loan Agreement.

“**Project Fund**” means the Project Fund created in the Indenture.

**“Rating Agency”** means Moody’s, S&P or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns, and initially means Moody’s so long as Moody’s is rating the Bonds.

**“Rating Category”** means one of the rating categories of the Rating Agency for the specific type and duration of the applicable Eligible Investment.

**“Rebate Fund”** means the Rebate Fund created in the Indenture.

**“Redemption Date”** means any date on which the Bonds are to be redeemed pursuant to the Indenture.

**“Register”** means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to the Indenture.

**“Regular Record Date”** means, with respect to any Bond, the fifteenth day of the calendar month next preceding each Interest Payment Date.

**“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.

**“Remarketing Agent”** means initially Ramirez & Co., Inc., and any successor Remarketing Agent that may be designated in accordance with the Indenture.

**“Remarketing Agreement”** means the Remarketing Agreement dated as of October 1, 2020, between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

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

**“Remarketing Period”** means the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to the Indenture or the final Maturity Date of the Bonds, as applicable.

**“Remarketing Proceeds Account”** means the Remarketing Proceeds Account of the Bond Fund created in the Indenture.

**“Remarketing Rate”** means the interest rate or rates established pursuant to the Indenture and borne by the Bonds then outstanding from and including the Mandatory Tender Date to, but not including, the immediately succeeding Mandatory Tender Date or the Maturity Date, as applicable.

**“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 the Loan Agreement, including the Issuer Fee and Expenses; (c) all rights of the Issuer to receive any Rebate Amount 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 under the Indenture

and the other Financing Documents; (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 Tax Exemption Agreement and in the Tax Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in the Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate Mortgage or the Note, as applicable, 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, the Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate Mortgage or the Note, (4) the maintenance of insurance by the Borrower, (5) no liability of the Issuer to third parties, and (6) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of the Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement, the Subordinate Mortgage and the Note, (h) any and all limitations of the Issuer's liability and the Issuer's disclaimers of warranties set forth in the Indenture, the Tax Exemption Agreement, the Tax Regulatory 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) all enforcement remedies with respect to the foregoing.

**"Revenues"** means (a) the Loan Payments, (b) the Collateral Payments, (c) all other money received or to be received by the Trustee in respect of repayment of the Loan, including without limitation, all money and investments in the Bond Fund, (d) any money and investments in the Project Fund and the Collateral Fund, and (e) all income and profit from the investment of the foregoing money. The term "Revenues" does not include any money or investments in the Rebate Fund or Additional Payments, or other payments or amounts with respect to the Reserved Rights.

**"S&P"** means S&P Global Ratings, a division of S&P Global Inc., a corporation organized and existing under the laws of the State of New York, or if it shall for any reason no longer perform the functions of a securities rating agency, then any other nationally recognized rating agency designated by the Borrower and acceptable to the Remarketing Agent.

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

**"Special Record Date"** means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest or principal on that Bond.

**"State"** means the State of Texas.

**"Subordinate Mortgage"** means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing, dated of even date with the Indenture, from the Borrower to BOKF, NA for the benefit of the Trustee and the Issuer as security for the Borrower's obligations under the Loan Agreement other than repayment of principal and interest on the Note, as amended or supplemented from time to time.

**"Supplemental Indenture"** means any indenture supplemental to the Indenture entered into between the Issuer and the Trustee in accordance with the Indenture.

**"Tax Exemption Agreement"** means the Tax Exemption Certificate and Agreement, dated as of October 1, 2020, among the Issuer, the Borrower and the Trustee, as amended or supplemented from time to time.

**“Tax Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, dated as of October 1, 2020, among the Issuer, the Borrower and the Trustee, as amended or supplemented from time to time.

**“Trust Estate”** means the property rights, money, securities and other amounts pledged and assigned to the Trustee under the Indenture pursuant to the Granting Clauses of the Indenture.

**“Trustee”** means BOKF, NA, a national banking association, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter, “Trustee” shall mean the successor Trustee.

**“Underwriter”** means Ramirez & Co., Inc.

**“Unredeemed Bonds”** means, on any Mandatory Tender Date, Bonds that are not scheduled to be redeemed pursuant to the Indenture.

[Remainder of page intentionally left blank]

## APPENDIX B

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a brief summary of certain provisions of the Indenture. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Indenture, copies of which are on file with the Issuer and the Trustee.*

#### **Creation of Funds**

The following funds and accounts are to be held in trust and maintained by the Trustee under the Indenture:

- (a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such accounts as provided in the Indenture);
- (b) the Project Fund, and therein the Bond Proceeds Account;
- (c) the Costs of Issuance Fund;
- (d) the Collateral Fund;
- (e) the Rebate Fund; and
- (f) the Expense Fund.

Each fund and account therein shall be maintained by the Trustee as a separate and distinct trust fund or account to be held, managed, invested, disbursed and administered as provided in the Indenture. All money deposited in the funds and accounts created under the Indenture shall be used solely for the purposes set forth in the Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, and all disbursements therefrom, in accordance with its general practices and procedures in effect from time to time. The Trustee may also terminate funds and accounts that are no longer needed.

The Trustee shall, at the written direction of an Authorized Borrower Representative and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Borrower or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of the Indenture or the Tax Exemption Agreement with respect to a deposit or use of money in the Special Funds or the Rebate Fund, or result in commingling of funds not permitted under the Indenture.

#### **Bond Fund**

The Trustee shall deposit in the Remarketing Proceeds Account of the Bond Fund any amounts received from the remarketing of the Unredeemed Bonds. Money in the Remarketing Proceeds Account shall be held exclusively for the payment of the Purchase Price of the Unredeemed Bonds.

So long as there are any outstanding Bonds, to the extent the Borrower has not received a credit against Loan Payments, all Loan Payments under the Loan Agreement shall be paid by the Borrower on or

before each Interest Payment Date directly to the Trustee, and deposited in the Bond Fund, in at least the amount necessary to pay the Bond Service Charges due on the Bonds on such Interest Payment Date.

The Bond Fund (and any accounts therein for which provision is made in the Indenture) and the money and Eligible Investments therein shall be used solely and exclusively for the payment of Bond Service Charges as they become due.

Bond Service Charges shall be payable, as they become due, in the following order (1) from money on deposit in the Bond Fund (excluding the Negative Arbitrage Account therein), (2) from money on deposit in the Negative Arbitrage Account of the Bond Fund, (3) from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, and (4) from money on deposit in the Project Fund and transferred as necessary to the Bond Fund.

Upon receipt by the Trustee of a Cash Flow Projection provided on behalf of the Borrower, the Trustee is authorized by the Indenture to release from the Negative Arbitrage Account the amount set forth in the Cash Flow Projection to or at the written direction of an Authorized Borrower Representative.

### **Project Fund**

Upon the deposit of Collateral Payments in the Collateral Fund as provided in the Indenture, and subject to the provisions of this heading, the Trustee may disburse the Bond proceeds on deposit in the Project Fund to or at the written direction of the Lender or the Borrower, as applicable, for payment of Project Costs in accordance with the Loan Agreement. To the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is authorized by the Indenture to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund and (ii) transfer, from Collateral Payments or other Eligible Funds then deposited in the Collateral Fund, a corresponding amount from the Collateral Fund to the Project Fund, which transfer is deemed to be of the proceeds of the sale of the Eligible Investments then allocated from the Project Fund to the Collateral Fund. The Trustee shall be irrevocably and unconditionally obligated to (i) disburse from the Project Fund an amount equal to the amount deposited into the Collateral Fund to or at the written direction of the Lender or the Borrower, as applicable, or (ii) return to the Lender or the Borrower, as applicable, the amount deposited into the Collateral Fund, within one Business Day of receipt of such deposit. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to pay Bond Service Charges on each Interest Payment Date without further written direction.

The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested by the Issuer, the Investor Limited Partner or the Borrower, after the Project has been completed and a Completion Certificate is filed as provided in the Indenture, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer, the General Partner and the Investor Limited Partner. The Trustee shall satisfy this obligation by providing trust statements for all periods in which there are funds in the Project Fund.

Notwithstanding any provision of the Loan Agreement or any other provision of the Indenture to the contrary and except to make necessary interest payments, the Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Collateral Payments or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund. Prior to making any disbursement (except to the extent necessary to pay Bond Service Charges), the Trustee shall determine that the aggregate principal amount

that will be held in (a) the Collateral Fund and (b) the Project Fund, after the anticipated disbursement, is at least equal to the then-outstanding principal amount of the Bonds.

On any Redemption Date, the Trustee shall, at the written direction of an Authorized Borrower Representative, transfer any amounts then on deposit in the Project Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Upon the occurrence and continuance of an Event of Default under the Indenture because of which the principal amount of the Bonds has been declared to be due and immediately payable pursuant to the Indenture, any money remaining in the Project Fund shall be promptly transferred by the Trustee to the Bond Fund.

### **Collateral Fund**

The Trustee is to deposit in the Collateral Fund all Collateral Payments received pursuant to the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. The Loan Agreement requires the Borrower to cause Collateral Payments to be paid to the Trustee for deposit into the Collateral Fund in a principal amount equal to, and as a prerequisite to the disbursement of, amounts on deposit in the Project Fund to be disbursed by the Trustee to pay Project Costs.

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

The Trustee is to transfer money in the Collateral Fund as follows: (a) on each Bond Payment Date, to the Bond Fund, the amount necessary to pay Bond Service Charges due on such Bond Payment Date (but only to the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund); (b) on the Mandatory Tender Date, if the Unredeemed Bonds are to be redeemed pursuant to the Indenture, to the Bond Fund, the amount necessary to pay the redemption price of such Bonds on such date, and (c) on the Maturity Date of the Bonds, to the Bond Fund the amount necessary to pay all amounts due on the Bonds on such date.

On any Redemption Date, the Trustee will transfer all amounts then on deposit in the Collateral Fund into the Bond Fund to pay Bond Service Charges on the Bonds.

Amounts on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds may be transferred to the Project Fund and used to pay costs of the Project as provided in the Loan Agreement.

The Bonds shall not be, and shall not be deemed to be, paid or prepaid by reason of any deposit into the Collateral Fund unless and until the amount on deposit in the Collateral Fund is transferred to the Bond Fund and applied to the payment of the principal of any of the Bonds, or the principal component of the redemption price of any of the Bonds, all as provided in the Indenture.

Anything in the Indenture to the contrary notwithstanding, at any time up to 90 days prior to any Mandatory Tender Date, the purchaser (the "Purchaser") of any obligations issued to refund Bonds may deliver Eligible Funds to the Trustee for deposit into the Collateral Fund, and promptly following such receipt, the Trustee shall transfer a corresponding amount of other Eligible Funds on deposit in the Collateral Fund to the Lender or as otherwise directed by the Purchaser.



## **Rebate Fund**

The Rebate Fund is created 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 or the Holders of the Bonds. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust and applied solely as provided in the Tax Exemption Agreement. The Rebate Fund is not a portion of the Trust Estate and is not subject to any lien under the Indenture. Notwithstanding the foregoing, the Trustee is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture.

## **Investment of Special Funds**

Except as otherwise set forth in this heading, money in the Special Funds shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of an Authorized Borrower Representative, and money in the Rebate Fund shall be invested and reinvested by the Trustee as provided in the Tax Exemption Agreement. In the absence of written directions of an Authorized Borrower Representative as provided above, the Trustee shall be required to invest such funds in the investments described in clause (b) of the definition of Eligible Investments in the Indenture. At no time shall the Borrower direct that any funds constituting Gross Proceeds (as defined in the Tax Exemption Agreement) of the Bonds be used in any manner as would constitute failure of compliance with Section 148 of the Code, all as set forth in the Tax Exemption Agreement. Moneys in the Costs of Issuance Fund and the Expense Fund shall be held uninvested.

Investments of money in the Bond Fund and the Collateral Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide money to pay Bond Service Charges on the Bonds as they become due on each Bond Payment Date. Each investment of money in the Project Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any of those investments may be purchased from or sold to the Trustee, or any bank, trust company or savings and loan association that is an Affiliate of the Trustee. The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable under the Indenture to and at the times required for the purposes of paying Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. The Trustee is not providing and will not provide investment supervision, recommendations, or advice.

An investment made from money credited to the Special Funds shall constitute part of that respective Special Fund. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be allocated to the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein. Any investment losses from moneys credited to a Special Fund shall be charged against that Special Fund. The Trustee shall not be liable for losses on investments made upon the direction of the Authorized Borrower Representative or otherwise in compliance with the provisions of the Indenture. Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. Following the Closing Date, at the direction of the Borrower, the Trustee is permitted to purchase, sell or exchange Eligible Investments with a Cash Flow Projection. Notwithstanding anything in the Indenture to the contrary, Bond proceeds and any amounts deposited in the Negative Arbitrage Account shall be held uninvested until the Trustee has purchased, sold or exchanged Eligible Investments.

Subject to the following sentence, investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from the applicable Special Fund. Prior to the Initial Mandatory Tender Date, at the direction of the Borrower, the Trustee is permitted to invest in Eligible Investments that mature on or before a Mandatory Tender Date but is not permitted to sell or otherwise dispose of such Eligible Investment prior to maturity at a price below par without first receiving from or on behalf of the Borrower: (i) a Cash Flow Projection, and (ii) Eligible Funds in the amount, if any, set forth in such Cash Flow Projection.

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Issuer has notified the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur.

### **Defaults; Events of Default**

Each of the following events is defined as and declared to be and to constitute an “Event of Default” under the Indenture:

(a) Payment of any interest on any Bond is not made when and as that interest becomes due and payable;

(b) Payment of the principal of any Bond is not made when and as that principal becomes due and payable, whether at stated maturity, Mandatory Tender, upon redemption, acceleration or otherwise;

(c) Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed as contained in the Indenture or in the Bonds, which failure has continued for a period of 30 days after written notice, by registered or certified mail, overnight delivery service or electronic means to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and must be given by the Trustee at the written request of the Controlling Holders; and

(d) The occurrence and continuance of an Event of Default as defined in the Loan Agreement.

The term “default” or “failure” as used above means (i) a default or failure by the Issuer in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in the Indenture or in the Bonds, or (ii) a default or failure by the Borrower under the Loan Agreement, exclusive of any period of grace or notice required to constitute an Event of Default, as provided above or in the Loan Agreement.

Anything in the Indenture to the contrary notwithstanding, the Investor Limited Partner shall have the cure rights set forth under the heading “Acceleration” below.

### **Acceleration**

Upon the occurrence of an Event of Default described in (a) or (b) under the heading “Events of Default” above, the Trustee may, and upon the written request of the Controlling Holders shall, subject to the terms of the Indenture, by written notice delivered to the Borrower and the Issuer, 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. If the Trustee is unable to determine that sufficient funds will be available, the Trustee shall declare the principal of the Bonds immediately due and payable, but only upon the written direction of the Controlling Holders of the Bonds then outstanding. Upon the occurrence of any Event of

Default other than those described in (a) and (b) under the heading “Events of Default” above, the Trustee may, and upon written consent of all Holders of Bonds then outstanding, shall declare by a notice in writing delivered to the Borrower, the principal of all Bonds then outstanding (if not then due and payable), and the interest thereon, to be due and payable immediately. Upon such declaration, the principal and interest on the Bonds shall become and be due and payable immediately. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Holders pursuant to that declaration; provided that interest on any unpaid principal of Bonds outstanding will continue to accrue from the date determined by the Trustee for the tender of payment to the Holders of those Bonds.

The provisions described in the preceding paragraph are subject, however, to the condition that if, at any time after declaration of acceleration and prior to the entry of a judgment in a court for enforcement under the Indenture (after an opportunity for hearing by the Issuer and the Borrower),

(i) all sums payable under the Indenture (except the principal of and interest on Bonds that have not reached their stated maturity dates but which are due and payable solely by reason of that declaration of acceleration), plus interest to the extent permitted by law on any overdue installments of interest at the rate borne by the Bonds in respect of which the default has occurred, have been duly paid or provision has been duly made therefor by deposit with the Trustee, and

(ii) all existing Events of Default have been cured,

then and in every case, the Trustee is to waive the Event of Default and its consequences and rescind and annul that declaration. No waiver or rescission and annulment will extend to or affect any subsequent Event of Default or shall impair any rights consequent thereon.

The Investor Limited Partner is entitled (but not obligated) to cure any Event of Default under the Indenture within the time frame provided to the Borrower under the Indenture. The Issuer and the Trustee agree that cure of any default or Event of 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.

### **Other Remedies; Rights of Holders**

With or without taking action described under the heading “Acceleration” above, upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy, including without limitation actions at law or in equity to enforce the payment of Bond Service Charges or the observance and performance of any other covenant, agreement or obligation under the Indenture, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement or the Note or any other instrument providing security, directly or indirectly, for the Bonds.

If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by the Controlling Holders, the Trustee (subject to the provisions of the Indenture), is to exercise any rights and powers conferred by the Indenture.

No remedy conferred upon or reserved to the Trustee (or to the Holders) by the Indenture is intended to be exclusive of any other remedy. Each remedy is to be cumulative and in addition to every other remedy given under the Indenture or otherwise to the Trustee or to the Holders now or hereafter existing, provided that the only remedy enforceable against the Issuer shall be for specific performance of its covenants under the Indenture.

No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default is to impair that remedy, right or power or is to be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient.

No waiver of any default or Event of Default under the Indenture, whether by the Trustee or by the Holders, is to extend to or is to affect any subsequent default or Event of Default or is to impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Issuer in and to the Loan Agreement (except for the Reserved Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Issuer under the Loan Agreement (other than with respect to the Reserved Rights). In exercising any remedy, right or power under the Indenture or the Loan Agreement, the Trustee shall take any action which would best serve the interests of the Holders in the judgment of the Trustee, applying the standards described in the Indenture.

Nothing in the Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding without the approval of the Holders so affected.

### **Right of Holders to Direct Proceedings**

Anything to the contrary in the Indenture notwithstanding, the Controlling Holders will have the right at any time to direct, by an instrument or document in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture or any other proceedings under the Indenture; provided, that (i) any direction is not to be other than in accordance with the provisions of law and of the Indenture, (ii) the Trustee is indemnified as provided in the Indenture, and (iii) the Trustee may take any other action that it deems to be proper and that is not inconsistent with the direction.

### **Application of Money**

If at any time after the occurrence of an Event of Default, the money held by the Trustee under the Indenture (other than amounts in the Rebate Fund) is not sufficient to pay the principal of and interest on the Bonds as the same become due and payable, such money, together with any moneys then available or thereafter becoming available for such purpose, whether through the exercise of remedies in the Indenture or otherwise, is to be applied by the Trustee as described below.

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all fees of the Trustee for Ordinary and Extraordinary Expenses pursuant to any right given or action taken under the provisions of the Indenture or the provisions of the Financing Documents (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under the Indenture), all money received by the Trustee is to be applied as follows, subject to the provisions of the Indenture:

- (a) Unless the principal of all of the Bonds has become, or has been declared to be, due and payable, all of such money is to be deposited in the Bond Fund and applied:

First -- To the payment to the Holders entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that

interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Second -- To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds that has become due, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(b) If the principal of all of the Bonds has become due or has been declared to be due and payable pursuant to the Indenture, all of such money is to be deposited into the Bond Fund and applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest, of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Holders entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all of the Bonds has been declared to be due and payable pursuant to the Indenture, and if that declaration thereafter has been rescinded and annulled under the provisions of the Indenture, subject to the provisions of paragraph (b) above in the event that the principal of all of the Bonds becomes due and payable later, money is to be deposited in the Bond Fund and is to be applied in accordance with the provisions of paragraph (a) above.

(d) Whenever money is to be applied pursuant to the provisions described under this subcaption, such money is to be applied at such times, and from time to time, as the Trustee determines, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee directs the application of such money, it is to fix the date upon which the application is to be made, and upon that date, interest is to cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee is to give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of the Indenture for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee will not be required to make payment of principal of a Bond to the Holder thereof until the Bond is presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

### **Rights and Remedies of Holders**

A Holder does not have any right to institute any suit, action or proceeding for the enforcement of the Indenture, for the execution of any trust under the Indenture, or for the exercise of any other remedy under the Indenture, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in the Indenture, or of which it is deemed to have notice under the Indenture,

(b) the Controlling Holders shall have made written request to the Trustee to proceed to exercise the remedies, rights and powers granted under the Indenture or to institute the suit, action or proceeding in its own name, and have offered indemnity to the Trustee as provided in the Indenture, and

(c) the Trustee thereafter has failed or refused to exercise the remedies, rights and powers granted under the Indenture or to institute the suit, action or proceeding in its own name within 60 days of receipt of the written request and offer of indemnity.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent, in every case, to the institution of any suit, action or proceeding described above.

No one or more Holders of the Bonds will have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of the Indenture by its or their action, or to enforce, except in the manner provided therein, any remedy, right or power under the Indenture. Any suit, action or proceedings are to be instituted, had and maintained in the manner provided in the Indenture for the benefit of the Holders of all Bonds then outstanding. Nothing in the Indenture is to affect or impair, however, the right of any Holder to enforce the payment of the Bond Service Charges on any Bond owned by that Holder at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

### **Waivers of Events of Default**

Except as described below, at any time, in its discretion, the Trustee may waive any Event of Default under the Indenture and its consequences and may rescind and annul any declaration of maturity of principal of or interest on, the Bonds. The Trustee must do so upon the written request of the Controlling Holders.

There is not to be so waived, however, any Event of Default described in (a) or (b) under “—Events of Default” above or any declaration of acceleration in connection therewith rescinded or annulled, unless, at the time of that waiver or rescission and annulment, payments of the amounts provided in the Indenture for waiver and rescission and annulment in connection with acceleration of maturity have been made or provision has been made therefor. In the case of the waiver or rescission and annulment, or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default have been discontinued, abandoned or determined adversely to it, the Issuer, the Trustee and the Holders are to be restored to their former positions and rights under the Indenture, respectively. No waiver or rescission is to extend to any subsequent or other Event of Default or impair any right consequent thereon.

### **Supplemental Indentures Not Requiring Consent of Holders**

Without the consent of, or notice to, any of the Holders, the Issuer and the Trustee may enter into Supplemental Indentures for any one or more of the following purposes:

(a) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture;

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

(c) to assign additional revenues under the Indenture;

(d) to accept additional security and instruments and documents of further assurance with respect to the Project;

(e) to add to the covenants, agreements and obligations of the Issuer under the Indenture, other covenants, agreements and obligations to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in the Indenture;

(f) to evidence any succession to the Issuer and the assumption by its successor of the covenants, agreements and obligations of the Issuer under the Indenture, the Loan Agreement and the Bonds;

(g) to facilitate (i) the transfer of Bonds held in Book Entry Form from one Depository to another and the succession of Depositories, or (ii) the withdrawal of Bonds delivered to a Depository for use in a Book Entry System and the issuance of replacement Bonds in fully registered form and in the form of physical certificates to others than a Depository;

(h) to permit the Trustee to comply with any obligations imposed upon it by law;

(i) to specify further the duties and responsibilities of the Trustee; and

(j) to achieve compliance of the Indenture or the Bonds with any applicable federal securities or income tax law.

The provisions of paragraphs (h) and (j) shall not be deemed to constitute a waiver by the Trustee, the Issuer or any Holder of any right which it may have in the absence of those provisions to contest the application of any change in law to the Indenture or the Bonds.

### **Supplemental Indentures Requiring Consent of Holders**

Exclusive of Supplemental Indentures described above and subject to the terms, provisions and limitations described below, and not otherwise, with the consent of the Controlling Holders, evidenced as provided in the Indenture, and with the consent of the Borrower (if required by the Indenture), the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of the Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in the Indenture is to permit, however, or be construed as permitting,

(a) without the consent of the Holder of each Bond so affected: (i) an extension of the maturity of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or

(b) without the consent of the Holders of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Issuer requests that the Trustee execute and deliver any Supplemental Indenture for any of the purposes described under this subcaption, upon (i) being satisfactorily indemnified with respect to its expenses in connection therewith, and (ii) if required by the Indenture, receipt of the Borrower's consent to the proposed execution and delivery of the Supplemental Indenture, the Trustee is to cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first-class mail, postage prepaid (or when the Bonds are in Book-Entry form, sent pursuant to the applicable procedures of the Depository), to all Holders of Bonds then outstanding at their addresses as they appear on the Register at the close of business on the fifteenth day preceding that mailing.

The Trustee will not be subject to any liability to any Holder by reason of the Trustee's failure to mail, or the failure of any Holder to receive, the notice described above. Any failure of that nature will not affect the validity of the Supplemental Indenture when there has been consent thereto as described above. The notice is to set forth briefly the nature of the proposed Supplemental Indenture and state that copies thereof are on file at the Designated Office of the Trustee for inspection by all Holders.

If the Trustee shall receive, within a period prescribed by the Borrower, of not less than 60 days, but not exceeding one year, following the sending of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Controlling Holders (which instrument or document or instruments or documents refer to the proposed Supplemental Indenture in the form described in the notice and specifically consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Holder, regardless of whether that Holder has consented thereto.

Any consent will be binding upon the Holder of the Bond giving the consent and, anything in the Indenture to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds have filed their consents to the Supplemental Indenture, the Trustee is to make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement will be conclusive evidence that the consents have been so filed.

If the Holders of the required percentage in aggregate principal amount of Bonds outstanding shall have consented to the Supplemental Indenture, as described above, no Holder shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Issuer from that execution or delivery or from taking any action pursuant to the provisions thereof.

### **Consent of the Borrower**

Anything contained in the Indenture to the contrary notwithstanding, any Supplemental Indenture executed and delivered in accordance with the Indenture that affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower has consented in writing to the execution and delivery of that Supplemental Indenture; provided, however, that no consent shall be required if the Borrower is the source of an Event of Default under the Loan Agreement.



## Defeasance

Release of Indenture. If (a) all of the outstanding Bonds are paid and discharged, or if there otherwise shall be paid to the Holders of the outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable under the Indenture or the Loan Agreement, the Tax Regulatory Agreement, the Tax Exemption Agreement and the Note, then the Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of the Indenture in the event the Bonds are deemed paid and discharged pursuant to “Payment and Discharge of Bonds” below), and the covenants, agreements and obligations of the Issuer under the Indenture shall be released, discharged and satisfied.

Thereupon, and subject to the provisions of the Indenture if applicable,

(a) the Trustee shall release the Indenture (except for those provisions surviving by reason of the Indenture in the event the Bonds are deemed paid and discharged pursuant to “Payment and Discharge of Bonds” below), and shall execute and deliver to the Issuer any instruments or documents in writing as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer, and

(b) the Trustee shall assign and deliver to the Issuer any property subject at the time to the lien of the Indenture which then may be in its possession, except amounts in the Bond Fund required (i) to be paid to the Borrower under the Indenture, or (ii) to be held by the Trustee under the Indenture or otherwise for the payment of Bond Service Charges.

Payment and Discharge of Bonds. All or any part of the Bonds will be deemed to have been paid and discharged within the meaning of the Indenture if:

(a) the Trustee as paying agent has received, in trust for and irrevocably committed thereto, sufficient Eligible Funds,

(b) the Trustee has received, in trust for and irrevocably committed thereto, noncallable Government Obligations (or a combination of Eligible Funds and Government Obligations) which are certified by an Independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any Eligible Funds to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided herein), for the payment of all Bond Service Charges on those Bonds at their maturity, or their redemption date, as the case may be; and

(c) The Trustee shall have been given irrevocable written instructions from either the Issuer or an Authorized Borrower Representative to give the written notice to the Holders are required pursuant to the last paragraph of this section.

Any money so held by the Trustee in accordance with the provisions of the Indenture may be invested by the Trustee only in noncallable Government Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which money will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments so held is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for such purposes, that income, interest or

increment is to be transferred at the time of that determination in the manner provided in the Indenture for transfers of amounts remaining in the Bond Fund.

If any Bonds shall be deemed paid and discharged pursuant to this heading, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall (i) state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and (ii) set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this heading.

[Remainder of page intentionally left blank]

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

*The following is a summary of certain provisions of the Loan Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Loan Agreement, copies of which are on file with the Issuer and the Trustee.*

#### **Issuance of Bonds; Application of Proceeds**

To provide funds to make the Loan for purposes of assisting the Borrower in paying Project Costs, the Issuer will simultaneously with the execution and delivery of the Loan Agreement proceed with the issuance and delivery of the Bonds upon receipt by the Trustee of the items listed in the Indenture. The Issuer has agreed the proceeds of sale of the Bonds will be deposited in accordance with the Indenture.

The Bonds will be issued in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing pursuant to and as set forth in the Indenture. Under the Loan Agreement, the Borrower has approved the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture. The Borrower has agreed to perform fully and faithfully all the duties and obligations which the Issuer has covenanted and agreed to in the Indenture to cause the Borrower to perform.

Pending disbursement pursuant to the Loan Agreement, the proceeds of the Bonds deposited in the Project Fund, together with any investment earnings thereon, shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

#### **Disbursements from the Project Fund**

Subject to the provisions below and so long as no Event of Default under the Loan Agreement has occurred and is continuing for which the principal amount of the Bonds has been declared to be immediately due and payable pursuant to the Loan Agreement and the Indenture, disbursements from the Project Fund shall be made only to pay any of the following Project Costs:

- (a) Costs incurred directly or indirectly for or in connection with the acquisition, construction, improvement and equipping of the Project, including costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work.
- (b) Premiums attributable to any surety bonds and insurance required to be taken out and maintained during the construction period with respect to the Project.
- (c) Taxes, assessments and other governmental charges in respect of the Project that may become due and payable during the construction period.
- (d) Costs incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project.

(e) Subject to the limitations set forth in the Tax Exemption Agreement, Costs of Issuance of the Bonds, including, financial, legal, accounting, cash flow verification, printing and engraving fees, charges and expenses, and all other such fees, charges and expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds, including, without limitation, the fees and expenses of the Trustee properly incurred under the Indenture that may become due and payable during the construction period.

(f) Any other costs, expenses, fees and charges properly chargeable to the cost of acquisition, construction, improvement and equipping of the Project.

(g) Any disbursements from the Project Fund for the payment of Project Costs shall be made by the Trustee only upon the receipt by the Trustee of: (a) a disbursement request in the form attached to the Loan Agreement as an exhibit, on which the Trustee may conclusively rely; and (b) Collateral Payments in an amount equal to the amount of any such disbursement request for deposit in the Collateral Fund as provided in the Loan Agreement. In the Loan Agreement, the Borrower has acknowledged and agreed that it shall submit disbursement requests to the Trustee no more frequently than once each calendar month. Each such disbursement request shall be consecutively numbered and accompanied by a copy of the approval of the Lender of the payments or reimbursements requested.

(h) Any disbursement for any item not described in, or the cost for which item is other than as described in, the information statement filed by the Issuer in connection with the issuance of the Bonds as required by Section 149(e) of the Code, and in the notice of public hearing pertaining to the Bonds shall be accompanied by an Opinion of Bond Counsel to the effect that such disbursement will not adversely affect the Federal Tax Status of the Bonds.

(i) Notwithstanding any provision of the Loan Agreement or any provision of the Indenture to the contrary, the Trustee shall not disburse funds from the Project Fund unless and until the Trustee confirms that Eligible Funds in the Collateral Fund plus Eligible Funds in the Project Fund, less the amount of the requested disbursement from the Project Fund, is at least equal to then-outstanding principal amount of the Bonds; provided, however, the Trustee shall be permitted to transfer funds from the Project Fund to the Collateral Fund upon the direction of the Borrower in the form set forth on an exhibit attached to the Loan Agreement, provided that the result of such transfer is that the amount of Eligible Funds remaining on deposit in the Project Fund plus Eligible Funds on deposit in the Collateral Fund is at least equal to then outstanding principal amount of the Bonds.

### **Loan Repayment; Delivery of Note**

In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before the last Business Day prior to each Bond Payment Date, a Loan Payment in an amount equal to the amount necessary to pay Bond Service Charges due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and the Agreement.

The Borrower shall be entitled to a credit against the Loan Payments required to be made with respect to the Bonds on any date equal to the available money in the Bond Fund or transferred thereto from the Collateral Fund or the Project Fund for the payment of Bond Service Charges on that date.

To secure the Borrower's performance of its obligations under the Loan Agreement, the Borrower shall execute and deliver, concurrently with the issuance and delivery of the Bonds, the Note, the Tax Exemption Agreement and the Tax Regulatory Agreement.

So long as no Event of Default has occurred and is continuing under the Loan Agreement, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be canceled by the Trustee and surrendered to the Borrower.

### **Collateral Payments**

In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall cause the delivery of Collateral Payments equal to the amount of the proposed disbursement by the Trustee on or before each such disbursement. All such Collateral Payments shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture. Any such Collateral Payment amounts shall be provided to the Trustee in writing and the Trustee shall not be responsible for computing any amounts under this section.

### **Assignment of Agreement and Revenues; Trustee is Third Party Beneficiary**

To secure the payment of Bond Service Charges, the Issuer will assign to the Trustee, by the Indenture, its rights under and interest in the Loan Agreement (except for the Reserved Rights). In the Loan Agreement, the Borrower has agreed and consented to those assignments. To the extent within its control, the Issuer has agreed in the Loan Agreement that it will not attempt to further assign, transfer or convey its interest in the Revenues or the Loan Agreement or create any pledge or lien of any form or nature with respect to the Revenues, Loan Payments or Collateral Payments under the Loan Agreement.

The Trustee shall be a third party beneficiary of the Loan Agreement.

### **Borrower's Obligations Upon Tender of Bonds**

If any Unredeemed Bond is not remarketed on any Mandatory Tender Date and a sufficient amount is not available in the Special Funds for the purpose of paying the redemption price of the Bonds pursuant to the Indenture, the Borrower will cause to be paid to the Trustee as set forth in the Indenture Eligible Funds equal to the amount by which the redemption price of the Bonds exceeds the amount otherwise available pursuant to the Indenture.

### **Events of Default**

Each of the following is an "Event of Default" under the Loan Agreement:

(a) The Borrower fails to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts credited as paid and/or transferred from the Collateral Fund and the Project Fund, are insufficient to pay the Bond Service Charges due on such date;

(b) The Borrower fails to observe and perform any other agreement, term or condition contained in the Loan Agreement and the continuation of such failure for a period of 30 days after written notice thereof has been given to the Borrower by the Issuer or the Trustee, or for such longer period as the Issuer (with respect to the Reserved Rights) and the Trustee may, pursuant to the written direction of the Controlling Holders, agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure will not constitute an Event of Default so long as the Borrower institutes curative action within the applicable period and diligently pursues that action to completion, which must be resolved within 180 days after the aforementioned notice;

(c) The Borrower: (i) admits in writing its inability to pay its debts generally as they become due; (ii) has an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within ninety (90) days; (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or has such a proceeding commenced against it and either has an order of insolvency or reorganization entered against it or has the proceeding remain undischarged and unstayed for ninety (90) days; (iv) makes an assignment for the benefit of creditors; or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of ninety (90) days;

(d) Any representation or warranty made by the Borrower in the Loan Agreement or any statement in any report, certificate, financial statement or other instrument furnished in connection with the Loan Agreement or with the purchase of the Bonds at any time proves to have been false or misleading in any adverse material respect when made or given; and

(e) There occurs an Event of Default as defined in the Indenture.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition of the Loan Agreement which would give rise to an Event of Default under subsection (b) above, the Borrower will not be deemed in default during the continuance of such inability. However, the Borrower is to promptly give notice to the Trustee and the Issuer of the existence of an event of Force Majeure and is to use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

The term Force Majeure means, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; or partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(ii) any cause, circumstance or event not reasonably within the control of the Borrower.

The declaration of an Event of Default described under subsection (c) above, and the exercise of remedies upon any such declaration, will be subject to any applicable limitations of federal or state bankruptcy, insolvency, reorganization or similar law affecting or precluding that declaration or exercise

during the pendency of or immediately following any bankruptcy, insolvency, liquidation or reorganization proceedings.

### **Amendments and Supplements**

Except as otherwise expressly provided in the Loan Agreement or the Indenture, subsequent to the issuance of the Bonds and prior to all conditions provided for in the Indenture for release of the Indenture having been met, the Loan Agreement, the Tax Exemption Agreement, the Tax Regulatory Agreement and the Note may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of the Indenture, as applicable.

[Remainder of page intentionally left blank]

## APPENDIX D

### SUMMARY OF CERTAIN PROVISIONS OF THE TAX REGULATORY AGREEMENT

*The following is a summary of certain provisions of the Tax Regulatory Agreement. The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Tax Regulatory Agreement, copies of which are on file with the Issuer and the Trustee.*

Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the Indenture or the Tax Regulatory Agreement.

#### **Tax-Exempt Status of the Bonds**

The Borrower 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 Bonds from gross income for federal income tax purposes (subject to any exceptions contained in the opinion delivered upon the original issuance of the Bonds). With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel:

(a) That the Project 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 Borrower covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Project 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 Project will be functionally related and subordinate to the Units comprising the Project and will be of a character and size that is commensurate with the character and size of the Project;

(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 six months (unless the Unit serves as a single room occupancy unit or transitional housing for the homeless (as described in Section 42(i)(3)(B) of the Code), in which case such lease may be on a month-to-month basis) 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 Project 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 Project will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Project tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Project, 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 Project that contains fewer than five Units be occupied by the Borrower;

(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 the Regulatory Agreement, the Tax Exemption Agreement and the Loan Agreement) at all times during the longer of (A) the remaining term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants, seniors and other Eligible Tenants as provided in the Regulatory Agreement, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that the Project will meet the Set Aside. For the purposes of this clause (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, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file Tenant Income Certifications and supporting documentation from each Low-Income Tenant, including (A) a Tenant Income Certification dated immediately prior to the initial occupancy of such Low-Income Tenant in the Project and (B) thereafter, annual Tenant Income Certifications obtained on or before the anniversary of such Low-Income Tenant's occupancy of the Unit, and in no event less than once in every 12-month period following each Low-Income Tenant's occupancy of a Unit; provided that the requirement for annual recertification will not apply for any year in which no Unit in the Project is occupied by a new resident whose income exceeds the applicable income limit. The Borrower 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 promulgated, proposed or made by the Department of the Treasury or the

Internal Revenue Service as of or after the date of the Regulatory Agreement with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in a Tenant Income 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 Borrower 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 Borrower 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 Project continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Borrower 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 the Regulatory Agreement. The Borrower will retain all documentation required by this clause (a)(xii) until the date that is three years after the end of the Qualified Project Period.

(b) That the Borrower 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 prior written notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Funding Lender, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site (as defined in the Regulatory Agreement) to examine and inspect the Project and to inspect and photocopy the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. The Borrower will retain all records maintained in accordance with the provisions described under this caption until the date that is three years after the end of the Qualified Project Period.

(c) That the Borrower will provide to the Trustee and the Issuer a certificate in the form attached as an exhibit to the Regulatory Agreement 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.

(d) That the Borrower 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; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in the Regulatory Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties thereto 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 Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower under the Regulatory Agreement or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

## Housing Development During the State Restrictive Period

The Issuer and the Borrower have recognized and declared their understanding and intent that the Project 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 Borrower has represented, covenanted and agreed 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 Project, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of clauses (a)(viii) and (a)(ix) under the caption “Tax-Exempt Status of the Bonds” above continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant of a Unit in the Project (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 Project, and, if required as described in clause (a)(x) under the caption “Tax-Exempt Status of the Bonds” above, at least annually thereafter in the manner as described in clause (a)(x) under the caption “Tax-Exempt Status of the Bonds” above, 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 of a Unit in the Project (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 Borrower from time to time that (i) such lease is subordinate to the Security Instrument (as defined in the Regulatory Agreement) and the 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 the Regulatory Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Project, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, 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 Project;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer’s website) 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 Borrower, 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 Borrower 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 prior written notice to permit any duly authorized representative of the Issuer, the Funding Lender or the Trustee to inspect the books and records of the Borrower pertaining to the Project or the incomes of Project 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 Borrower 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, 2022;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached to the Regulatory Agreement as an exhibit, or from any additional supportive services added to the Issuer’s rules at any future date as agreed to in writing by the Issuer in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.405 of the Texas Administrative Code. The Borrower 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 Borrower 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 and other Issuer rules regarding affirmative marketing and written policies and procedures, 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 Project 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 Borrower, and the Borrower will have 30 days following receipt of such notice to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Project pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Project 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 Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower’s participation in contracts with the agency and the amount of financial assistance awarded to the Borrower 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 Project to so comply;

(n) to ensure that Units intended to satisfy the Set Aside in clause (a)(ix) under the caption “Tax-Exempt Status of the Bonds” above will be distributed evenly throughout the Project and will include a reasonably proportionate amount of each type of Unit available in the Project;

(o) to ensure that the Project conforms to the federal Fair Housing Act; and

(p) the Project meets the requirements of the Housing for Older Persons Act under the Fair Housing Act and receives no funding that requires leasing to persons other than the elderly and is therefore considered by the Issuer to have a federal elderly limitation.

## **Persons With Special Needs**

The Borrower has represented, covenanted and warranted that during the State Restrictive Period, it will make at least 5% of the Units within the Project available for occupancy by Persons with Special Needs.

## **Term**

The Regulatory Agreement and all and each of the provisions thereof will become effective upon the execution and delivery of the Regulatory Agreement, will remain in full force and effect for the periods provided in the Regulatory Agreement and, except as otherwise described under this caption, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions of the Regulatory 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; 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 the Regulatory Agreement to the contrary notwithstanding, the requirements set forth in the Regulatory Agreement 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 the 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 of the Regulatory Agreement, 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, certain provisions set forth in the 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 Borrower or any Related Person obtains an ownership interest in the Project for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of the Regulatory Agreement, the Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of the Regulatory Agreement, the parties thereto have agreed to execute, deliver and record appropriate instruments of release and discharge of the terms of the Regulatory Agreement; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of the 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 the Regulatory Agreement will be paid by the Borrower and its successors in interest.

## **Covenants to Run With the Land**

The Borrower has subjected the Project (including the Development Site (as defined in the Regulatory Agreement)) to the covenants, reservations and restrictions set forth in the Regulatory Agreement. The Issuer, the Trustee and the Borrower have declared that the covenants, reservations and restrictions set forth in the Regulatory Agreement are covenants running with the land and will pass to and be binding upon the Borrower’s successors in title to the Project; provided, however, that upon the

termination of the Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument executed after the date of the Regulatory Agreement covering or conveying the Project or any portion thereof prior to the termination of the 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 the 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 Project or any portion thereof.

[Remainder of page intentionally left blank]

**APPENDIX E**  
**FORM OF OPINION OF BOND COUNSEL**

October \_\_, 2020

Texas Department of Housing and Community Affairs  
Austin, Texas

BOKF, NA, as Trustee  
Dallas, Texas

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance of its Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments) Series 2020 (the “Bonds”) pursuant to a Trust Indenture dated as of October 1, 2020 (the “Indenture”), between the Issuer and BOKF, NA, as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to mandatory tender and optional redemption prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture or in the Regulatory Agreement and Declaration of Restrictive Covenants dated as of October 1, 2020 (the “Regulatory Agreement”), among the Issuer, the Trustee and FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “Borrower”).

The Bonds are being issued for the purpose of obtaining funds to make a loan (the “Borrower Loan”) to the Borrower to provide financing for the acquisition, construction, renovation, repair and equipping of the multifamily rental housing developments known as FishPond at Corpus Christi Apartments, located in Corpus Christi, Texas (the “Project”).

We have assumed with your permission and without independent verification (i) the genuineness of certificates, records and other documents (the “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the Indenture by the parties thereto, and the validity and binding effect of the Indenture on such parties; (iii) that all documents submitted to us as originals are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

The scope of our representation extends solely to an examination of the facts and law incident to rendering an opinion with respect to the legality and validity of the Bonds and the security therefor and with respect to the excludability of interest on the Bonds from gross income for federal income tax purposes. We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of any offering material relating to the Bonds. We have not assumed any responsibility with respect to the financial condition or capability of the Issuer or the Borrower or the disclosure thereof. We have participated in the preparation of and have examined a transcript of certain materials pertaining to the Bonds, including certain certified proceedings of the Issuer, the Trustee and the Borrower, and customary certificates, opinions, affidavits and other documents executed by officers, agents and representatives of the Issuer, the State of Texas, the Trustee, the Borrower and others. We also have analyzed such laws, regulations, guidance, documents and other materials as we have deemed necessary to render the opinions herein. We have also examined the Initial Bond registered by the Comptroller.

In providing the opinions set forth herein, we have relied on representations and certifications of the Issuer, the Borrower and other parties involved with the issuance of the Bonds with respect to matters

solely within the knowledge of the Issuer and such parties, which we have not independently verified. In addition, we have assumed for purposes of this opinion continuing compliance with the covenants in the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement, including, but not limited to, covenants relating to the tax-exempt status of the Bonds.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing law:

1. The Issuer has duly authorized the issuance, execution and delivery of the Bonds. The Bonds constitute legal, valid and binding special limited obligations of the Issuer and are entitled to the benefit and security of the Indenture.

2. Interest on the Bonds is excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the “Code”), except with respect to the interest on any Bond for any period during which such Bond is held by a “substantial user” of the Project or a “related person” of such a “substantial user,” as those terms are defined for purposes of Section 147(a) of the Code.

3. Interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer’s alternative minimum tax liability.

Except as stated above, we express no opinion as to the amount of interest on the Bonds or any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds. Further, in the event that the representations of the Issuer, the Borrower, or other parties are determined to be inaccurate or incomplete or the Issuer or the Borrower fail to comply with the covenants of the Indenture, the Loan Agreement, the Regulatory Agreement and the Tax Agreement pertaining to those sections of the Code that affect the tax exempt status of the Bonds, interest on the Bonds could become includable in gross income for federal income tax purposes from the date of the original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

Certain actions may be taken or omitted subject to the terms and conditions set forth in the Indenture and related documents, upon the advice or with an opinion of Bond Counsel. We hereby express no opinion with respect to our ability to render an opinion that such actions, if taken or omitted, will not adversely affect the excludability from gross income of interest on the Bonds for federal income tax purposes.

We express no opinion as to the priority or perfection of the security interest granted by the Issuer in the Trust Estate.

The enforceability of certain provisions of the Bonds may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors. Furthermore, availability of equitable remedies under the Bonds may be limited by general principles of equity that permit the exercise of judicial discretion.

The opinions set forth above speak only as of their date and only in connection with the Bonds and may not be applied to any other transaction. Such opinions are specifically limited to the laws of the State of Texas and, to the extent applicable, the laws of the United States of America.

Very truly yours,



## APPENDIX F

### FORM OF CONTINUING DISCLOSURE AGREEMENT

**\$10,000,000\***

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(FishPond at Corpus Christi Apartments)  
Series 2020**

This Continuing Disclosure Agreement, dated as of October 1, 2020 (this “Continuing Disclosure Agreement”), is executed and delivered by FishPond Living at Corpus Christi, LP, a Texas limited partnership (the “Borrower”), and Digital Assurance Certification LLC, as dissemination agent (the “Dissemination Agent”), for the above-captioned bonds (the “Bonds”). The Bonds are being issued pursuant to a Trust Indenture, dated as of October 1, 2020 (the “Indenture”) between the Texas Department of Housing and Community Affairs (the “Issuer”) and BOKF, NA, as trustee (the “Trustee”). Pursuant to the Indenture and the Loan Agreement, dated as of October 1, 2020, between the Issuer and the Borrower (the “Loan Agreement”), the Dissemination Agent and the Borrower covenant and agree as follows:

**Section 1. Purpose of this Continuing Disclosure Agreement.** This Continuing Disclosure Agreement is being executed and delivered by the Borrower, which is deemed to be the “obligated person” as defined by the Rule (defined below), and the Dissemination Agent for the benefit of the Holders and in order to assist the Underwriter in complying with the Rule (defined below). The Borrower and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Continuing Disclosure Agreement, and has no liability to any Person, including any holder of the Bonds or Beneficial Owner, with respect to any such reports, notices or disclosures.

**Section 2. Definitions.** In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Continuing Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“*Annual Report*” shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Continuing Disclosure Agreement.

“*Audited Financial Statements*” means, in the case of the Borrower, the annual audited financial statements of the Borrower prepared in accordance with generally accepted accounting principles, if any.

“*Beneficial Owner*” shall mean any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including Persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“*Disclosure Representative*” shall mean, with respect to the Borrower, the administrator of the Project or his or her designee, or such other Person as the Borrower shall designate in writing to the Dissemination Agent from time to time.

---

\* Preliminary; subject to change.

“*Dissemination Agent*” shall mean Digital Assurance Certification LLC, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Borrower and which has filed with the Trustee a written acceptance of such designation.

“*Material Events*” shall mean any of the events listed in Section 5(a) of this Continuing Disclosure Agreement.

“*MSRB*” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934. All documents provided to the MSRB shall be in an electronic format and accompanied by identifying information, as prescribed by the MSRB. Initially, all document submissions to the MSRB pursuant to this Continuing Disclosure Agreement shall use the MSRB’s Electronic Municipal Market Access (EMMA) system at [www.emma.msrb.org](http://www.emma.msrb.org).

“*Rule*” means Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“*Underwriter*” means Ramirez & Co., Inc., and its successors and assigns.

**Section 3. Provision of Annual Reports.** (a) The Borrower will, or will cause the Dissemination Agent to, not later than 120 days following the end of the Borrower’s fiscal year, commencing with the fiscal year ending December 31, 2020, provide to the MSRB an Annual Report which is consistent with the requirements described below. No later than 15 Business Days prior to said date, the Borrower will provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). In each case, the Annual Report of the Borrower may be submitted as a single document or as separate documents comprising a package and may cross reference other information, provided that the audited financial statements for the prior calendar year of the Borrower may be submitted separately from the balance of its Annual Report.

(b) If by 15 Business Days prior to the date specified in subsection (a) for providing an Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent will contact the Disclosure Representative to determine if the Borrower is in compliance with subsection (a).

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent will, in a timely manner, send a notice to the MSRB in substantially the form attached as Exhibit B to this Continuing Disclosure Agreement.

(d) The Dissemination Agent will file a report with the Borrower and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Continuing Disclosure Agreement, stating the date it was provided.

**Section 4. Content of Annual Reports.** The Borrower’s Annual Report will contain or incorporate by reference the financial information or operating data with respect to the Project, provided at least annually, of the type included in Exhibit A hereto, which Annual Report may, but is not required to, include Audited Financial Statements. If the Borrower’s audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report will contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements will be filed in the same manner as the Annual Report when they become available; and

Any or all of the items listed above may be incorporated by reference from other documents, including official statements of debt issues with respect to which the Borrower is an “Obligated Person” (as defined by the Rule), which have been filed with the MSRB. The Borrower will clearly identify each such other document so incorporated by reference.

**Section 5. Reporting of Material Events.** (a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events (each, a “Material Event”):

- (i) Principal and interest payment delinquencies;
- (ii) Non-payment related defaults, if material;
- (iii) Unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv) Unscheduled draws on credit enhancements reflecting financial difficulty;
- (v) Substitution of credit or liquidity providers, or their failure to perform;
- (vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (vii) Modifications to rights of Holders, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) Defeasances;
- (x) Release, substitution or sale of property securing repayment of the Bonds, if material;
- (xi) Rating changes;
- (xii) Bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;
- (xiii) The consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material;

(xv) incurrence of a financial obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Borrower, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Borrower, any of which reflect financial difficulties.

For purposes of clauses (xv) and (xvi) of this Section 5(a), “financial obligation” is as contemplated by Exchange Act Release No. 34-83885; File No. S7-01-17 (the “Adopting Release”).

(b) The Dissemination Agent shall, within three (3) Business Days of obtaining actual knowledge of the occurrence of any Material Event, pursuant to subsection (c) of this Section or otherwise, provide the Disclosure Representative with notice (by facsimile transmission confirmed by telephone). The Dissemination Agent shall not be deemed to have actual knowledge of those items listed in Section 5(a) above without the Dissemination Agent having received written notice of such event from the Borrower, provided, however, while the Dissemination Agent is also the Trustee, the Dissemination Agent shall be deemed to have actual knowledge of those items listed in clauses (i) and (xiv).

(c) Whenever the Borrower obtains knowledge of the occurrence of a potential Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than seven (7) Business Days after the occurrence of such event, determine if such event is in fact a Material Event that is required by the Rule to be disclosed and provide the Dissemination Agent with notice and instructions pursuant to subsections (d) or (e) below, as applicable.

(d) If the Borrower has determined that a Material Event is required to be disclosed, then the Borrower shall prepare a written notice describing the Material Event and provide the same to the Dissemination Agent along with instructions to file the same pursuant to subsection (f) below.

(e) If the Borrower determines that an event is not required to be disclosed as a Material Event then the Borrower shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (f).

(f) If the Dissemination Agent has been provided with a written notice describing a Material Event pursuant to subsection (c) of this Section or otherwise, and is instructed by the Borrower to report the occurrence of such Material Event, the Dissemination Agent shall, within three (3) Business Days of its receipt of such written notice, provided that the Borrower has complied with the notice requirements set forth in subsection (c), and no more than ten (10) Business Days after the occurrence of the Material Event, file the notice with the MSRB and send a copy to the Borrower. The foregoing notwithstanding, notice of a Material Event described in subsections (a)(viii) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to the Holders of affected Bonds pursuant to the Indenture.

**Section 6. Amendment; Waiver.** Notwithstanding any other provision of this Continuing Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Continuing Disclosure Agreement (and the Trustee will agree to any amendment so requested by the Borrower) and any provision of this Continuing Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions described under paragraph (a) under “Provision of Annual Reports,” “Contents of Annual Reports” or paragraph (a) under “Reporting of Material Events,” it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law or change in the identity, nature or status of an Obligated Person with respect to the Bonds or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Holders of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Holders or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Continuing Disclosure Agreement, the Borrower will describe such amendment in the next Annual Report and will include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Borrower. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change will be given in the same manner as for a Material Event under Section 5(f) hereof and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**Section 7. Default.** In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Continuing Disclosure Agreement, the Dissemination Agent may (and, at the request of the Underwriter or the Holders of at least 25% aggregate principal amount of Outstanding Bonds, will), or the Borrower or any Holder or Beneficial Owner of the Bonds may, take such actions as may be necessary and appropriate, including seeking, or specific performance by court order, to cause the Borrower or the Dissemination Agent, as the case may be, to comply with its obligations under this Continuing Disclosure Agreement. A default under this Continuing Disclosure Agreement will not be deemed an Event of Default under the Indenture or the Loan Agreement, and the sole remedy under this Continuing Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Continuing Disclosure Agreement will be an action to compel performance.

**Section 8. Beneficiaries.** This Continuing Disclosure Agreement will inure solely to the benefit of the Borrower, the Trustee, the Dissemination Agent, the Underwriter and Holders from time to time of the Bonds and will create no rights in any other Person or entity.

**Section 9. Additional Information.** Nothing in this Continuing Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is required by this Continuing Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of occurrence of a Material Event, in addition to that which is specifically required by this Continuing Disclosure Agreement, the Borrower shall have no obligation under this Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Material Event.

**Section 10. Duties, Immunities and Liabilities of Dissemination Agent.** Article VI of the Indenture is hereby made applicable to this Continuing Disclosure Agreement as if this Continuing Disclosure Agreement were (solely for this purpose) contained in the Indenture and the Dissemination Agent shall be entitled to the same protections, limitations from liability and indemnities afforded the Trustee thereunder. The Dissemination Agent shall have only such duties as are specifically set forth in this Continuing Disclosure Agreement, and the Borrower agrees to indemnify and save the Dissemination Agent, the Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their rights, obligations, powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Borrower under this Section shall survive the termination of this Continuing Disclosure Agreement, the resignation or removal of the Dissemination Agent and payment of the Bonds. The Dissemination Agent and the Trustee shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the Borrower, the Holders, or any other party. Neither the Trustee or the Dissemination Agent shall have any liability to the Holders or any other party for any monetary damages or financial liability of any kind whatsoever related to or arising from the breach of this Continuing Disclosure Agreement.

The Dissemination Agent agrees to disseminate the information provided to it hereunder in the form delivered by the Borrower. The Dissemination Agent is acting hereunder solely in an agency capacity and as such is merely a conduit for the Borrower, and shall have no liability or responsibility for the form, content, accuracy or completeness of any information furnished hereunder. Any such information may contain a legend to that effect.

The Dissemination Agent shall have no obligation to make disclosure concerning the Bonds, the Project or any other matter except as expressly set out herein, provided that no provision of this Continuing Disclosure Agreement shall limit the duties, trusts, rights, powers or obligations of the Trustee under the Indenture. The fact that the Dissemination Agent or affiliate thereof has or may have any banking, fiduciary or other relationship with the Borrower or any other party in connection with the Project or otherwise, apart from the relationship created by this Continuing Disclosure Agreement, shall not be construed to mean that the Dissemination Agent or affiliate thereof has knowledge or notice of any event or condition relating to the Bonds or the Project except in its respective capacities under this Continuing Disclosure Agreement.

No provision of this Continuing Disclosure Agreement shall require or be construed to require the Borrower or the Dissemination Agent to interpret or provide an opinion concerning any information disclosed hereunder.

The Annual Report may contain such disclaimer language as the Borrower may deem appropriate. Any information disclosed hereunder by the Dissemination Agent may contain such disclaimer language as the Dissemination Agent may deem appropriate.

The Borrower hereby agrees to compensate the Dissemination Agent for the services provided and the expenses incurred pursuant to this Continuing Disclosure Agreement, in an amount to be agreed upon from time to time hereunder, and to reimburse the Dissemination Agent upon its request for all reasonable expenses, disbursements and advances incurred by the Dissemination Agent hereunder (including any reasonable compensation and expenses of counsel) except any such expense, disbursement or advance that may be attributable to its negligence or willful misconduct.

The Dissemination Agent may consult with counsel of its choice and the written advice of such counsel or any opinion of counsel shall be full and complete authorization and protection in respect of any

action taken, suffered or omitted by it hereunder in good faith and in reliance thereon, it being understood that for purposes of this provision, that such counsel may be counsel to the Borrower.

No provision of this Continuing Disclosure Agreement shall require the Dissemination Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights of powers.

**Section 11. Notices.** Any notices or communications to or among any of the parties to this Continuing Disclosure Agreement may be given at the addresses set forth in the Indenture. Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices of communications should be sent, effective only upon receipt.

**Section 12. Governing Law.** This Continuing Disclosure Agreement shall be governed by the laws of the State of Texas.

**Section 13. Termination of this Continuing Disclosure Agreement.** This Continuing Disclosure Agreement may be terminated by any party to this Continuing Disclosure Agreement upon thirty days' written notice of termination delivered to the other party or parties to this Continuing Disclosure Agreement; provided the termination of this Continuing Disclosure Agreement is not effective until (i) the Borrower, or its successor, enters into a new continuing disclosure agreement with a dissemination agent who agrees to continue to provide, to the MSRB and the Beneficial Owners of the Bonds, all information required to be communicated pursuant to the rules promulgated by the Securities and Exchange Commission or the MSRB, (ii) a nationally recognized bond counsel or counsel expert in federal securities laws provides an opinion that the new continuing disclosure agreement is in compliance with all applicable state and federal securities laws, and (iii) notice of the termination of this Continuing Disclosure Agreement is provided to the MSRB.

The Dissemination Agent shall be fully discharged at the time any such termination is effective. Also, this Continuing Disclosure Agreement shall terminate automatically upon (i) payment or provisions for payment of the Bonds, or (ii) when all of the Bonds are or are deemed to be no longer outstanding by reason of redemption or legal defeasance or at final maturity.

**Section 14. Counterparts.** This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 15. Electronic Signatures.** The parties agree that the electronic signature of a party to this Continuing Disclosure Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Continuing Disclosure Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format (PDF) or other replicating image attached to an electronic mail or internet message.

[Remainder of Page Intentionally Left Blank]

[Borrower's Signature Page to Continuing Disclosure Agreement]

**FISHPOND LIVING AT CORPUS CHRISTI, LP,**  
a Texas limited partnership

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
David Fournier  
Managing Member



[Counterpart Signature Page to Continuing Disclosure Agreement]

**DIGITAL ASSURANCE CERTIFICATION LLC,**  
as Dissemination Agent

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**ANNUAL REPORT**

**\$10,000,000\***

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(FishPond at Corpus Christi Apartments)  
Series 2020**

CUSIP: \_\_\_\_\_

**Annual report for the period ending December 31, \_\_\_\_\_**

**THE PROJECT**

Name of the Project:	FishPond at Corpus Christi Apartments
Address:	1006 Sixth Street, Corpus Christi, TX 78404
Number of Units:	112

**OPERATING HISTORY OF THE PROJECT**

The tables set forth below offer a summary of the operating results of the Project for fiscal year ended December 31, 20\_\_, as derived from the Borrower's audited financial statements [or unaudited financial statements].

<b>Financial Results for Fiscal Year Ending December 31, _____</b>	
Revenues	
Operating Expenses <sup>1</sup>	
Net Operating Income	
Debt Service on the Series 2020 Bonds	
Net Income (Loss)	
Debt Service Coverage Ratio	

<sup>1</sup> Excludes depreciation and other non-cash expenses.

<b>Occupancy Results for Fiscal Year Ending December 31, _____</b>	
Physical Occupancy	%
Economic Occupancy <sup>1</sup>	%

<sup>1</sup> The physical occupancy rate is the proportion of units that are occupied or leased by tenants. The economic occupancy rate is the proportion of the gross potential rent that is actually collected. As such, the economic occupancy takes into consideration items such as model units, employee units, discounted units, rent incentives, loss to lease and bad debt expense.

\* Preliminary; subject to change.

**EXHIBIT B**

**NOTICE TO MUNICIPAL SECURITIES RULEMAKING BOARD OF  
FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Texas Department of Housing and Community Affairs  
Name of Bond Issue: Multifamily Housing Revenue Bonds (FishPond at Corpus Christi Apartments)  
Series 2020  
Name of Borrower: FishPond Living at Corpus Christi, LP  
Date of Issuance: October \_\_\_\_, 2020

NOTICE IS HEREBY GIVEN that the above-referenced borrower (the “Borrower”) has not provided an Annual Report in connection with the above-named bonds (the “Bonds”) as required by a Continuing Disclosure Agreement, dated as of October 1, 2020 (the “Continuing Disclosure Agreement”), between the Borrower and Digital Assurance Certification LLC, as dissemination agent (the “Dissemination Agent”). The undersigned has been informed by the Borrower that it anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

**DIGITAL ASSURANCE CERTIFICATION LLC,**  
as Dissemination Agent

By: \_\_\_\_\_  
Authorized Officer

cc: Borrower

**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

October 1, 2020

among

**Texas Department of Housing and Community Affairs,**  
as Issuer

and

**BOKF, NA,**  
as Trustee

and

**Fishpond Living at Corpus Christi, LP,**  
as Borrower

regarding

**[\$Par Amount]  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Fishpond at Corpus Christi Apartments) Series 2020**

## TABLE OF CONTENTS

		Page
1.	Definitions.....	1
2.	Authorized Representatives .....	7
3.	Reasonable Expectations .....	8
4.	Reliance on Borrower’s Representations and Covenants .....	8
5.	Completeness of Borrower Information .....	8
6.	General Requirements Relating to Issuance of the Bonds.....	9
7.	Sale Proceeds of the Bonds.....	10
8.	Pre-Issuance Accrued Interest.....	10
9.	Use of Proceeds of the Bonds .....	10
10.	Issue Price .....	13
11.	Yield on the Bonds.....	14
12.	Yield on the Loan.....	14
13.	Investment of Proceeds Pending Expenditure; No Arbitrage .....	15
14.	Covenants of Trustee Relating to Investment of Proceeds .....	16
15.	Compliance with Yield Reduction and Rebate Requirements; Rebate Fund .....	17
16.	Funds.....	20
17.	Replacement Proceeds .....	20
18.	Not an Abusive Transaction.....	22
19.	The Project.....	23
20.	Tenant Income Certifications.....	24
21.	Form of Lease .....	24
22.	Change in Use.....	25
23.	Cashflow Sufficiency.....	25
24.	Post-Issuance Compliance Procedures .....	25
25.	Record Retention .....	25
26.	Examination by IRS.....	26
27.	Term.....	26
28.	Amendments .....	26
29.	Remedies.....	27
30.	Miscellaneous .....	27
Exhibit A	Issue Price Certificate .....	A-1
Exhibit B	Certificate of Financial Advisor.....	B-1
Exhibit C	Schedule of Loan Costs .....	C-1

## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of October 1, 2020, but effective as of the Closing Date (as defined in the Trust 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 Trust Indenture (together with any successor Trustee under the Trust Indenture described below and their respective successors and assigns, the “Trustee”), and **Fishpond Living at Corpus Christi, 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 \$[Par Amount] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Fishpond at Corpus Christi Apartments) Series 2020 (the “Bonds”). The representations of facts and circumstances and the covenants of the Issuer made herein are made in part for purposes of fulfilling the requirements set forth in section 1.148-2(b)(2) of the Regulations (as defined herein).

### RECITALS

WHEREAS, the Governing Board of the Issuer has determined to authorize the issuance of the Bonds pursuant to and in accordance with the terms of an Trust Indenture (as defined herein) by and between the Issuer and the Trustee for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); 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 Project Costs (as defined herein); 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, TDCHA (Fishpond at Corpus Christi) 2020

to the extent that such terms are defined in the Trust 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 shall mean Bracewell LLP.

**“Bond Fund”** means the “Bond Fund” established pursuant to the Indenture, with the Negative Arbitrage Account and the Remarketing Proceeds Account therein.

**“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).

**“Collateral Fund”** means the Collateral Fund established pursuant to the Indenture.

**“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 Trust Indenture.

**“Eligible Investments”** has the meaning set forth in the Indenture.

**“Expense Fund”** means the “Expense 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 thereof).

**“Final Computation Date”** means the date on which the final payment in full of the Bonds is made.

**“Financial Advisor”** means Stifel, Nicolaus & Company, Incorporated.

**“Form 8038”** means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

**“Gross Proceeds”** means any Proceeds and any Replacement Proceeds.

**“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.

**“Issue Price”** has the meaning ascribed to it in section 1.148-1(f) of the Regulations.

**“Loan”** means the loan of proceeds of the Bonds from the Issuer to the Borrower pursuant to the terms of the Loan Agreement.

**“Loan Agreement”** means the Loan Agreement among the Issuer, the Trustee, and the Borrower, dated as of October 1, 2020.

**“Maturity Date”** means [\_\_\_\_\_].

**“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.

**“Official Intent Date”** means July 25, 2019.

**“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.

**“Placed in Service”** has the meaning set forth in section 1.150-2(c) of the Regulations and means, with respect to a facility, the date on which, based on all the facts and circumstances, (a) the facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) the 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, construction or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of construction or rehabilitation.

**“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 112-unit multifamily housing development to be located at 1002 6<sup>th</sup> Street, Corpus Christi, Nueces County, Texas 78404.

**“Project Costs”** has the meaning set forth in the Trust Indenture.

**“Project Fund”** means the “Project Fund” established pursuant to the Indenture.

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount.

**“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 or rehabilitated 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 or rehabilitating 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) (i) The costs were paid no earlier than 60 days prior to the Official Intent 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 any 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 first day on which 10 percent of the Units are occupied 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, (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) 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 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), no 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 Trust 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 Land Use Restriction Agreement, among the Issuer, the Trustee, and the Borrower, dated as of October 1, 2020.

**“Related Party”** means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

**“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.

**“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).

“**Substantial User**” has the meaning given to such term in section 1.103-11(b) of the Regulations, and generally includes any person (i) specifically for whom a facility, or part thereof, is constructed, reconstructed, or acquired or (ii) that (A) receives more than five percent of the total revenue derived by all users of such facility as gross revenue or (B) occupies more than five percent of the entire usable area of the facility.

“**Trust Indenture**” means the Trust Indenture by and between the Issuer and the Trustee, dated as of October 1, 2020.

“**Underwriter**” means Ramirez & Co., Inc.

“**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 Sale Proceeds 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.

“**Yield Reduction Payments**” means amounts paid in accordance with section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an 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 the 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 has also relied, to the extent appropriate, on the (a) Issue Price Certificate attached hereto as Exhibit A, and (b) the Certificate of Financial Advisor attached hereto as Exhibit B. 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.

(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.

(b) Public Hearing and Approval. As required under section 147(f) of the Code, the Issuer hosted a forum that provided a reasonable opportunity for interested individuals to express their views, orally or in writing, on the Bonds and the location and nature of the Project on February 25, 2020, in Corpus Christi, Texas. The Issuer provided notice reasonably designed to inform residents of the approving governmental unit of the proposed issue no fewer than seven days before the date of such public hearing by publication in the newspaper of general circulation available to residents of the governmental unit. The notice stated the time and place for the public hearing, a general functional description of the type and use of the Project, the maximum stated principal amount of the Bonds, the name of the expected initial legal owner of the Project, and the location of the Project. The Attorney General of the State approved the issuance of the Bonds.

(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 Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) are 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.

(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. No person that was a Substantial User of the Project at any time during the five-year period before the Issue Date of the Bonds or any Related Person to such Substantial User will (i) receive (directly or indirectly) more than five percent of the Proceeds of the Bonds for such user's interest in the Project and (ii) will be a Substantial User of the Project at any time during the five-year period after 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 amount of Sale Proceeds received by the Issuer from the sale of the Bonds is \$[\_\_\_\_\_], which represents the Stated Redemption Price at Maturity of the Bonds. The Sale Proceeds of the Bonds will be loaned to the Borrower and deposited as follows:

(a) The amount of \$[\_\_\_\_\_] will be deposited in the Project Account of the Project Fund and used to pay Project Costs. The aggregate amount of the Project Costs is anticipated to exceed such amount.

(b) The amount of \$[\_\_\_\_\_] will be deposited in the Costs of Issuance Fund and disbursed to pay Costs of Issuance on the Bonds.

(c) The amount of \$[\_\_\_\_\_] will be deposited in the Bond and disbursed to pay interest on the Bonds accruing during a period not to exceed [\_\_\_\_\_] following the Issue Date of the Bonds. Sale proceeds and investment proceeds of the Bonds expected to be used to pay interest on the Bonds will serve the governmental purpose of the Bonds by temporarily enabling the payment of debt service on the Bonds pending the construction of the Project, which is the basis for payment of debt service on the Bonds.]

(d) [Add as applicable]

8. Pre-Issuance Accrued Interest. There is no Pre-Issuance Accrued Interest on the Bonds.

9. Use of Proceeds of the Bonds.

(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 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. Costs of Issuance in an amount of \$[ ] are expected to be paid out of the Net 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., \$[ ]). 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) 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. Net Proceeds of the Bonds in the amount of \$[ ] are expected to be used (directly or indirectly) to acquire land (or an interest therein), and such amount is less than 25 percent of the Net Proceeds of the Bonds (i.e., \$[ ]).

(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 Proceeds of the Bonds are not being used to directly or indirectly 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 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 to 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.] Other than (i) an amount not greater than \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Issue Price 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 Official Intent Date, which is the date on which 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 Yield Reduction and Rebate Requirements; Rebate Fund" paragraph herein.

(d) Allocations and Accounting. The Borrower will prepare a final allocation of the Proceeds of the Bonds 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. In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Issuer hereby identifies in its books and records maintained for the Bonds the rule the Issuer will use to determine the Issue Price for each maturity of the Bonds as follows:

(a) 10% Test. For those Bonds maturing in the years [ ], the Issuer will determine the Issue Price of such maturities as set forth in the first sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the first price at which a substantial amount (i.e. 10%) is sold to the public.

(b) Hold-the-Offering-Price Rule. For those Bonds maturing in the years [ ], the Issuer will determine the Issue Price of such maturities as set forth

in section 1.148-1(f)(2)(ii) of the Regulations, i.e. the Issue Price is the initial offering price to the public as of the sale date.

Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$[Issue Price]. The Issue Price of the Bonds represents the Stated Redemption Price at Maturity (excluding Pre-Issuance Accrued Interest for those Bonds the interest on which is paid at least once annually) of the Bonds in an amount of \$[\_\_\_\_\_], plus Original Issue Premium in the amount of \$[\_\_\_\_\_], less Original Issue Discount in the amount of \$[\_\_\_\_\_].

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) 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. The Issue Price is based upon the representations of the Underwriter set forth in Exhibit A hereto. No underwriter's discount, Costs of Issuance, or costs of carrying or repaying the Bonds is taken into account for purposes of computing the Yield on the Bonds.

(b) Neither the Issuer nor the Borrower has entered into any hedging transaction with respect to the Bonds, and each covenants not to enter into a hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel.

12. 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. \$[\_\_\_\_\_].

(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 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 section 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 C 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 the Yield on the Bonds by more than 1.5 percentage points.

13. Investment of Proceeds Pending Expenditure; No Arbitrage.

(a) Investment Proceeds. Amounts on deposit in the Bond Fund and 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, if permitted by section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in 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 Trust 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.

(e) Guaranteed Investment Contract. If Proceeds of the Bonds are co-mingled as an investment in a guaranteed investment contract (“GIC”), the Borrower will take into account for purposes of its covenant to comply with the rebate requirement that proceeds of the Bonds and amounts that are not proceeds of the Bonds have been co-mingled as an investment in the GIC and will comply with the requirements of section 1.148-5(d)(6)(iii) of the Regulations.

14. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Trust Indenture in accordance with the respective terms of the Trust Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Trust Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Notwithstanding any other provisions of the Trust 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 Trust 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 Trust 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 Trust 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 an “arbitrage bond.”

The Issuer and the Borrower agree that, in complying with the provisions set forth under this subparagraph, 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. The Trustee is not liable or responsible for monitoring the compliance by the Borrower, the Issuer or the Rebate Analyst with the requirements of section 148 of the Code or any applicable regulation, ruling, or other judicial or administrative interpretation thereof, it being acknowledged and agreed that the sole obligation of the Trustee in this regard is (i) to invest the moneys received by the Trustee pursuant to the written instructions of the Borrower or Issuer in specific investments identified by the Borrower or, in the absence of such identification, to make investments as otherwise provided herein and to disburse said moneys in accordance with the terms of the Indenture and this Agreement and (ii) to materially follow the investment instructions as provided in the Indenture and this Agreement.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Bonds have been invested at a Yield that is “materially higher” than the Yield on the Bonds and Yield Reduction Payments are permitted under section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “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 Trust 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 Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Trust 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 Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Trust 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 the amount of any Yield Reduction Payments due; 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 and Yield Reduction Payments due 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 and Yield Reduction Payments due 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 Eligible Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Eligible 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 is 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 or Yield Reduction Payments due 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 or Yield Reduction Payments, 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 and the Yield Reduction Payments.

(g) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value (as defined in section 1.148-5(d)(6)(iii) of the Regulations) or includes terms that the Borrower would not have included if the Bonds were not subject to section 148(f) of the Code.



(h) Amounts 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 Yield Reduction and Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Bonds have not been invested at a Yield that is “materially higher” than the Yield on the Bonds and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent 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.

16. Funds.

(a) Project Fund. All of the Proceeds of the Bonds in the Project Fund are expected to be invested and disbursed as described in the Indenture to pay Project Costs. The Issuer and the Borrower hereby waive the temporary period available under section 1.148-2(e)(2) of the Regulations. All amounts on deposit in the Project Fund will 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) Bond Fund. Amounts on deposit in the Bond Fund, including the Negative Arbitrage Account and the Remarketing Proceeds Account therein, will be used for the purposes set forth in Section 4.03 of the Indenture. The Bond Fund 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 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.

(c) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund will be funded by the Borrower at closing and used for the purpose of paying Costs of Issuance. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance, and in any event not later than 30 days following the Issue Date of the Bonds, 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.

(d) Collateral Fund. Amounts on deposit in the Collateral Fund will be used for the purposes set forth in Section 4.06 of the Indenture. Any amounts held in the Collateral Fund 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.

(e) Expense Fund. Amounts on deposit in the Expense Fund will be funded by the Borrower and used for the purposes set forth in Section 4.08 of the Indenture. There is no assurance that amounts on deposit in such fund will be available to pay debt service on the Bonds.

(f) 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 Yield Reduction and 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.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Bond Fund and the Collateral Fund, 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 amounts in the Bond Fund and the Collateral Fund, 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).

18. 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.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project will be comprised of (i) Units, all of which will be rented to individuals or families for residential occupancy and none of which will be owner-occupied (other than any functionally related and subordinate Units used by management for the purpose of housing any reasonably required resident managers, security personnel or maintenance personnel 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).

(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.

20. 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.

(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.

21. 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.

22. 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 Trust Indenture and the Loan Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. Cashflow Sufficiency. The Borrower reasonably expects that the cash flow from the Project on an annual basis (excluding cash generated from the investment of nonoperating funds or other investment funds maintained by the Borrower) will be sufficient to pay annual debt service on the Loan during each year. Accordingly, 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 to the Borrower. Except for the funds described in the “Funds” paragraph above, 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. Investment Proceeds of the Bonds and amounts earned from the investment of such Investment Proceeds will not be commingled with other receipts or revenues of the Borrower.

24. Post-Issuance Compliance Procedures. The Issuer has implemented written post-issuance tax 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. A copy of the Issuer’s then-current post-issuance tax compliance procedures is and will be available on the Issuer’s website during the term of this Agreement. If the Issuer’s website is not available, a copy of the then-current post-issuance tax compliance procedures will be made available to the Borrower, upon request. The Borrower agrees to take such actions as required therein to be taken by the Borrower to maintain compliance with requirements in the Code. In the event that the terms of the Issuer’s post-issuance tax compliance procedures conflict with the terms of this Agreement, the terms of this Agreement will control.

25. Record Retention. The Borrower and the Trustee will retain or cause to be retained all pertinent and material records relating to any formal elections made for purposes of federal income tax law; the use of the Project; the investment, use and expenditure of the Proceeds of the Bonds; and the calculation of rebate in connection with the Bonds 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.

26. 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).

27. 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. The indemnification provisions set forth in Section 26 will survive the defeasance and discharge of the Bonds and/or the resignation or removal of the Trustee.

28. 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.

29. Remedies. The Issuer, the Trustee, and the Borrower each hereby agrees that the remedies available under Article VI of the Trust Indenture and Article VII of the Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Trust 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.

30. 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 provisions 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 Trust 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 (but, as for the Trustee, it is only agreeing to sections 2(c), 14, 15, and 26 through 30) have caused this Agreement to be executed and delivered by duly authorized officers thereof as of Closing Date.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

By: \_\_\_\_\_  
Name: Monica Galuski  
Title: Director of Bond Finance/Chief Investment  
Officer

*Signature Page to Tax Exemption Agreement*

**FISHPOND LIVING AT CORPUS CHRISTI,  
LP, a Texas limited partnership**

By: FishPond Corpus Christi Manager, LLC,  
a Texas limited liability company,  
its General Partner

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

David Fournier, Managing Member

*Signature Page to Tax Exemption Agreement*

**BOKF, NA, as Trustee**

By: \_\_\_\_\_  
Name: Kathy McQuiston  
Title: Vice President

*Signature Page to Tax Exemption Agreement*

## EXHIBIT A

### ISSUE PRICE CERTIFICATE

I, the undersigned officer of Ramirez & Co, Inc. (“Ramirez”), make this certification in connection with the \$[Par Amount] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Fishpond at Corpus Christi Apartments) Series 2020 (the “Bonds”) (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”).

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of Ramirez 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 Ramirez. I am the officer of Ramirez charged, along with other officers of Ramirez, with responsibility for the Bonds.

(b) **[IF 10% OF MATURITY SOLD]** For the Bonds maturing in [\_\_\_\_\_], the first price at which at least 10% of each maturity was sold to the Public is the price for each such maturity set forth on the cover of the Official Statement prepared in connection with the Bonds (each, an “Actual Sales Price”).

(c) **[IF FEWER THAN 10% OF MATURITY SOLD ON SALE DATE]** For the Bonds maturing in [\_\_\_\_\_] (each, a “Held Maturity”), Ramirez on or before the Sale Date offered for purchase each such maturity to the Public at the applicable initial offering price set forth on the [inside] cover of the Official Statement prepared in connection with the Bonds (each, an “Initial Offering Price”). A copy of the pricing wire evidencing the Initial Offering Prices is attached hereto as Attachment I. In connection with the offering of the Bonds, Ramirez agreed in writing that (i) during the Hold Period, it would neither offer nor sell any Held Maturity to any person at a price higher than the applicable Initial Offering Price (the “Hold-the-Offering-Price Rule”) and (ii) any selling group agreement would contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement would contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, that, during the Hold Period, such party would comply with the Hold-the-Offering-Price Rule. In accordance with such agreements, no Underwriter offered or sold any of the Held Maturities at a price higher than the applicable Initial Offering Price for such Held Maturity during the Hold Period.

(d) The aggregate of the Actual Sales Prices [and the Initial Offering Prices] is \$[\_\_\_\_\_].

2. For purposes of this Issue Price Certificate, the following definitions apply:

(a) “Hold Period” means, with respect to a Held Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the

Sale Date or (ii) the date on which the Underwriters have sold at least 10% of such Held Maturity to the Public at a price no higher than the applicable Initial Offering Price.

(b) “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.

(c) “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).

(d) “Sale Date” means the first day on which there is a binding contract in writing for the sale or exchange of the Bonds. The Sale Date of the Bonds is [\_\_\_\_\_], 2020.

(e) “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 third-party 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 Ramirez’s interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax 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 Internal Revenue Service 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]

EXECUTED as of this \_\_\_\_\_ day of October, 2020.

**RAMIREZ & CO, INC.**

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

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

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

*Signature Page to Issue Price Certificate*

## EXHIBIT B

### CERTIFICATE OF FINANCIAL ADVISOR

I, the undersigned officer of Stifel, Nicolaus & Company, Incorporated (the “Financial Advisor”), make this certificate in connection with the \$[Par Amount] Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Fishpond at Corpus Christi Apartments) Series 2020 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption 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 plus any Pre-Issuance Interest on the Bonds, based on the representations of the Underwriter in the Issue Price Certificate attached as Exhibit A to the Tax Exemption Agreement, is not more than \$[Issue Price].

3. Solely for the purposes of demonstrating the fact that the Yield on the Loan is not more than 1.5 percentage points higher than the Yield on the Governmental, the Financial Advisor computed the Yield on the Governmental Note, based on the Issue Price and assuming semiannual compounding, an assumed Construction Phase rate of interest of [\_\_\_\_\_] percent per annum, a Conversion Date of [\_\_\_\_\_] , and a fixed rate of interest of [\_\_\_\_\_] percent per annum thereafter to the Maturity Date, to be [\_\_\_\_\_] percent and the Yield on the Loan to be [\_\_\_\_\_] percent. Accordingly, the Yield on the Mortgage Loan does not exceed the Yield on the Notes by more than 1.5 percentage points.

4. For purposes of determining the Yields in paragraphs 3 above, the Financial Advisor has performed certain calculations relating to the Bonds and the 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 “Yield on the Bonds” and “Yield on the 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, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Bonds, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

5. 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.

B-1

6. 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.

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

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

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

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

*Signature Page to Certificate of Financial Advisor*

**SCHEDULE I**  
**TO CERTIFICATE OF FINANCIAL ADVISOR**

*Schedule I to Certificate of Financial Advisor*

TDCHA (Fishpond at Corpus Christi) 2020

#6217477.2

**EXHIBIT C**  
**SCHEDULE OF LOAN COSTS**

**Paid Prior to Closing**

Application Fee	\$2,240
-----------------	---------

**Paid at Closing**

Issuer Closing Fee	\$
--------------------	----

Issuer Administration Fee (first two years)	\$
--	----

Issuer Compliance Fee (first year)	\$2,800
---------------------------------------	---------

**Annual Fees**

Issuer Administrative Fee (beginning October 1, 2022)	0.10% per annum of the aggregate principal amount of the Bonds outstanding
--	---

Issuer Compliance Fee (beginning October 1, 2023)	\$25 per unit in the Project
--	------------------------------